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**In the matter of the  
Arbitration Between:**

**Respondent.**

**NO. 95-03308**

Fuess' Statement of Claim was filed on or about July 10, 1995. Fuess' Submission Agreement was

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signed on June 27, 1995.

Fuess' and Bums' First Amended Statement of Claim was filed on or about October 12, 1995.

Oppenheimer's Statement of Answer was filed on or about September 29, 1995. Oppenheimer's Submission Agreement was signed on September 29, 1995.

### **HEARING INFORMATION**

A telephonic pre-hearing conference was held on March 25, 1996 for a total of one (1) session.

The hearing was held on April 16, 17, and 18, 1996 for two (2) sessions each day, and May 28, and 29, 1996 for two (2) sessions each day in St. Louis, Missouri for a total of 10 sessions.

### **CASE SUMMARY**

Claimants Bums and Fuess allege that Oppenheimer's registered representative, William L. Chambers, ("Chambers"), recommended that they take a lump-sum distribution from their respective pension plans to open an IRA account at Oppenheimer for each of them. Claimants further allege that Chambers recommended to them a "72t distribution" plan. Claimants specifically allege:

1. Chambers' recommendation and utilization of the "72t distribution" plan was flawed, inappropriate and not suitable, negligent and inadequately explained.
2. Chambers deceived them in convincing them about how well they could live over the long term with a lump sum distribution.
3. Chambers failed to disclose to them that the principal of their IRA accounts may not grow at the rates as represented to them.
4. Chambers represented to them that he would make at least 10% to 12% on the principal in the accounts and that at age 59 1/2 their accounts would be worth in excess of \$1,000,000.00.
5. Chambers delivered false and misleading documentation to them either without Oppenheimer compliance review or such compliance review was inadequate.
6. They will not be able to maintain their standard of living prior to their retirement (which Chambers represented would be enhanced) and preserve the underlying principal.
7. Their lives, employment and retirement have all been drastically and irrevocably altered and damaged as a direct result of Chambers' negligent and reckless advice.

9606125

Based upon these allegations, Claimants asserted claims for breach of fiduciary duty, recklessness, negligence and violation of the NASD Rules of Fair Practice.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that:

1. Neither Burns nor Fuess have lost any money in their Oppenheimer accounts and have generated a return in those accounts.
2. That Burns and Fuess had decided to retire before Chambers joined Oppenheimer.
3. That the "72t distribution" plan recommended by Chambers is suitable for both Burns and Fuess.

### **RELIEF REQUESTED**

Claimant Burns requests an entry of an award against Respondent in the sum of \$960,713.00 plus punitive damages, interest and attorneys fees.

Claimant Fuess requests an entry of an award against Respondent in the sum of \$562,025.00 plus punitive damages, interest and attorneys fees.

Oppenheimer requested that the panel dismiss the Claimants' claims in their entirety and award Oppenheimer its reasonable attorneys' fees and costs.

### **OTHER ISSUES CONSIDERED & DECIDED**

Burns and Fuess filed separate Statements of Claim against Oppenheimer. Oppenheimer requested that the two arbitrations be consolidated for hearing and award purposes, and Burns and Fuess have consented to such consolidation. On or about August 24, 1995, the parties agreed that the above-referenced arbitrations be consolidated for hearing and award purposes in accordance with §25(d) of the NASD Code of Arbitration Procedure (the "Code").

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Burns' and Fuess' claims are, and each of them, denied with prejudice.

9606125

Each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration.

### **FORUM FEES**

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each prehearing conference, if any. There were 10 regular sessions x \$1,000 and one (1) pm-hearing session x \$300 = \$10,300 in forum fees. Pursuant to §43(b) of the Code, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$250 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with the NASD by Bums.

Pursuant to §43(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by Fuess.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$500 previously paid by Oppenheimer for case number 95-03307 and shall retain the member surcharge fee in the amount of \$350 previously paid by Oppenheimer for case number 95-03308..

Additional forum fees in the amount of \$8,550 are assessed jointly and severally against Bums and Fuess.

**Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

/s/

June 20, 1996

/s/

June 20, 1996

/s/

June 20, 1996