

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ingrid Osterheider

95-04202

Name of Respondents

Oppenheimer & Co., Inc.
James W. McMackin

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 1, 1995, Claimant, Ingrid Osterheider ("Claimant"), who appeared Pro Se, alleged that Respondents Oppenheimer & Co., Inc. ("Oppenheimer") and James W. McMackin ("McMackin"), a representative of Oppenheimer, Inc. ("Oppenheimer, Inc.") and purchased unsuitable investments for her. Claimant further alleged that she informed McMackin that the money she had to invest was limited and that her objectives included security, maintaining the value of her assets and building a retirement nest egg. Claimant contended that she informed McMackin that she was an unexperienced investor and did not want to invest in stocks at all. Claimant further contended that McMackin assured her that he understood her situation and recommended two "very successful" and "safe" mutual funds: Emerging Markets Income Fund II Inc. ("EMI") and Quest for Value-Dual Purpose Fund Inc. Capital Shares ("Quest"). Claimant contended that she agreed to purchase 200 shares of Quest and 900 shares of EMI. Claimant further contended that a few months later, McMackin called her in a "panic" to tell her that he was leaving for Austin and he wanted to sell EMI and buy Zenith Electronics ("Zenith") instead. Claimant alleged that when she asked McMackin about Zenith, he stated that the Zenith shares would go up and that he wanted to immediately sell all of her funds including Quest. Claimant further alleged that at the end of the conversation, McMackin became "pushy" with her, and because she was afraid of losing her investment, she agreed to his proposal. Claimant further contended that she called McMackin two months later to advise him that he had pushed her into buying Zenith and she had felt "overrun". Claimant alleged that as a result of the above, she has suffered a loss for which the Respondents should be held liable.

Respondents Oppenheimer & Co., Inc. and James W. McMackin, maintained that Claimant informed McMackin that her investment objectives included income/moderate growth; long term growth and business risk-appreciation. Respondents further maintained that it was Claimant who wanted advice on the Kauffman Fund, which is a no load fund that invests in companies going public and emerging public companies. Respondents contended that McMackin explained the investment methodology in the mutual funds, but did not state that they were very successful. Respondents further contended that he advised Claimant to sell the funds and buy Zenith to preserve her principle, but that he was not pushy with her and that he has never forced a client to do anything against his or her will.

Respondents maintained that, as a result of the above, they should not be held liable.

RELIEF REQUESTED

Claimant Ingrid Osterheider, requested \$7,639.00 in actual damages.

Respondents Oppenheimer & Co., Inc., and James W. McMackin, requested that the claims of the Claimant be dismissed.

AWARD

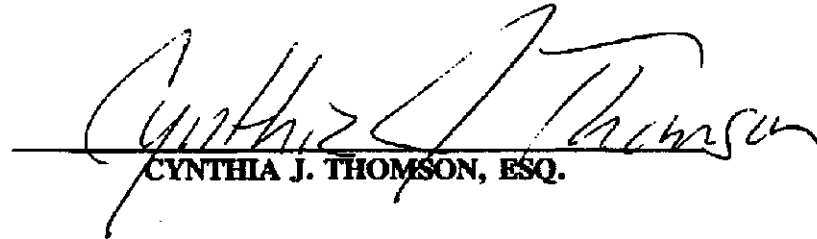
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Cynthia J. Thomson, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Ingrid Osterheider, on August 31, 1995, and by the Respondent Oppenheimer & Co., Inc., on October 16, 1995, by Respondent James W. McMackin, on October 9, 1995.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Respondents Oppenheimer & Co., Inc. and James W. McMackin, are jointly and severally liable, and shall pay to the Claimant Ingrid Osterheider, \$2,701.21 in actual damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Ingrid Osterheider, shall be retained by the NASD, Inc. The Respondents Oppenheimer & Co., Inc. and James W. McMackin, are liable and shall pay to the Claimant Ingrid Osterheider, \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **CYNTHIA J. THOMSON, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


CYNTHIA J. THOMSON, ESQ.

DATE OF DECISION: March 29, 1996