

961113

NASDR AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Laurie White Pope

and

Names of Respondents

*Oppenheimer & Company, Incorporated
and Charles Hurst

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Securities Dealers Inc.

1996

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REPRESENTATION OF PARTIES

Laurie White Pope ("Claimant") was represented by Charles D. Powell, Esquire Brown, Parker & Leahy, L.L.P. from Houston, Texas.

Oppenheimer & Co., Inc. and Charles Hurst ("Respondents") were represented by David J. Healey, Esquire of Arnold, White & Durkee from Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about October 24, 1995

The Submission Agreement of the Claimant was signed on October 16, 1995.

The joint Statement of Answer was filed by the Respondents on or about December 29, 1995.

The joint Amended Statement of Answer was filed by the Respondents on or about January 2, 1996.

The Submission Agreement of Respondent Oppenheimer & Co., Inc. was signed on December 29, 1995 by Frank James, Managing Director.

The Submission Agreement of Respondent Charles Hurst was signed on or about December 29, 1995.

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HEARING INFORMATION

A pre-hearing conference was held on July 11, 1996 for one (1) pre-hearing session

The hearing was held in Houston, Texas on the following dates:

- August 27, 1996 for two (2) sessions
- August 28, 1996 for three (3) sessions
- August 29, 1996 for three (3) sessions

CASE SUMMARY

In the Statement of Claim, Laurie White Pope ("Pope") sought to recover damages suffered allegedly as a result to fraudulent and deceitful practices perpetrated by Oppenheimer & Co., Inc. ("Oppenheimer") and its registered representative, Charles Hurst ("Hurst"). Claimant alleged that during the period the Claimant maintained her account at Oppenheimer, Respondents committed fraudulent and manipulative practices which included: (1) Directed and effected excessive trades and churned the Claimant's account for the primary purpose of producing substantial amounts of the Claimant's commissions; (2) Made and effected unauthorized and discretionary trades in the Claimant's account (2) Made and without written discretionary authority and without having implemented the appropriate procedures for handling a discretionary account; (3) Directed and effected unsuitable trades in the Claimant's account; (4) Misrepresented or omitted to state material facts to the Claimant; (5) Misrepresented the quality, benefits and characteristics of the services to be provided; and (6) Conducted its services in an unconscionable manner. Claimant alleged that she was unsophisticated and opened an account at Oppenheimer in February of 1994 following a series of conversations initiated by Hurst. Pope claimed to have totally trusted and relied upon Hurst to invest her funds in her best interest and consistent with her desire to have some appreciation. As alleged, Respondents promoted their own interests by recommending and directing a program of speculative trading activities which included purchases of speculative investments. Respondents allegedly magnified the risk presented by these securities by utilizing margin indebtedness. Claimant's causes of action against Respondents included, but were not limited to, (1) Claims for breach of duty based upon inadequacies in providing professional services, including unsuitable recommendations; (2) Claims for common-law fraud and securities fraud based upon the fraudulent and deceitful trading activity, churning of commissions and unauthorized trading which the Respondents directed in the account; (3) Violation of Federal and state securities laws, including the continued misrepresentations to Pope that she was profiting in the Respondents' trading activity when in fact the account was not earning an appropriate return for a prudently managed account, and unauthorized trading in the account; (4) Claims for breach of contract, negligence and gross negligence based upon Respondents' failure to provide competent, professional services in accordance with the rules and regulations of the NASD and industry custom practices and standards; and (5) Claims for violations of the Texas Deceptive Trade Practices/Consumer Protection Act, including misrepresentations that the financial services to be provided and provided by Respondents were of a particular standard and quality; that the financial services provided were of particular benefits, qualities and characteristics which they did

not and the failure to disclose information concerning the services, which failure to disclose was intended to induce the Claimant into transactions into which the Claimant would not have entered had the information been disclosed.

In their Amended Statement of Answer, Oppenheimer & Co., Inc. and Charles Hurst denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Pope was an impulsive, speculative and aggressive trader upon opening the account and directed most of the trading in her account based upon stories from television while ignoring the advice of Hurst. Respondents claimed that none of the trades effected in the account were made on a discretionary basis and that all charges and commissions were fully disclosed to Pope. Claimant allegedly signed a contract to open both cash and margin accounts in February of 1994 and was told by Hurst how a margin account works. Respondents asserted many defenses including, but not limited to, Pope knowingly gave her express consent to all activities in her account; losses in the account were caused by negligence on the part of Pope; Pope failed to comply with the notice requirements under the Texas Deceptive Trade Practices Act; Pope ratified any accused wrongdoing by Respondents; the applicable statutes of limitations barred some or all of Pope's claims against Respondents; no private cause of action existed for one or more of Pope's allegations against Respondents; and that the damages calculations in *Miley v. Oppenheimer & Co.* were inapplicable because the case only applies when the broker had been given authority and accepted the responsibility to control the account.

Respondents claimed that they had implemented the appropriate procedures with respect to the account, (3) Directed and effected unsuitable trades in the Claimant's account, and (4) Failed to

RELIEF REQUESTED

Claimant requested an award in the amount of \$302,195 in actual damages and at least \$300,000 in punitive damages as well as costs and attorneys' fees.

Respondents requested that the claims asserted against them be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

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 NASDR.

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:

1. Respondents Oppenheimer & Co., Inc. and Charles Hurst are hereby, jointly and severally, liable for and shall pay to the Claimant Laurie White Pope the sum of \$245,300.00 in actual damages with pre-judgment simple interest on that amount at a rate of 10% per annum from July 1, 1995 through the date of this award as well

as post-award simple interest at a rate of 18% per annum if, and only if, the award is not paid within thirty (30) days of receipt of this award;

2. Respondents Oppenheimer & Co., Inc. and Charles Hurst are hereby, jointly and severally, liable for and shall pay to Claimant Laurie White Pope the amount of \$55,000.00 in attorneys' fees. In determining to award attorneys' fees, the arbitrators considered the pleadings, the testimony and the evidence as well as the legal authority provided by the Claimant which was the State Securities laws;
3. Respondents Oppenheimer & Co., Inc. and Charles Hurst are hereby, jointly and severally, liable for and shall pay to the Claimant Laurie White Pope the amounts of \$7,000.00 for expenses and \$16,000.00 in expert witness fees. If, and only if, this award is not paid by thirty (30) days after the date of receipt of the award, Respondents Oppenheimer & Co., Inc. and Charles Hurst are liable for and shall pay to the Claimant Laurie White Pope simple interest at a rate of 18% per annum on the above amounts awarded in attorneys' fees, expert witness fees and expenses;

4. The parties shall bear their own costs, including attorneys' fees, except for those specifically enumerated herein; and

5. All relief not specifically granted herein is hereby denied in its entirety.

FORUM FEES

Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300 for each pre-hearing conference. There were eight (8) sessions x \$1,000.00 plus one (1) pre-hearing session x \$300 = \$8,300.00 in forum fees. Pursuant to Section 10332(b) of the Code of Arbitration Procedure (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 Section 10332(c) of the Code, the National Association of Securities Dealers Regulation, Inc. ("NASDR") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain as forum fees the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASDR by the Claimant Laurie White Pope.

The NASDR shall retain postponement fee in the amount of \$500.00 previously deposited with the NASDR by the Claimant Laurie White Pope. The NASDR shall also retain the postponement fee in the amount of \$500.00 and the member surcharge in the amount of \$500.00 in accordance with Section 10333 of the Code previously submitted by Respondent Oppenheimer & Co., Inc.

Respondents Oppenheimer & Co., Inc. and Charles Hurst are hereby, jointly and severally, liable for and shall pay to the Claimant Laurie White Pope the sum of \$1,750.00 as reimbursement.

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Respondents Oppenheimer & Co., Inc. and Charles Hurst are hereby, jointly and severally, liable for and shall pay to the NASDR the amount of \$7,300.00 in forum fees.

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

Arbitrators' Signatures:

Dated:

Patrick Lanier, Esquire
Patrick Lanier, Esquire
Public Arbitrator, Presiding Chair

November 8, 1996

Thomas D. Nagle
Thomas D. Nagle
Public Arbitrator

October 9, 1996

John C. Booth, Jr.
John C. Booth, Jr.
Industry Arbitrator

October 8, 1996

Date served by the NASDR: November 8, 1996

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