

## AWARD

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

James and Susie Coward,

and

96-01107

Name of Respondent

\*Oppenheimer & Co., Inc.;

Kemper Clearing Corporation n/k/a/ Everen Securities Inc.

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### REPRESENTATION OF PARTIES

For Claimant: Claimant James and Susie Coward ("Cowards") were represented by Delia M. Stephens, Esq. in Houston Texas.

For Respondent: Respondent Oppenheimer & Co., Inc ("Oppenheimer") was represented by Michelle A. Murphy, Esq. of Oppenheimer & Co., Inc. in New York, New York.

Respondent Kemper Clearing Corporation ("Kemper") was represented by Renan I. Sugarman, Esq. of Kemper Clearing Corporation in Chicago, Illinois.

### CASE INFORMATION

Statement of Claim filed on or about: August 6, 1996

Claimants' Submission Agreement signed on: February 29, 1996 by James and Susie Coward.

Statement of Answer filed on or about: March 6, 1997.

Respondent Oppenheimer's Submission Agreement signed on: October 8, 1996 by Michelle Murphy, Vice President of Oppenheimer & Co., Inc.

Respondent Kemper Clearing Corporation's Submission Agreement signed on: March 3, 1997 by Renan I. Sugarman, Vice President and Senior Attorney for Everen Securities, Inc.

### CASE SUMMARY

The Cowards alleged that Oppenheimer churned their account and traded without their authorization. The Cowards specifically alleged that:

1. In February 1988, the Cowards opened an account with Oppenheimer & Co., Inc.

2. The Cowards have virtually no investment experience other than two conservative retirement accounts.
3. The Cowards explicitly specified their investment objectives as low-risk.
4. Oppenheimer purchased funds that were far too speculative for the Cowards' investment objectives.
5. Oppenheimer purchased and sold several high-risk securities that generated excessive commissions for Oppenheimer.
6. The Cowards repeatedly questioned the account purchases. Oppenheimer reassured the Cowards that the purchases were within their investment objectives.
7. The Cowards have lost virtually of their investment because of the high-risk stock value loss.

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

8. All of Coward's stock purchases were within their investment objective.
9. The amount of purchases were never excessive and therefore, Oppenheimer did not churn the Cowards' account.
10. Affirmative defenses including failure to state a claim, equitable estoppel, failure to object, lack of due diligence, assumption of the risk, ratification, waiver, estoppel, laches, unclean hands, contributory/comparative negligence, good faith, and statute of limitations bar the Cowards' claim.

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$23,973.75 plus interest, costs, and attorneys' fees.

Respondents denied the claims asserted against them and asked the panel to award them costs and attorneys' fees.

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

By written submissions dated March 11, 1996 and January 15, 1997, the parties agreed to waive their right to a hearing in this matter and requested that the case proceed as a simplified arbitration in accordance with §10302 of the Code of Arbitration Procedure.

**AWARD**

After considering the pleadings and the evidence presented by the parties, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Oppenheimer & Co., Inc. is liable for and shall pay to Claimants James and Susie Coward the sum of \$1,750.00 as compensatory damages.
2. The parties shall bear their own costs of arbitration, including attorneys' fees.
3. With the exception of forum fees addressed below, all claims and relief requests not specifically granted are hereby denied.

**FORUM FEES**

Pursuant to §10332 of the Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$100.00 and shall retain as forum fees the simplified arbitration fee in the amount of \$75.00 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimants.

Pursuant to §10332 of the Code of Arbitration Procedure, Oppenheimer & Co., Inc. shall reimburse Claimants for the filing fee and the simplified arbitration fee for the total amount of \$175.00.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, Oppenheimer & Co., Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the non-refundable member surcharge in the amount of \$200.00. Kemper Clearing Corporation also is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the non-refundable member surcharge in the amount of \$200.00.

Arbitrator's Signature

David G. Beerbower, Esq.  
David G. Beerbower, Esq.  
Public Arbitrator, Presiding Chair

October 9, 1997  
Dated:

For NASD use only:  
Date served: October 10, 1997

9/10/23

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David G. Beerbower, Esq.  
Public Arbitrator, Presiding Chair

10-9-97  
Dated:

For NASD use only:  
Date served: