

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Oppenheimer & Co., Inc.

96-02969

Name of Respondent

David Ellrich

REPRESENTATION

For claimant Oppenheimer & Co., Inc. ("claimant") appeared Lynn E. Judell, Esq. of the law offices Rosenthal Judell & Uchima located in New York, New York.

For respondent David Ellrich ("respondent") appeared Pete S. Michaels, Esq. of the law offices Murphy, MacKenzie, Michaels & Sullivan located in Boston, Massachusetts.

CASE INFORMATION

Claimant's Statement of Claim was filed on: July 10, 1996.

Claimant's Reply to Counterclaim was filed on: October 23, 1996.

Claimant's Submission Agreement was signed on: July 9, 1996.

A Statement of Answer was filed by respondent on: September 20, 1996.

Respondent's Submission Agreement was signed on: September 20, 1996.

HEARING INFORMATION

Hearing Dates/Sessions:	December 2, 1997	-	Two Sessions
	December 3, 1997	-	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in Boston, Massachusetts.

CASE SUMMARY

Claimant commenced this arbitration to recover sums due from respondent pursuant to a written agreement between claimant and respondent and a promissory note signed by respondent. Claimant alleged that, at the time respondent commenced his employment with it in September 1993, he was given a loan in the amount of \$105,000.00, which was forgivable at a rate of \$2,187.50 per month, and that, when his employment was terminated in January 1996, there was a balance due on the loan of \$41,562.50.

Respondent denied all of the allegations set forth in the Statement of Claim and requested that all claims be dismissed. Respondent also asserted the following affirmative defenses: (1) claimant is not entitled to any recovery whatsoever based on the equitable doctrine of "unclean hands"; (2) claimant is not entitled to any recovery based on violations of Massachusetts state law; (3) claimant is not entitled to any recovery based upon breach of contract it committed; and (4) claimant is not entitled to any recovery because the Statement of Claim failed to state a claim upon which relief may be granted.

In addition to the above stated affirmative defenses, respondent set forth the following counterclaims in its Statement of Answer: (1) Counterclaim Count I - Fraud and Misrepresentation, constituting fraud in the inducement, and misrepresentation upon which respondent relied to his detriment; (2) Counterclaim Count II - Breach of Contract; (3) Counterclaim Count III - Violation of Massachusetts General Laws Ch. 93A; (4) Counterclaim Count IV - Violation of Massachusetts Wage Payment Statute; and (5) Counterclaim Count V - Tortious Interference with Business Relations.

Specifically, respondent alleged that the contract he signed was breached, that claimant misrepresented material facts about itself in order to induce respondent to join it, that claimant owed him salary and compensation in violation of state statute and that the monies claimant alleged were owed to it were forgiven.

In its Reply to Counterclaims, claimant denied all of the allegations in respondent's counterclaims. In particular, claimant denied that it made any misrepresentation to induce respondent to join it, denied that it breached any contract with respondent, denied that there were any sums due respondent at the time he left claimant's employ, and denied that it tortiously interfered with respondent's business relations. In addition, claimant alleged that respondent expressly waived his right to assert any counterclaim against it in the promissory note he signed on or about September 1, 1993.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$41,562.50 plus accrued interest, costs and disbursements of this proceeding, including reasonable attorneys' fees.

Respondent requested that all claims against him be dismissed in their entirety. In his Counterclaims, respondent requested in counts I, II and V actual damages in an amount not less

than \$250,000.00. In count III, respondent sought actual damages of not less than \$750,000.00. In count IV, respondent requested actual damages of not less than \$6,000.00. In addition, respondent requested attorneys' fees and costs.

Claimant requested that respondent's Counterclaims be dismissed in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc.

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. Respondent be and hereby is liable for and shall pay to claimant the sum of **FORTY-ONE THOUSAND FIVE HUNDRED DOLLARS (\$41,500.00)**.
2. Claimant be and hereby is liable for and shall pay to respondent the sum of **THIRTY-FOUR THOUSAND EIGHT HUNDRED DOLLARS (\$34,800.00)**.
3. Claimant's requests for interest, costs, disbursements and attorneys' fees are hereby denied.
4. Respondent's requests for costs and attorneys' fees are hereby denied.
5. All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. will retain the \$500.00 non-refundable filing fee and the \$350.00 non-refundable member surcharge previously submitted by claimant, and the \$500.00 non-refundable filing fee previously submitted by respondent. In addition, the arbitrators have assessed the following forum fees:

4 hearing sessions x \$1,000.00	=	\$4,000.00
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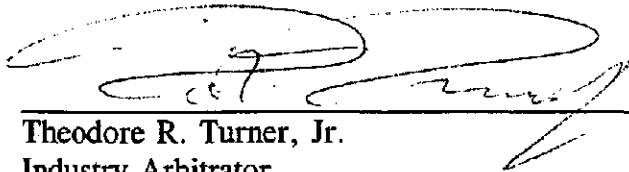
1. Claimant be and hereby is liable for the sum of \$2,000.00, representing one-half

of the total amount of forum fees assessed. Claimant previously deposited \$600.00 with NASD Regulation, Inc. and, therefore, claimant shall pay the balance of \$1,400.00.

2. Respondent be and hereby is liable for the sum of \$2,000.00, representing one-half of the total amount of forum fees assessed. Respondent previously deposited \$1,000.00 with NASD Regulation, Inc. and, therefore, respondent shall pay the balance of \$1,000.00.

Fees are payable to NASD Regulation, Inc.

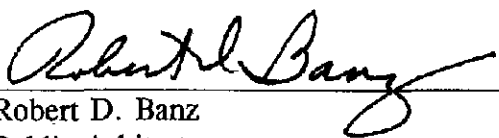
ARBITRATORS' SIGNATURES



Theodore R. Turner, Jr.
Industry Arbitrator

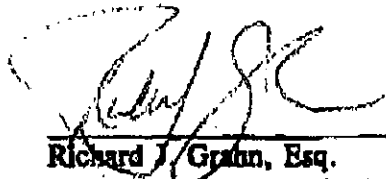
Date of decision: March 16, 1998

ARBITRATORS' SIGNATURES


Robert D. Banz
Public Arbitrator

Date of decision: March 16, 1998

ARBITRATORS' SIGNATURES

A handwritten signature in dark ink, appearing to read 'Richard J. Grain', is written over a horizontal line.

Richard J. Grain, Esq.
Chairperson - Public Arbitrator

Date of decision: March 16, 1998