

**MSRB**  
MUNICIPAL SECURITIES RULEMAKING BOARD

RECEIVED

APR 16 1991

MSRB

In the Matter of the Arbitration between

v.

Claimant,

AWARD

JASON N. GINDER  
and OPPENHEIMER & CO., INC.,

Respondents.

MS 90-32

The Undersigned, pursuant to section 31 of MSRB rule G-35, hereby state as follows:

**CASE SUMMARY**

Claimant alleges that in October, 1988, he purchased from Drexel Burnham Lambert ("Drexel"), through its registered representative Jason N. Ginder ("Respondent Ginder"), \$10,000 face amount of certain Colorado Springs Stetson Hills Bonds ("Stetson Hills Bonds"). Claimant alleges that this purchase was made "due to undue pressure and misleading and incomplete information and no prospectus" from Respondent Ginder. Claimant contends that this was his first purchase through Respondent Ginder and that he explained to Respondent Ginder that he was sixty-three years old and not interested in risks as he neared retirement. Claimant maintains that he was not advised that the Stetson Hills Bonds were unrated. Claimant also alleges that, shortly thereafter, he was again pressured by Respondent Ginder into buying \$10,000 face amount of certain Gulf Shores, Alabama, Quality Inn Beachside Project Revenue Bonds ("Gulf Shores Bonds"), and was again given misleading information and no prospectus. Claimant maintains that at no time did Respondent Ginder ask Claimant his investment objectives and when Claimant volunteered same, Respondent Ginder ignored them.

Claimant alleges that Respondent Ginder subsequently persuaded Claimant to transfer the aforementioned bonds and his account at Drexel to Oppenheimer & Co., Inc. ("Respondent Oppenheimer"), where Respondent Ginder had become employed. Claimant alleges that once his account was transferred to Respondent Oppenheimer, Respondent Ginder ignored Claimant and delegated Claimant's inquiries concerning his account to other employees of Respondent Oppenheimer. Claimant maintains that Respondent Oppenheimer failed to keep Claimant abreast of developments regarding the bonds at issue "with monthly statements, etc." and that he had to get outside help to learn that the Stetson Hills Bonds had gone into default. Claimant contends

that if Respondent Ginder and Respondent Oppenheimer had properly and timely advised Claimant of the problems with the bonds at issue, he could have limited his losses, but due to their actions and lack of assistance and advice he has suffered maximum financial loss. In addition, Claimant alleges that Respondent Oppenheimer executed buy and sell orders in his account without his consent.

Respondent Ginder denies that he ever gave Claimant false or fraudulent misinformation, that he ever made any misrepresentations to Claimant, or that he high-pressured Claimant into buying either of the bonds at issue. Respondent Ginder contends that Claimant is a sophisticated investor who had dealt in these types of investments previously and was fully aware of the risks involved but nevertheless was willing to accept those risks because of the high yield generated on both bonds. Respondent Ginder argues that, with respect to investment objectives, Claimant advised Respondent Ginder that he was open to anything with the exception of short-term trading and options, and further stated that he had invested in the past in stocks, bonds and limited partnerships, and was particularly interested in fixed-income securities with a high yield. Respondent Ginder also argues that, prior to Claimant's purchase of the Stetson Hills Bonds, Claimant had rejected two of Respondent Ginder's offers, in one instance stating that a yield of approximately 7% was too low.

With respect to the Stetson Hills purchase, Respondent Ginder maintains that Claimant asked what the rating was and Respondent Ginder explained to Claimant that the bond was not rated because the offering was too small to apply for a rating. In addition, Respondent Ginder maintains that Claimant was given the entire Drexel explanation with regard to the bond and was sent a prospectus. Respondent Ginder also contends that Claimant never complained at any time, even when he was advised that the Stetson Hills Bonds had gone into default, that Respondent Ginder had given him false and fraudulent representations or had pressured him into buying the bonds.

Respondent Ginder maintains that he also explained in detail the Gulf Shores Bonds, and that Claimant was sent a prospectus on this issue as well. Respondent Ginder further argues that the Gulf Shores Bonds have not gone into default and that Claimant continues to receive 11% tax-free interest on them.

Respondent Ginder also denies Claimant's allegations that, once Claimant's account was moved to Respondent Oppenheimer, Claimant was ignored or was not kept advised regarding the status of both of the bonds at issue. In addition, Respondent Ginder argues that Claimant received an erroneous interest payment of \$450 on the Stetson Hills Bonds from Respondent Oppenheimer after the Stetson Hills default, but refused to return

said payment to Respondent Oppenheimer when he was requested to do so. Respondent Ginder contends that, subsequently, in view of Claimant's refusal to return the erroneous payment, Respondent Oppenheimer sold the Stetson Hills Bonds in Claimant's account to cover the erroneous interest payment to Claimant. Respondent Ginder maintains that he had nothing to do with either the mistaken payment or the subsequent sale of the Stetson Hills Bonds by Respondent Oppenheimer. Finally, Respondent Ginder argues that Claimant has failed to mitigate his damages, and is seeking to have Respondents Ginder and Oppenheimer act as guarantors of his investments.

Respondent Oppenheimer denies Claimant's allegations of impropriety and denies that it is liable to Claimant for any monetary damages. Respondent Oppenheimer argues that Claimant's claims relate to Respondent Ginder's activities while he was employed by Drexel and, thus, Respondent Oppenheimer has no controlling person liability to Claimant for any damages sustained in connection with the purchase of the two bonds at issue. Respondent Oppenheimer also contends that there have been no transactions in Claimant's account at Respondent Oppenheimer except for the aforementioned liquidation of the Stetson Hills Bonds at a price of \$.03 on the dollar for net proceeds of \$285, due to Claimant's refusal to return the erroneous \$450 interest payment.

#### RELIEF REQUESTED

Claimant contends that he has suffered damages of approximately \$10,000 on the Stetson Hills Bonds and \$5,000 on the Gulf Shores Bonds. Claimant also requests compensation for lost interest and his time and expenses, as well as punitive damages. The total relief requested by Claimant in his pleadings is \$50,000.

Respondent Ginder requests that the claims of the Claimant be dismissed in all respects and that Respondent Ginder should not bear the costs of this proceeding.

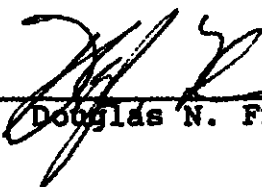
Respondent Oppenheimer requests that the claims of the Claimant be dismissed in all respects as against Respondent Oppenheimer and that the costs of this proceeding be assessed against Claimant, not against Respondent Oppenheimer.

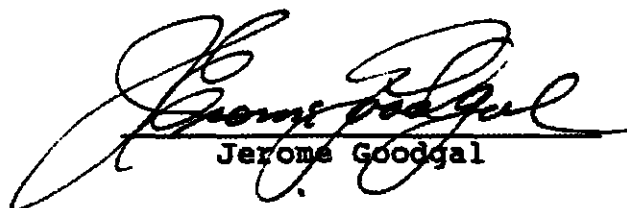
#### AWARD

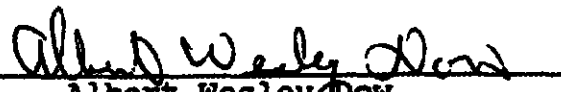
On January 31, 1991, and March 8, 1991, in New York City, New York, the undersigned arbitrators heard the controversy between the parties set forth in submissions to the arbitrators signed by Claimant on May 7, 1990 (filed with the MSRB on May 23, 1990); by Respondent Ginder on September 19, 1990; and, by

Respondent Oppenheimer on September 11, 1990. The arbitration panel, having considered the pleadings, the testimony and the evidence presented at the hearing, has determined, in full and final resolution of the issues submitted for determination, as follows:

1. The claims of the Claimant as against Respondent Ginder and Respondent Oppenheimer are dismissed in their entirety.
2. Each of the parties shall bear its own costs, including legal fees.
3. Claimant's \$400 arbitration deposit shall be retained by the MSRB as forum fees, pursuant to MSRB rule A-16(2).

  
Douglas N. Frenkel

  
Jerome Goodgal

  
Albert Wesley Dow

Dated:

RECEIVED

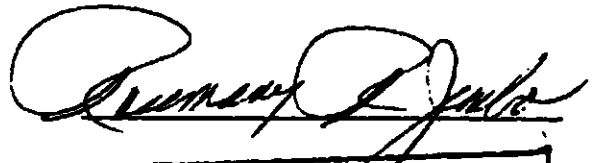
APR 16 1991

1. 3.

STATE OF  
COUNTY OF

SS.:

On this 5th day of April, 1991, before me personally  
appeared \_\_\_\_\_ to me known and known to me to be the  
individual described in and who executed the foregoing instrument  
and he duly acknowledged to me that he executed the same.



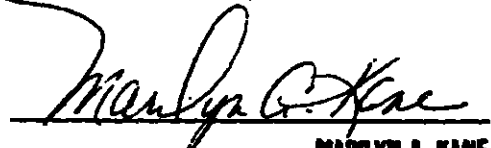
Notarial Seal  
Rosemary R. Jumbo, Notary Public  
Philadelphia, Philadelphia County  
My Commission Expires Dec. 20, 1993

SS.:

Member, Pennsylvania Association of Notaries

STATE OF New Jersey  
COUNTY OF Passaic

On this twentieth day of April, 1991, before me personally  
appeared \_\_\_\_\_ to me known and known to me to be the  
individual described in and who executed the foregoing instrument  
and he duly acknowledged to me that he executed the same.

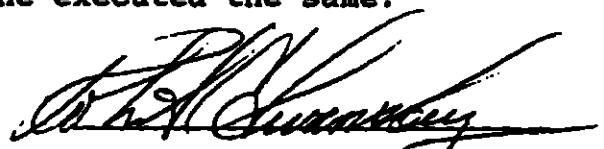


MARTLYN A. KANE  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES OCTOBER 25, 1995

STATE OF Massachusetts  
COUNTY OF Suffolk

SS.:

On this fourth day of April, 1991, before me personally  
appeared \_\_\_\_\_ to me known and known to me to be the  
individual described in and who executed the foregoing instrument  
and he duly acknowledged to me that he executed the same.



ROBERT C. SWANSBURG  
NOTARY PUBLIC  
My Commission Expires July 18, 1997