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## Unsealed files tell David vs. Goliath tale

### Ex-staffer takes on brokerage

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GLOBE STAFF

Some days, James F. Dever can hardly believe what has happened to his life.

In the summer of 2007, his boss, Albert "Bud" G. Lowenthal, chief executive of Oppenheimer & Co., walked into the Wall Street brokerage's Boston office and demoted him as manager, slashed his salary, and told him to be gone in six months.

Dever soon resigned, but challenged the dismissal in a private arbitration proceeding. He won a \$74,000 award, but did not stop there. For more than a year, he has fought in Suffolk Superior Court to make public the arbitration records, which he believes show he was forced out for cooperating with a state probe of an Oppenheimer broker who stole from an elderly couple.

Last month, Dever's persistence paid off. Over Oppenheimer's strong objections, Judge Frances A. McIntyre ordered the



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**James Dever launched  
Oppenheimer's local office.**

release of more than 1,600 pages of documents, opening a rare window on a system routinely used in the financial industry to settle disputes in private.

The documents detail missteps by Oppenheimer in disciplining the bad broker, Stephen J. Toussaint, and moves by executives, including Lowenthal, that state regulators said were designed to hide those actions.

The records also show why brokerage firms are so insistent on arbitration: The firms can keep matters out of the public eye — even when there are allegations of serious wrongdoing

**DEVER, Page A8**

# Staffer's fight with brokerage proves costly

► DEVER

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and coverups.

"This is a David vs. Goliath story," said Stuart D. Meissner, Dever's lawyer. He said that Dever, 46, has gone up against "very powerful forces, so as to expose the truth, not just in clearing his own name, but also for the general public's sake and the sake of all honest employees within the securities industry."

It has not come without a cost for Dever, a father of two, who today is working at a small brokerage firm and trying to get his career back on track. His reputation in the brokerage industry was damaged after the case, he said — even though he was not charged — making it harder for him to advance and attract clients. He had to sell his Duxbury home and dip into retirement savings to wage his legal battle and make ends meet.

"Judge Frances McIntyre upheld this country's First Amendment rights when arbitrators stripped them away from me," Dever said. With the records available, he noted, "hopefully authorities will investigate."

Oppenheimer denied it retaliated against Dever in a statement: "Oppenheimer believes that anyone who reviews the facts will conclude Mr. Dever's allegations are baseless."

The following account is based on the recently released documents, testimony from arbitration and interviews, and public documents filed by the FBI and the Massachusetts Securities Division.

Dever's ordeal began in 2004, when a banker called Oppenheimer's general counsel to report that Toussaint, who worked in the Boston office under Dever, was depositing checks from the retired Fall River couple's Oppenheimer account into his own Wellesley bank account. Instead of referring the matter to a top company lawyer or to the authorities, as is standard practice, the general counsel at the time instructed Dever to look into it.

Dever, a Dorchester native and the first in his family to go to college, was hired by Lowenthal to launch the Boston office. He recalls moving in the first desks in 2001, and ultimately he built the office to 30 brokers generating \$9 million a year in revenue for Oppenheimer. The firm, which is based in New York, has 94 offices across the country plus several abroad and oversees \$72 billion for clients.

Dever, not trained in investigations, was reluctant to take on the task and unable to prove Toussaint was stealing.

When he and an operations manager went to see the client, Doris Pitera, they placed on her kitchen table 19 checks for \$350,000 that Toussaint had signed and deposited in his own account. But Pitera said Toussaint had helped the family build a \$3 million nest egg, which helped pay for her husband's Alzheimer's care, and insisted he could not have stolen from them.

It turned out that Toussaint had gone to the Piteras ahead of Dever and begged them not to talk to the authorities. He convinced the clients he had written the checks to repay himself for securities he had purchased with his own money on their behalf.

Oppenheimer's handling of



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James Dever says he was forced out of Oppenheimer & Co. for cooperating in a state probe.

the Toussaint allegations was highly unusual, said Michael A. Collora, a Boston securities lawyer who is not involved in the case. "In the ordinary course, you would call in corporate counsel, compliance, and potentially an investigating agency like the attorney general's office," he said.

Dever said he wanted to fire Toussaint, but was overruled. Toussaint continued to work at Oppenheimer for another year.

Meanwhile, the banker who had first tipped off Oppenheimer to Toussaint's activities notified a county elder services office. The Piteras eventually hired a lawyer, and the FBI investigated.

Federal prosecutors filed an 11-count fraud indictment against Toussaint in February 2007. He pleaded guilty and was sentenced to four years in prison.

Separately, the Massachusetts Securities Division launched its own civil investigation of Oppenheimer's oversight of Toussaint. Dever was called to testify. He wanted to tell regulators about Oppenheimer's mishandling of the Toussaint allegations, and how the firm failed to fire him. But Oppenheimer's lawyers at the Boston firm Bingham McCutchen told him to answer the investigators' questions, and not to elaborate beyond that, Dever testified during his arbitration.

Martin F. Murphy, Bingham's outside counsel, said the firm advised Dever to answer the Securities Division's questions truthfully and completely. "Bingham's actions with respect to Mr. Dever were completely ethical and professional, and Bingham did nothing to cause any harm to him," he said.

But a colleague later testified during arbitration that Dever was upset by what he felt were Bingham's directions to mislead investigators, and told the colleague he would rather resign. Dever did tell the state that Oppenheimer had not given him proper assistance in addressing the evidence that Toussaint was stealing, and the state included that in its case.

The division charged Oppenheimer with failing to supervise Toussaint, as well as with dishonest and unethical conduct.

The state charged both the firm and Lowenthal personally, alleging they told regulators the firm had turned over all relevant e-mails in the case, when they had not. The regulators also alleged the firm and Lowenthal failed to disclose that other regulators had cited Oppenheimer for having inadequate systems to

store internal e-mails, as required by law.

Lowenthal in September 2006 broke the news about the complaint to his son, then head of technology at Oppenheimer.

"It names the firm and me. No mention of you," he wrote in an e-mail. "There are allegations that are completely without substantiation with respect to me."

Moments later, his son, Robert Lowenthal, responded from his BlackBerry: "Completely ridiculous! It brings me no relief that you are named, what a croc of [expletive]. They have no case and we have nothing but time, money and the inclination to fight."

Testimony by Oppenheimer directors shows that the board

**James Dever says a notation on his record is unfair and will hurt his career.**

was concerned about Albert Lowenthal, the firm's majority owner, being named in the case. Documents released by the court show the back-and-forth between the firm's lawyers and the state to soften the language in the settlement — and ultimately to merge the two cases in such a way that Lowenthal's name would appear only on a separate document, called a memorandum of understanding.

In July 2007, the firm agreed to pay a \$1 million fine — large by the state's standards — to settle the Toussaint case and resolve the related charges involving Lowenthal.

An e-mail released by the court shows the state thanked Bingham lawyers for combining the two documents. So successful was the negotiation that Oppenheimer, when it disclosed the settlement to its stockholders, did not mention that Lowenthal had initially been charged.

The settlement does not appear on Lowenthal's brokerage record, unlike other regulatory matters disclosed there. A spokesman for Secretary of State William F. Galvin, who oversees the Securities Division, said that was "an oversight."

But the case is disclosed on Dever's record — even though he was never charged in the case.

Days after Lowenthal settled his case with the regulators, he walked into Dever's office and stripped him of his manager's

job, saying he was under pressure from the state to do so. (The state would later tell Dever that was not true.) Lowenthal told Dever to move out of his corner office and went immediately to tell the branch staff that Dever had decided to become a broker.

For Dever, the demotion could not have come at a worse time. His son had recently been diagnosed with diabetes, and the family's medical bills were soaring. The next month, he resigned with an angry letter filled with allegations of wrongdoing by the company. Oppenheimer's board hired a lawyer to investigate the allegations; the lawyer concluded that Oppenheimer had not retaliated against Dever.

Things grew worse still for Dever. When another brokerage hired him, the state made him take a new supervisory licensing exam and had him sign a consent order that would disclose the Toussaint affair on his public record. He says the reference is unfair and will hurt his career.

It is that note on his record that has driven Dever to fight so hard for the release of the documents, first after the arbitration case he filed in 2008 and then in 2009, when he filed in state court to reverse the arbitration panel's confidentiality order. Oppenheimer battled fiercely to keep the documents private — including Dever's resignation letter — arguing they were protected by attorney-client privilege and by customer privacy laws.

The Globe filed a motion to keep the court open to the public during those sessions, and the judge agreed except for during brief periods when customer names and account numbers were being redacted.

Among the 1,651 pages of documents were two the firm fought hardest to protect: the state's e-mail thanking Bingham for merging the Toussaint cases, and a document presenting to regulators a 2004 audit of the Boston office that, according to testimony, never took place.

Dever and his lawyer have pointed those and other documents out to the Securities and Exchange Commission in a whistle-blower complaint.

Judge McIntyre rejected all of Oppenheimer's arguments about confidentiality. She ruled that "the public's interest in transparency trumps a financial institution's interest in concealing its dealings with employees, regulatory agencies, and their lawyers."

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