

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Reuben J. Donig Attorney at Law Salary Deferral Plan

Case Number: 19-00816

vs.

Respondent

Oppenheimer & Co., Inc.

Hearing Site: San Francisco, California

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customer vs. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Reuben J. Donig Attorney at Law Salary Deferral Plan (“Claimant”): Brett A. Alcala, Esq., Alcala Law Firm, San Mateo, California.

For Respondent Oppenheimer & Co., Inc. (“Respondent”): Justin M. Garbaccio, Esq., Oppenheimer & Co., Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: March 26, 2019.

Answer to Counterclaim filed on or about: May 28, 2019.

Claimant signed the Submission Agreement: March 26, 2019.

Statement of Answer and Counterclaim filed by Respondent on or about: May 16, 2019.

Respondent signed the Submission Agreement: May 16, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty, negligence; breach of contract; breach of the implied covenant of good faith and fair dealing; negligent misrepresentation; and failure to supervise/respondent superior. The causes

of action relate to unspecified securities in a retirement plan (“the Plan”) subject to the Employee Retirement Income Security Act of 1974 (“ERISA”).

In the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the Counterclaim, Respondent asserted the following causes of action against Claimant and Reuben J. Donig (individually “Donig”): breach of fiduciary duty (against Donig); indemnification (against Claimant and Donig); and contribution (against Donig). The causes of action relate to the Plan.

In the Answer to the Counterclaim, Claimant and Donig denied the allegations made in Respondent’s Counterclaim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Compensatory and consequential damages against Respondent in an amount equal to \$215,722.00;
2. Pre-award and post-award interest;
3. Reasonable attorneys’ fees; and
4. Costs.

In the Statement of Answer and Counterclaim, Respondent requested:

1. Claimant’s Statement of Claim be dismissed in its entirety;
2. An award of Respondent’s costs in this action, including the Panel’s fees and expenses;
3. On the Counterclaim, an award against Claimant for compensatory damages to be determined at the hearing;
4. Expungement of Claimant’s allegations from the Central Registration Depository (“CRD”) records of Unnamed Party Peter Wagner (“Wagner”) pursuant to FINRA Rules 2080 and 12805; and
5. Such other and further relief as the Panel deems just and equitable.

In the Answer to Counterclaim, Claimant requested:

1. Dismissal of Respondent’s Counterclaim with prejudice;
2. Costs of suit, including attorneys’ fees and costs; and
3. Such other relief as the Panel may deem proper.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

At the evidentiary hearing, Respondent filed a motion to dismiss and argued that Claimant presented insufficient evidence to support its claim. The Panel denied the motion.

FINDINGS

The Panel finds that Respondent's Counterclaim is more accurately classified as a Third-Party claim, since Respondent brought forth claims against Donig (individually), who is not the named Claimant in the matter, as Trustee of the Plan. Accordingly, the Panel denies Respondent's claims against Donig, individually.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.
2. Respondent's Counterclaim is denied, including any claims against Donig.
3. Peter Wagner's (CRD #1003080) request for expungement of the above-captioned arbitration (Occurrence Number 2020098) from his registration records maintained by the CRD is denied.
4. Any and all claims for relief not specifically addressed herein, including any requests for attorneys' fees, are denied.

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$	1,425.00
Counterclaim Filing Fee	= \$	1,700.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	= \$	1,700.00
Member Process Fee	= \$	3,750.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

June 23-26, 2020, postponement requested by Claimant	=	WAIVED
--	---	--------

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision = \$ 200.00

Respondent submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$ 200.00

The Panel has assessed \$100.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$100.00 of the discovery-related motion fees to Respondent.

Contested Motion for Issuance of Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) decision on a contested motion for the issuance of a subpoena with one Arbitrator @ \$200.00 = \$ 200.00

Total Contested Motion for Issuance of Subpoena Fees = \$ 200.00

The Panel has assessed \$100.00 of the contested motion for issuance of subpoena fees to Claimant.

The Panel has assessed \$100.00 of the contested motion for issuance of subpoena fees to Respondent.

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 2,250.00
Pre-Hearing Conferences: July 15, 2019 1 session
November 4, 2020 1 session

Six (6) hearing sessions @ \$1,125.00/session = \$ 6,750.00
Hearings: March 1, 2021 2 sessions
March 2, 2021 1 session
March 3, 2021 2 sessions
March 5, 2021 1 session

Total Hearing Session Fees = \$ 9,000.00

The Panel has assessed \$4,500.00 of the hearing session fees to Claimant.

The Panel has assessed \$4,500.00 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

Jon H. Sylvester	-	Public Arbitrator, Presiding Chairperson
Gary Kostow	-	Public Arbitrator
Carol Marshall	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Jon H. Sylvester

Jon H. Sylvester
Public Arbitrator, Presiding Chairperson

03/15/2021

Signature Date

Gary Kostow

Gary Kostow
Public Arbitrator

03/15/2021

Signature Date

Carol Marshall

Carol Marshall
Public Arbitrator

03/15/2021

Signature Date

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

March 15, 2021

Date of Service (For FINRA Dispute Resolution Services use only)