

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Theresa Ann McTague

Case Number: 20-00961

vs.

Respondents
Oppenheimer & Co. Inc. and
James Kenneth Louderbaugh

Hearing Site: Oklahoma City, Oklahoma

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 and Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Theresa Ann McTague (“Claimant”): William P. Nacy, Esq., Hanrahan & Nacy, P.C., Jefferson City, Missouri.*

For Respondents Oppenheimer & Co. Inc. (“Oppenheimer”) and James Kenneth Louderbaugh (“Louderbaugh”), hereinafter collectively referred to as “Respondents”: Nicola Anne Murphy, Esq., Oppenheimer & Co. Inc., New York, New York.

*FINRA recorded the appearance of Claimant’s counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimant may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant’s counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: March 24, 2020.
Claimant signed the Submission Agreement: March 23, 2020.

Statement of Answer filed on or about: May 14, 2020.
Oppenheimer signed the Submission Agreement: June 11, 2020.
Louderbaugh signed the Submission Agreement: May 21, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following cause of action: breach of fiduciary duties. The cause of action related to Claimant's allegation that Respondents failed to ascertain the scope of authority granted in a power of attorney, which resulted in the attorney in fact being allowed to make unauthorized withdrawals from her 401(k) account, and Louderbaugh falsely represented that only mandatory distributions had been withdrawn from the account.

Unless specifically admitted in the Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested actual damages plus interest at a rate of 9% per annum on or from the date of her injuries or, alternatively, from the date the Statement of Claim is filed; punitive damages; costs and reasonable attorneys' fees; and any other relief consistent with substantial justice.

In the Statement of Answer, Respondents requested that the Statement of Claim be dismissed in its entirety; costs, including arbitrators' fees and expenses; expungement of all references to this matter from Louderbaugh's registration records maintained by the Central Registration Depository ("CRD"); and such other and further relief as the Panel deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 4, 2021, Claimant filed notice that all claims against Respondents would be dismissed once their settlement agreement was signed by all parties. The same day, Louderbaugh filed a request for an expungement hearing after dismissal of Claimant's claims, to which no response was filed.

On April 5, 2021, Claimant filed a Notice of Dismissal with Prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

The Panel conducted a recorded, telephonic hearing on June 8, 2021, so the parties could present oral argument and evidence on Louderbaugh's request for expungement.

Neither Claimant nor Claimant's counsel participated in the expungement hearing.

The Panel reviewed Louderbaugh's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the

settlement not opposing the request for expungement and that Louderbaugh did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings, Respondents' pre-hearing brief, Respondents' exhibits, and Louderbaugh's testimony.

The Award in this matter may be executed in counterpart copies.

AWARD

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

1. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2070089) from registration records maintained by the CRD for Respondent James Kenneth Louderbaugh (CRD Number 1282165) with the understanding that, pursuant to Notice to Members 04-16, Respondent James Kenneth Louderbaugh must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code of Arbitration Procedure ("Code"), the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 finding based on the following reasons:

Respondents acted in accordance with the language of the power of attorney.

2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	= \$ 1,575.00
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**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, Oppenheimer is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	3,750.00

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:

One (1) pre-hearing session with the Panel @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: July 16, 2020	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: June 8, 2021	1 session	
Total Hearing Session Fees		= \$ 2,250.00

The Panel has assessed \$562.50 of the hearing session fees to Claimant.

The Panel has assessed \$562.50 of the hearing session fees, jointly and severally, to Respondents.

The Panel has assessed \$1,125 of the hearing session fees to Louderbaugh.

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

ARBITRATION PANEL

Mark L. Williams	-	Public Arbitrator, Presiding Chairperson
Karen Roberts Washington	-	Public Arbitrator
Robert G. Cass	-	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

Mark L. Williams

Mark L. Williams
Public Arbitrator, Presiding Chairperson

06/17/2021

Signature Date

Karen Roberts Washington

Karen Roberts Washington
Public Arbitrator

06/18/2021

Signature Date

Robert G Cass

Robert G. Cass
Public Arbitrator

06/18/2021

Signature Date

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June 18, 2021

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