

**Award**  
**FINRA Dispute Resolution Services**

---

In the Matter of the Arbitration Between:

Claimant

Harriet Zisman Trust DTD 12/23/1997

Case Number: 20-01434

vs.

Respondent

Oppenheimer & Co., Inc.

Hearing Site: Boca Raton, Florida

---

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 matter proceeded pursuant to Rule 12800 of the Code of Arbitration Procedure (“Code”).

**REPRESENTATION OF PARTIES**

For Claimant Harriet Zisman Trust DTD 12/23/1997: Joshua A. Katz, Esq., Sallah Astarita & Cox, LLC, Boca Raton, Florida.

For Respondent Oppenheimer & Co., Inc.: Nicola Murphy, Esq., Oppenheimer & Co., Inc., Office of the General Counsel, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: May 6, 2020.

Harriet Zisman Trust DTD 12/23/1997 signed the Submission Agreement: May 6, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: violation of Florida Statutes § 517.301; common law fraud; punitive damages; and exploitation of elderly individual. The causes of action relate to a tax liability incurred by the sale of the following four (4) positions from Claimant’s account: First Trust U.S. Revenue # 13; H&W High 20 Dividend Strategy Trust Series 23; Franklin Income Fund; and Fidelity Advisor® Stock Selector All Cap Fund.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: total damages, including compensatory damages, punitive damages and damages for elder exploitation in an amount not to exceed

\$50,000.00, exclusive of attorneys' fees, interest and costs; attorneys' fees; pre-judgment and post-judgment interest; and the costs of prosecuting this case.

In the Statement of Answer, Respondent requested: Claimant's Statement of Claim be dismissed in its entirety; their costs in this action, including attorneys' fees, arbitrators' fees and expenses; expungement of all references to this arbitration proceeding (Occurrence Number 2075069) from unnamed party Harris Stephen Tuchman's FINRA Central Registration Depository Record; and such other and further relief as the Arbitrator deemed just and equitable.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On June 11, 2021, Claimant filed with FINRA Dispute Resolution Services a notice of settlement. Accordingly, the Arbitrator made no determination with respect to the relief requested in the Statement of Claim.

On June 28, 2021, Respondent filed a Motion for Expungement on behalf of unnamed party Harris Stephen Tuchman, to which no response was filed.

The Arbitrator conducted a recorded, telephonic hearing on July 30, 2021, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of unnamed party Harris Stephen Tuchman.

Claimant did not participate in the expungement hearing.

The Arbitrator reviewed unnamed party Harris Stephen Tuchman's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 2075069, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request. The Arbitrator noted that unnamed party Harris Stephen Tuchman contributed half of the settlement amount, but the Arbitrator deemed the total settlement amount to be minimal and part of a business decision to resolve the pending claim.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Respondent's hearing exhibits submitted on July 28, 2021.

### **AWARD**

After considering the pleadings, the Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to Occurrence Number 2075069 from registration records maintained by the CRD for unnamed party Harris Stephen

Tuchman (CRD Number 5677161) with the understanding that, pursuant to Notice to Members 04-16, unnamed party Harris Stephen Tuchman 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, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

The credible, undisputed testimony of Mr. Tuchman was that he discussed the sale of the subject securities with Claimant in person while her daughter was on the phone. In a second call with claimant, Mr. Tuchman confirmed permission to sell the securities alleged to be sold without authorization. Mr. Tuchman also prepared a written investment plan that he presented to Claimant. The undisputed testimony was that the securities were less than investment grade and continued to decline in value after the sale. Any potential gains on the sale of the securities were evidenced on the face of the monthly statements.

2. Any and all relief not specifically addressed herein, including requests for punitive damages and attorneys' fees, if any, 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 = \$ 600.00

\*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 Oppenheimer & Co., Inc. is assessed the following:

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

**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) hearing session on expungement request @ \$450.00/session	= \$ 450.00
Hearing: July 30, 2021 1 session	

---

Total Hearing Session Fees	= \$ 450.00
----------------------------	-------------

The Arbitrator has assessed the entire hearing session fee to Respondent.

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

**ARBITRATOR**

Steven Gerard Goerke

-

Sole 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.

**Arbitrator's Signature**

***Steven Gerard Goerke***

\_\_\_\_\_  
Steven Gerard Goerke  
Sole Public Arbitrator

**08/10/2021**

\_\_\_\_\_  
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.

August 16, 2021

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