

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Judith Cohen

The Max Trust, Dated January 16, 1997, an Arizona
Revocable Trust

Case Number: 20-01639

vs.

Respondent

Oppenheimer & Co., Inc.

Hearing Site: Phoenix, Arizona

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 and Non-Member vs. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Judith Cohen (“Cohen”) and The Max Trust, Dated January 16, 1997, an Arizona Revocable Trust (“Max Trust”): Jonah A. Toleno, Esq., Shustak Reynolds & Partners, P.C., San Diego, California.

Hereinafter, Cohen and Max Trust will collectively be referred to as “Claimants”.

For Respondent Oppenheimer & Co., Inc. (“Respondent”): Donald Corbett, Esq., Oppenheimer & Co., Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: May 22, 2020.

Claimants signed the Submission Agreement: May 18, 2020.

Statement of Answer filed by Respondent on or about: August 5, 2020.

Respondent signed the Submission Agreement: August 6, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: fraudulent misrepresentation; fraudulent concealment; negligent misrepresentation; negligent concealment; negligence; unsuitability; failure to supervise; breach of fiduciary duty; breach of contract; breach of implied covenant of good faith and fair dealing; elder abuse under Arizona law and all other applicable statutes, rules, regulations, and law; violations of state and federal securities laws; violations of FINRA, NASD, and NYSE rules; and respondeat superior. The causes of action relate to IRA and trust investment accounts held at Respondent.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

1. Damages in an amount to be determined at hearing resulting from Respondent's misconduct, including but not limited to compensatory and incidental damages;
2. Pre-award and prejudgment interest at the legal rate;
3. Post-award and post-judgment interest at the legal rate;
4. Double damages pursuant to A.R.S. § 46-456;
5. Cohen's attorneys' fees and costs incurred in bringing this arbitration pursuant to A.R.S. § 46-456 and any other applicable statute or relevant provision;
6. Punitive damages; and
7. Such other and further relief as the Panel may deem just and proper.

In the Statement of Answer, Respondent requested:

1. Claimants' Statement of Claim be dismissed in its entirety;
2. Respondent's costs in this action, including arbitrators' fees and expenses; and
3. Such other and further relief as the arbitration panel may deem 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.

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. Claimants' claims are denied in their entirety.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and 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 = \$ 1,575.00

**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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$ 1,900.00

Member Process Fee = \$ 3,750.00

Postponement Fees

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

September 14-15, 2021, postponement requested by Claimants = \$ 1,125.00

Total Postponement Fees = \$ 1,125.00

The Panel has assessed \$562.50 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$562.50 of the postponement fees to Respondent.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

September 14-15, 2021, cancellation requested by Claimants = \$ 1,800.00

Total Last-Minute Cancellation Fees = \$ 1,800.00

The Panel has assessed \$900.00 of the last-minute cancellation fees jointly and severally to Claimants.

The Panel has assessed \$900.00 of the last-minute cancellation 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 Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 4,500.00

Pre-Hearing Conferences: September 24, 2020 1 session

April 22, 2021 1 session

July 28, 2021 1 session

September 8, 2021 1 session

Ten (10) hearing sessions @ \$1,125.00/session		= \$ 11,250.00
Hearings:		
	September 16, 2021	2 sessions
	September 17, 2021	2 sessions
	September 20, 2021	2 sessions
	September 21, 2021	2 sessions
	September 22, 2021	2 sessions

Total Hearing Session Fees	= \$ 15,750.00
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The Panel has assessed \$9,900.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$5,850.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Timothy J. Kroll	-	Public Arbitrator, Presiding Chairperson
Floyd Gerry Hoffman	-	Public Arbitrator
Ronald Stewart Ripley	-	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

Timothy J. Kroll

Timothy J. Kroll
Public Arbitrator, Presiding Chairperson

10/05/2021

Signature Date

Floyd Gerry Hoffman

Floyd Gerry Hoffman
Public Arbitrator

10/05/2021

Signature Date

Ronald Stewart Ripley

Ronald Stewart Ripley
Public Arbitrator

10/05/2021

Signature Date

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October 06, 2021

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