

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

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In the Matter of the Arbitration Between:

Claimant

Timothy Arthur Vanderver

Case Number: 20-03007

vs.

Respondent

Oppenheimer & Co., Inc.

Hearing Site: Atlanta, Georgia

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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: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant Timothy Arthur Vanderver: Frances Menzer, J.D. and Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Oppenheimer & Co., Inc.: Nicola Anne Murphy, Esq., Oppenheimer & Co., Inc., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: September 4, 2020.

Timothy Arthur Vanderver signed the Submission Agreement: September 4, 2020.

Statement of Answer filed by Respondent on or about: November 12, 2020.

Oppenheimer & Co., Inc. signed the Submission Agreement: November 13, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent did not oppose Claimant’s expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1510856 and 1605563; compensatory damages in the amount of \$1.00 from Respondent; and any and all

other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent opposed any monetary damages requested in the Statement of Claim.

At the hearing, Claimant withdrew the request for \$1.00 in damages.

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

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

On March 1, 2021, Claimant advised that the customers in Occurrence Numbers 1510856 ("Customer A") and 1605563 ("Customer B") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on May 26, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

Customer A participated in the expungement hearing and opposed the expungement request. Customer B did not participate in the expungement hearing. The Arbitrator found that Customer B had notice of the expungement request and hearing.

On May 27, 2021, Claimant filed an Unopposed Motion to Withdraw Without Prejudice Claimant's request for expungement as to Occurrence Number 1510856. On June 1, 2021, the Arbitrator issued an Order in which he granted Claimant's Motion. Accordingly, the Arbitrator made no determination with respect to Claimant's request for expungement of Occurrence Number 1510856.

The Arbitrator reviewed Claimant'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 noted that the dispute related to Occurrence Number 1605563 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim; Claimant's Amended Statement of Claim; Respondent's Statement of Answer; Claimant's BrokerCheck® Report; Claimant's Submission of Hearing Exhibits, including Exhibit #1 - SEC Investigatory Report; and the testimony at the hearing of Claimant and Customer A.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Arbitrator has decided 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 1605563 from registration records maintained by the CRD for Claimant Timothy Arthur Vanderver (CRD Number 4580729) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 13805 of the Code of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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:

Customer B's attorney alleged "...that an unsuitable investment was misrepresented to his client." Alleged damages were in the amount of \$800,000.00. Customer B's complaint was made to Respondent with whom Claimant now works. Respondent was given no date for the claim or adequate information to respond. The matter was referred to Claimant who spoke with Customer B explaining that the investment made with his prior employer, which at the time was suitable, turned out to be a Ponzi scheme of which Claimant had no knowledge and had invested his own funds in the investment that he lost. The Customer decided to take no further action in the matter and it was closed/no action. The great preponderance of the evidence presented and the testimony of Claimant shows that Claimant performed reasonable diligence in obtaining Customer B's investment goals, risk tolerance and investor profile. The recommended investments were suitable for Customer B and fully explained to Customer B who signed the appropriate documents detailing the investment terms and risks. It turned out that the SEC Inspector General's report determined that the investment was fraudulent. However, he exonerated all financial advisors involved, including Claimant, concluding that the advisors were not complicit in the fraud. The Arbitrator concluded that the Claimant should be granted expungement of the charges set forth by Customer B because Claimant was not involved in the investment related sales practice violation and therefore the claims against him are false, factually impossible or clearly erroneous.

2. Any and all claims for relief not specifically addressed herein 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 = \$ 50.00

*\*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 = \$ 150.00

**Hearing Session Fees and Assessments**

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

One (1) pre-hearing session with a single Arbitrator @ \$50.00/session = \$ 50.00  
Pre-Hearing Conference: February 4, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing: May 26, 2021 1 session

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Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed the total hearing session fees to Claimant.

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

**ARBITRATOR**

Michael J. Ahlstrom

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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**

***Michael J. Ahlstrom***

Michael J. Ahlstrom  
Sole Public Arbitrator

**06/04/2021**

Signature Date

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June 04, 2021

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