

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

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In the Matter of the Arbitration Between:

Claimant  
Oppenheimer & Co., Inc.

Case Number: 20-03578

vs.

Respondent  
Kevin P. Fay

Hearing Site: Jersey City, New Jersey

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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: Member vs. Associated Person

This matter proceeded pursuant to Rule 13800 of the Code of Arbitration Procedure (“Code”).

**REPRESENTATION OF PARTIES**

For Claimant Oppenheimer & Co., Inc.: Nicola A. Murphy, Esq., Oppenheimer & Co. Inc., New York, New York.

Respondent Kevin P. Fay did not enter an appearance.

**CASE INFORMATION**

Statement of Claim filed on or about: October 21, 2020.

Oppenheimer & Co., Inc. signed the Submission Agreement: October 21, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract; unjust enrichment; and overpayment of quarterly managed fees.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested damages of \$40,672.10, pursuant to the agreement and for the managed fee overpayment; interest at the rate of 9% per annum on \$40,672.10 accrued from June 24, 2020 through the date of payment in full; costs incurred in connection with the enforcement and collection of the amount owed, including but not limited to, FINRA filing fees of no less than \$2,200.00; attorneys’ fees; and such other and further relief as deemed just and equitable.

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

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

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code is bound by the determination of the Arbitrator on all issues submitted.

Respondent Kevin P. Fay did not file a Statement of Answer. The Arbitrator determined that Respondent Kevin P. Fay was served with the Claim Notification letter dated October 21, 2020 by regular mail and the Overdue Notice (including the Statement of Claim) dated December 14, 2020 by regular and certified mail. The Arbitrator also determined that Respondent Kevin P. Fay was served with the Notification of Arbitrator dated January 12, 2021 by regular and certified mail.

The Claim Notification letter notified Respondent Kevin P. Fay that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent the submission of pleadings, selection of arbitrators, and receipt of notification relating to case information and deadlines. Respondent Kevin P. Fay failed to register for the DR Portal.

The Arbitrator determined that Respondent Kevin P Fay is, therefore, bound by the Arbitrator's ruling and determination.

### **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. Respondent is liable for and shall pay to Claimant the sum of \$40,672.10 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant interest on the sum of \$40,672.10 at the rate of 9% per annum from June 24, 2020 through and including date of full payment.
3. FINRA Dispute Resolution Services shall retain the \$1,450.00 filing fee that Claimant deposited previously.
4. Respondent is liable for and shall pay to Claimant \$1,450.00 to reimburse Claimant for the filing fee previously paid to FINRA Dispute Resolution Services.
5. Any and all relief not specifically addressed herein, including request for attorneys' fees, are denied.

**FEES**

Pursuant to the Code:

Claimant Oppenheimer & Co., Inc. has paid to FINRA Dispute Resolution Services the \$750.00 Member Surcharge and \$1,750.00 Member Process Fee previously invoiced.

**ARBITRATOR**

Edward W. Morris, Jr.

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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**

***Edward W. Morris, Jr.***

Edward W. Morris, Jr.  
Sole Public Arbitrator

**02/22/2021**

Signature Date

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February 23, 2021

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