

EXHIBIT 18

Oppenheimer's Statement of Answer dated December 18, 2024 (pp. 1-10).
Exhibits omitted; they contain personal identifiers.

**BEFORE THE
FINANCIAL INDUSTRY REGULATORY AUTHORITY**

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In the Matter of the Arbitration of

JORDAN TEPPER WEINER
AND TERRI P. TEPPER

FINRA Case No. 24-02286

Claimants,

-against-

STATEMENT OF ANSWER

OPPENHEIMER & CO. INC.,

Respondent.

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**STATEMENT OF ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENT
IN RESPONSE TO CLAIMANT'S STATEMENT OF CLAIM**

Respondent Oppenheimer & Co. Inc. ("Oppenheimer") submits this Statement of Answer in response to the Statement of Claim filed by Jordan Teppner Weiner and Terri P. Teppner on behalf of the Estate of Lawrence Jay Weiner (collectively "Claimants"). Lawrence Jay Weiner ("Mr. Weiner") opened three accounts with Oppenheimer in 2018 and 2019. Mr. Weiner passed away, and this matter is brought on his Estate's behalf by the Claimants. Except as specifically set forth in the following, Oppenheimer denies each and every allegation contained in the Statement of Claim, and denies it is liable to Claimants for any monetary damages.

I. INTRODUCTION

The allegations set forth in the Statement of Claim are baseless and fail to provide any clear showing of wrongdoing on part of the Respondent, and therefore should be dismissed. The

Statement of Claim purports that Oppenheimer breached a fiduciary duty in the management of Mr. Weiner's accounts by wrongfully increasing the rates of management fees while Mr. Weiner allegedly suffered from cognitive decline due to medical conditions. However, no information regarding these medical conditions and their alleged ramifications was ever provided to Mr. Jerald Hymen ("Mr. Hymen"), the Financial Advisor working on these accounts and closely with Mr. Weiner. Oppenheimer and Mr. Hymen were not advised of Mr. Weiner's health status until late 2022 and 2023. The Statement of Claim argues that Mr. Weiner's authorization of the fee update was invalid due to the state of his health at the time, yet Oppenheimer had no indication or knowledge of Mr. Weiner's condition, nor was it apparent to Mr. Hymen that Mr. Weiner could have been suffering from any form of cognitive decline.

The Claimants allege that the management fee increase from 1.25% to 1.95% which occurred in mid-2022 was somehow inappropriate. It should be noted, however, that not only did Mr. Weiner authorize in person that increase, necessitated by the extensive additional account management activities required of Mr. Hymen in order to meet Mr. Weiner's annual IRA required distribution amount, but Mr. Weiner's wife was present and also approved of the slight increase in the management fee. Parenthetically, Oppenheimer and Mr. Hymen were legally allowed to charge up to 3%; if there was any bad intent on Mr. Hymen's part and if Mr. Weiner's alleged cognitive decline was so obvious, it begs the question why didn't the fee increase to 3%. The answer is simple: there was no malfeasance intended or caused by Mr. Hymen.

Also, in 2024 Mr. Hymen explained how the amount in question could be recouped by exercising the "death benefit" for corporate bonds held in the accounts (Goldman Saks, GE, and Citigroup). Claimants refused that advice.

Oppenheimer had no documentation on file pertaining to Mr. Weiner's alleged "cognitive" decline or any incapacitation due to his medical ailments. The only documentation to ever be provided to Oppenheimer was from Claimant Jordan Weiner during recent communications, prior to the filing of the Statement of Claim, which contained correspondence from Mr. Weiner's personal trainer and fitness instructor, not any sort of physician. Furthermore, this document did not come into Oppenheimer's possession until May of 2024, over 4 years after the fee update took effect.

Oppenheimer at all times serviced Mr. Weiner's accounts properly and provided all material disclosures regarding the accounts. The evidence to be presented at the arbitration hearing will show that, at all times, Oppenheimer believed it had Mr. Weiner's approval and consent because there was no indication that it otherwise was not present. The investments and transactions surrounding Mr. Weiner's accounts at Oppenheimer were suitable for each account in light of his stated investment objectives, investment experience and financial acumen. Oppenheimer did not breach any duties owed to Mr. Weiner and to Claimants in the handling of these accounts. The claims are without merit and should be dismissed in his entirety.

II. PARTIES

Oppenheimer is a corporation organized under the laws of New York and licensed to do business in Florida during the relevant time period. Oppenheimer is a registered broker/dealer and is a member of and regulated by the Financial Industry Regulatory Authority ("FINRA"), as well as other exchangers and self-regulatory organizations.

Claimants are residents of Illinois. Claimants brought this matter on behalf of the Estate of Lawrence Weiner. Lawrence Weiner had three accounts with Oppenheimer which were opened in

2018 and 2019. The accounts were serviced by Mr. Jerald Hymen who worked out of Oppenheimer's Chicago, Illinois branch office. After the passing of Mr. Weiner, this Claim was brought by Terri Tepper (sole beneficiary of Mr. Weiner's accounts) and Jordan Weiner.

III. FACTUAL BACKGROUND

A. Account Openings

Mr. Weiner was an experienced investor. Mr. Weiner had three accounts opened with Oppenheimer. One in or around August of 2018 ("Account G87-XXXX395") with the following two opened in or around May of 2019 ("Account G87-XXXX977" and "Account G87-XXXX969"). In connection with these accounts, Mr. Weiner represented that he had a total net worth of \$3,000,000, a liquid net worth of \$400,000, and annual income of \$150,000. *See* 395, 977, and 969 Know Your Customer ("KYC") Forms attached hereto as Exhibit A.

Mr. Weiner represented that he had 25 years of investment experience with equities, mutual funds, and corporate debt. He also represented that he had 15 years of investment experience with managed money, and one year with options. *Id.* Mr. Weiner identified his investment objectives and risk tolerance as "Income," "Tax-free/Tax-deferred," "Speculation" and "Balanced Allocation" *Id.* Mr. Weiner signed Client Agreements for each account, which provided that "Confirmations of transactions and statements for the Client's Account(s) shall be binding upon the Client if the Client does not object, in writing, within 30 days after receipt by the Client." *See* Client Agreement for Account G87-XXXX395 at ¶ 22, attached hereto as Exhibit B.¹ The Client Agreement further provides that New York Law applies to this dispute. *Id.*

¹ The Client Agreement is substantially the same for all of Mr. Weiner's accounts. In an effort to minimize the volume of exhibits and paper attached to this Statement of Answer, Oppenheimer will refer to this Exhibit B as a representative example of the Client Agreements for all of Claimant's accounts. Copies of the other Client Agreements will be made available to the Panel upon request.

In opening all three accounts, Mr. Weiner also signed Individual Retirement Custodial Applications and Authorizations. *See* the Account G87-XXXX395 IRA Application attached hereto as Exhibit C.² In the IRA Applications, Claimant attested that they “authorize[d] Oppenheimer & Co. Inc. to act as my broker for my IRA Account transactions and act upon my oral instructions regarding trading. I expressly certify that I take complete responsibility for the type of investment instruments(s) I choose to fund my IRA and that the Custodian is released of any liability regarding the performance of any investment choice I make.” *Id.* at p. 2. On the IRA Designation of Beneficiary Forms, Mr. Weiner designated Claimant Terri Tepper as the sole beneficiary for each account. *See* The Account G87-XXX395 Oppenheimer & Co., Inc. IRA Designation of Beneficiary Form, attached hereto as Exhibit D.³

1. Account G87-XXXX395

Account G87-XXXX395 was opened in 2018. Following the opening of this account, it entered Oppenheimer’s Omega program, a fee-based discretionary managed account program. The account was originally charged 1.25% per the signed Enrollment Document. In mid-2022, Mr. Weiner authorized a fee increase from 1.25% to 1.95%. Mr. Hymen holds that he was never informed of Mr. Weiner’s medical ailments until late 2022 and later in 2023 when Mr. Weiner shared his cancer diagnosis. At the time of the fee update, Oppenheimer and Mr. Hymen were not

² The IRA Application is substantially the same for all of Mr. Weiner’s accounts. In an effort to minimize the volume of exhibits and paper attached to this Statement of Answer, Oppenheimer will refer to this Exhibit C as a representative example of the IRA Applications for all of Claimant’s accounts. Copies of the other IRA Applications will be made available to the Panel upon request.

³ The IRA Designation of Beneficiary Form is substantially the same for all of Mr. Weiner’s accounts. In an effort to minimize the volume of exhibits and paper attached to this Statement of Answer, Oppenheimer will refer to this Exhibit D as a representative example of the IRA Designation of Beneficiary Forms for all of Claimant’s accounts. Copies of the other IRA Designation of Beneficiary Forms will be made available to the Panel upon request.

informed of Mr. Weiner's alleged "cognitive decline" nor was there any documentation of such on file.

2. Account G87-XXXX969

Account G87-XXXX969 was opened in 2019. Following the opening of this account, it entered Oppenheimer's Omega program, a fee-based discretionary managed account program. The account was originally charged 1.25% per the signed Enrollment Document. In mid-2022, Mr. Weiner authorized a fee increase from 1.25% to 1.95%. Mr. Hymen holds that he was never informed of Mr. Weiner's medical ailments until late 2022 and later in 2023 when Mr. Weiner shared his cancer diagnosis. At the time of the fee update, Oppenheimer and Mr. Hymen were not informed of Mr. Weiner's alleged "cognitive decline" nor was there any documentation of such on file.

3. Account G87-XXXX977

Account G87-XXXX977 was opened in 2019 as a commission based account. The commissions were charged on a per-transaction basis until October of 2021. At that time, the account was placed in Oppenheimer's Preference Advisory program, a fee-based managed account program. The account was then subsequently charged 1.95%.

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Oppenheimer regrets any disappointment Claimant experienced as a result of performance of the accounts. Nevertheless, Claimants are unable to make out a case for liability or damages against the Respondent.

IV. LEGAL ARGUMENT

A. CLAIMANT'S BREACH OF FIDUCIARY DUTY CLAIMS MUST FAIL

Claimant's breach of fiduciary duty claim should be denied because Oppenheimer did not owe any fiduciary duty to the Claimants. Claimants' cause of action for breach of fiduciary duty alleges in conclusory fashion that Oppenheimer breached its duty in multiple different ways including (1) "increasing wealth management fees on Mr. Weiner's accounts during a period of diminished capacity due to Parkinson's disease and stage 4 lung cancer;" (2) "failing to consider Mr. Weiner's Medical Conditions and best interests in the management of his accounts;" and (3) "denying Claimant's complaint" *See* SOC at p. 2. This claim should be denied because Oppenheimer fulfilled its duties to Mr. Weiner through its successful selection of investments, as the accounts realized an overall gain while open with Oppenheimer.

Oppenheimer did not breach any fiduciary duty by implementing its fee updates to Mr. Weiner's accounts. Again, Oppenheimer had no knowledge of Mr. Weiner's medical conditions and there was no indication otherwise at the time the fee updates were implemented. Oppenheimer sought Mr. Weiner's authorization for the fee updates and received it. Thus Oppenheimer moved forward in applying those updates to Mr. Weiner's accounts.

Oppenheimer did not breach any fiduciary duty owed to Mr. Weiner or the Claimants for "failing to consider Mr. Weiner's medical conditions and best interests" because Oppenheimer had no knowledge and no way of knowing that those medical ailments existed at the time Claimants stated them to be. Oppenheimer was not informed of Mr. Weiner's diagnoses until late 2022. Even then, as stated previously, Oppenheimer never received any documentation pertaining to Mr. Weiner's conditions at the time of the fee updates. Oppenheimer cannot be held liable for failing to consider this when it did not know that it needed to be accounted for.

Oppenheimer's internal review processes are fair, thorough, and are designed to ensure Oppenheimer and its employees are fulfilling any and all duties owed to its clients. Oppenheimer takes all formal complaints seriously and each is subject to a rigorous review process. Claimants' decision to raise a breach of fiduciary duty claim on the basis that Oppenheimer denied their complaint is baseless. Claimants are likely upset their complaint didn't reach the conclusion they desired, but that does not automatically equate to breach of duty on Oppenheimer's part. In fact, Oppenheimer held true to its duty by performing its internal review to determine if the complaint had any merit. When it determined that it did not, Oppenheimer promptly notified Claimants of this.

V. GENERAL DENIAL

To the extent not done so above, Respondent denies each and every allegation of wrongdoing and alleged liability set forth or implied in the SOC. Respondent further denies that Claimant has been injured in the amount claimed or in any amount by virtue of any act or omission by Oppenheimer or by any act or omission of its employees.

VI. AFFIRMATIVE DEFENSES

1. Failure to State a Claim. Claimants' Statement of Claim fails to state a claim upon which relief may be granted.
2. Market Price Fluctuations. Any losses incurred by Claimants resulted from market price fluctuations that were beyond the control and responsibility of Respondent.
3. Lack of Due Diligence. Claimants failed to use the requisite due diligence in monitoring, managing and handling the investments in his account.

4. Comparable Fault. If any fault is found on part of Respondent, liability for any loss to Claimants herein is no greater than that percent of said damages which equals the percent of fault attributed to Respondent.
5. Causation. Any losses sustained by Claimants was proximately caused by Claimants' express and implied agreement to voluntarily and knowingly assume the risk of losses in his account.
6. Failure to Mitigate. Claimants failed to mitigate damages. To the extent Claimants suffered damages and were dissatisfied with the account and how they were managed, such damages were proximately caused by their own actions or omissions, including failure to use reasonable means to mitigate damages.
7. Waiver. Claimants by conduct waived any rights to recover herein.
8. Statute of Limitations. The claims alleged in the Statement of Claim are barred in whole or in part by the relevant statute of limitations.
9. Negligence of Others. The alleged damages of Claimants were proximately caused by Claimants' own conduct or negligence, or the conduct or negligence of third parties.
10. Assumption of Risk. Claimant is an experienced investor with full knowledge of the risks attendant to making investments and the alleged losses or diminution in value of Claimant's account or investments were the result of company-specific or issuer-specific events and market risks or fluctuations, which were beyond the control of Respondent – risks that Claimants knowingly, willingly, and voluntarily assumed.
11. Ratification. Claimants ratified the acts and transactions complained of and upon which recovery is sought, and Claimants are accordingly precluded from recovering therein.
12. Laches. Claimants' claims are barred by the principle of laches.

13. Adequate Supervision. Oppenheimer at all times maintained an adequate system of supervision and properly supervised the activity in Claimants' accounts.
14. No Support for Attorney's Fees or Punitive Damages. The facts in this case, as a matter of law, do not support an award of attorney's fees or punitive damages.
15. Respondent reserves the right pending completion of its investigation and prehearing discovery to assert such additional defenses as may exist

VII. **REQUESTED RELIEF**

In light of the foregoing, Respondent requests:

1. A dismissal of the Statement of Claim in its entirety;
2. For Respondent's costs in this action, including arbitrators' fees and expenses
3. For such other and further relief as the arbitration panel deems just and equitable.

Dated: New York, New York
December 18, 2024

Respectfully Submitted,

By: 
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