

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TERRI TEPPER, as executor of the	)	
estate of LAWRENCE WEINER,	)	
	)	Case No. 1:25-cv-09985
Petitioner,	)	
	)	Honorable Franklin U. Valderrama
v.	)	
	)	
OPPENHEIMER & CO., INC.,	)	
	)	
Respondent.	)	

**PETITIONER’S REPLY IN SUPPORT OF MOTION TO VACATE ARBITRATION
AWARD AND RESPONSE IN OPPOSITION TO RESPONDENT’S CROSS-MOTION
TO CONFIRM**

Petitioner Terri Pepper, as Executor of the Estate of Lawrence Weiner (“Petitioner”), by counsel and pursuant to this Court’s Order of September 14, 2026 (Dkt. 41), replies in support of her Motion to Vacate (Dkt. 1) and responds in opposition to the Response and Cross-Motion to Confirm of Oppenheimer & Co., Inc. (“Oppenheimer”) (Dkt. 15) and its supplemental submission on timeliness (Dkt. 34).

INTRODUCTION

Oppenheimer told the Arbitrator that this case “comes down to one document, January 2021 signed by Mr. Weiner That is the hard stop.” 5/7/25 Tr. 202:22–203:1 (Ex. 1). That document is one sentence long, states no effective date, and bears Lawrence Weiner’s handwritten date of January 12, 2021. Ex. 13; 5/7/25 Tr. 156:12-17. Oppenheimer’s own complaint department confirmed in writing that the increased fee was applied to the quarter beginning January 1, 2021 -- before the document existed -- by reversing the fee already charged at the old rate and re-charging “the correct amount.” Ex. 2 at 2. The Arbitrator denied every claim, including the claim for that period, without explanation. Ex. 3 at 3. No reading of an authorization signed January 12 reaches charges for January 1 through 11. An award that leaves those charges in place does not interpret the parties’ agreement; it dispenses with it. 9 U.S.C. § 10(a)(4).

Second, the hearing was not fundamentally fair. Oppenheimer agreed to produce the accounts' financial data in Excel and to produce all files under 30 megabytes, and the Arbitrator recorded both commitments in his order. Oppenheimer kept neither. Claimants pointed out the non-compliance again and again; it was never corrected, and they went to the hearing without the Excel financial spreadsheets. The Arbitrator reserved Oppenheimer's non-compliance for "the May 7 hearing," and at that hearing declined to hear it. He held the unrepresented Claimants to every production rule -- excluding their evidence and, on Oppenheimer's motion, requiring them to pay for live medical testimony in place of written reports -- while treating Oppenheimer's non-production as beside "the substance of the dispute." 9 U.S.C. § 10(a)(3).

[Paragraph omitted from this excerpt]

ARGUMENT

I. THE ARBITRATOR EXCEEDED HIS POWERS. 9 U.S.C. § 10(a)(4).

A. Legal Standard

Section 10(a)(4) authorizes vacatur "where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." The question is not whether the arbitrator misread the contract; "it is whether they interpreted the contract." *Hill v. Norfolk & W. Ry.*, 814 F.2d 1192, 1194–95 (7th Cir. 1987). An award must be set aside where the arbitrator "strays from interpretation and application of the agreement and effectively dispenses his own brand of industrial justice." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671 (2010). The standard is demanding -- vacatur is proper only where there is "no possible interpretive route to the award," *Kinsella v. Baker Hughes Oilfield Operations, LLC*, 66 F.4th 1099, 1104 (7th Cir. 2023) (citation modified) -- but the Seventh Circuit enforces it where the arbitrator disregards language that is clear. *See*

USAA Sav. Bank v. Goff, 170 F.4th 1051 (7th Cir. 2026) (reversing confirmation where arbitrator “ignored the plain language” of the agreement); *U.S. Soccer Fed’n, Inc. v. U.S. Nat’l Soccer Team Players Ass’n*, 838 F.3d 826, 836–37 (7th Cir. 2016); *Anheuser-Busch, Inc. v. Local Union No. 744*, 280 F.3d 1133, 1142 (7th Cir. 2002).

B. The Award Enforces a Fee for a Period That the Only Authorization Oppenheimer Identified Cannot Cover.

The Motion showed that Oppenheimer increased its fee “12 days prior to Mr. Weiner’s authorization,” and that the Arbitrator thereby exceeded his powers. Dkt. 1 ¶¶ 4, 6, 8. An arbitrator who leaves such a charge in place has “act[ed] outside the scope of his contractually delegated authority,” issuing an award that “simply reflects his own notions of economic justice rather than drawing its essence from the contract.” *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 (2013) (citation modified). Oppenheimer’s Response answers a manifest-disregard argument and FINRA Rule 2165. Dkt. 15 at 10-11. It never mentions the charges for January 1 through 11, 2021.

The facts here are Oppenheimer’s, not Petitioner’s. Its witness agreed that “the fee increase letter signed by Mr. Weiner is dated January 12, 2021.” 5/7/25 Tr. 156:12-17. Its counsel introduced that letter as “the actual document that authorized” the increase, *id.* at 176:10-11, and closed on it as the “hard stop.” *Id.* at 202:22–203:1. The letter’s entire operative text is: “You are authorized to update the fee on the above referenced OMEGA accounts from 1.25% to 1.95%.” Ex. 13. It carries a typed date of January 5, 2021, Mr. Weiner’s handwritten date of 1-12-2021, and an Oppenheimer signature-verification stamp of 1-20-21. *Id.* It states no effective date and says nothing of fees already accrued.

Oppenheimer’s complaint department explained in writing what the firm then did. The fee for January 1 through March 31, 2021 was charged on January 13, 2021 at the existing 1.25% rate: \$1,133.05 and \$3,490.82 on the two fee-based accounts. Ex. 2 at 2. Because those charges “did not take into account the fee increase,” Oppenheimer “credited back” both amounts on January 22, 2021 and re-charged the full quarter at 1.95%: \$1,767.56 and \$5,445.68. *Id.*

Claimants put this document before the Arbitrator and walked him through it, 5/7/25 Tr. 22:24–24:14, 82:11–83:8, and he confirmed the exhibits “will be in evidence” for review “in their entirety.” *Id.* at 82:4-6. Oppenheimer’s own account of the timing, meanwhile, never held still: both its Statement of Answer and its Amended Statement of Answer told the Arbitrator the fee was increased in “mid-2022,” Ex. 18 at 2, 5-6; Ex. 8 at 2, 5-6, while its counsel’s closing placed “the fee increase in January 2021.” 5/7/25 Tr. 198:1-2.

The Award denies “Claimants’ claims . . . in their entirety.” Ex. 3 at 3. It contains no finding on the pre-signature charges, no finding of ratification, and no construction of the letter. Petitioner does not ask this Court to reweigh the evidence or to substitute its judgment for the Arbitrator’s on suitability, capacity, or fiduciary duty. Mr. Weiner’s cognitive decline when the January 2021 letter was signed, the absence of any disclosure of the increase to Ms. Tepper, and the testimony concerning Mr. Hymen’s “bonus” statement were the record before the Arbitrator, and they bear on how the hearing was conducted. *See infra* Part II. Under § 10(a)(4) the question is narrower: “whether the arbitrator (even arguably) interpreted the parties’ contract.” *Oxford Health*, 569 U.S. at 569. A letter signed January 12 can be read many ways; it cannot be read to authorize a higher fee for January 1 through 11. There is no interpretive route to that result, *Kinsella*, 66 F.4th at 1104, and an award silent on a discrete, documented, conceded overcharge is not a “mutual, final, and definite award upon the subject matter submitted.” 9 U.S.C. § 10(a)(4).

C. Every Source of the Arbitrator’s Authority Points the Same Way.

An arbitrator’s power comes from the parties’ agreement and the rules it incorporates. Oppenheimer’s Client Agreement, which Oppenheimer itself placed before the Arbitrator, commits all controversies to arbitration “before FINRA and in accordance with its rules then in force” and provides that the rules of the arbitration forum “shall be incorporated into this agreement.” Ex. 8, Client Agreement ¶¶ 33(G), 34. Each source of authority says what the letter says. An investment adviser is a fiduciary and may not take compensation its client has not

agreed to pay. 15 U.S.C. § 80b-6; *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191–94 (1963); *see also* 815 ILCS 5/12(J). A FINRA member must “observe high standards of commercial honor and just and equitable principles of trade.” FINRA Rule 2010. The Motion invoked FINRA’s senior-investor rule for the same reason. Dkt. 1 ¶ 5 (FINRA Rule 2165). Oppenheimer’s own Code of Conduct, as Claimants quoted it to the Arbitrator, requires employees to “deal fairly with Oppenheimer’s clients” and calls “[o]beying both the letter and spirit of the law” a foundation of the firm’s standards. Ex. 15-A at 2-3.

Petitioner does not offer these authorities as a free-standing “manifest disregard” ground, which this Circuit confines to awards that direct a party to violate the law. *Wise v. Wachovia Sec., LLC*, 450 F.3d 265, 268–69 (7th Cir. 2006); *George Watts & Son, Inc. v. Tiffany & Co.*, 248 F.3d 577, 580–81 (7th Cir. 2001). She offers them because they close the last door: there is no contract term, no FINRA rule, no statute, and no firm policy from which an arbitrator could derive authority to leave in place an advisory fee charged before the client authorized it. When every source of delegated authority forbids a result and the award reaches it anyway without a word, the arbitrator was not interpreting anything. *Hill*, 814 F.2d at 1195 (“the grosser the apparent misinterpretation, the likelier it is that the arbitrators weren’t interpreting the contract at all”). The Court should vacate and direct a rehearing. 9 U.S.C. § 10(b).

II. THE ARBITRATOR REFUSED TO HEAR PERTINENT AND MATERIAL EVIDENCE AND DID NOT CONDUCT A FUNDAMENTALLY FAIR HEARING. 9 U.S.C. § 10(a)(3).

A. The Arbitrator Reserved Oppenheimer’s Non-Production for the Hearing and Then Refused to Hear It.

Oppenheimer relies on *Hyatt Franchising, L.L.C. v. Shen Zhen New World I, LLC*, 876 F.3d 900 (7th Cir. 2017), for the rule that “‘refusing to hear evidence’ concerns the conduct of the hearing, not the conduct of discovery.” *Id.* at 901; Dkt. 15 at 10. Petitioner agrees with that rule. It is why the Award should be vacated.

Petitioner was represented in the arbitration by her son, Jordan Weiner, who is not a lawyer; the Award refers to the two as “Claimants.” Ex. 3 at 1. What Claimants demanded, and

what Oppenheimer agreed at the untranscribed March 14, 2025 pre-hearing conference to produce, was client financial Excel spreadsheets -- every management fee and commission charged to the accounts. Ex. 14-B ¶ 3; Ex. 15-B at 1 (3/26/25 email to Oppenheimer's counsel, copying FINRA: "the date Mr. McGuire stated to Mr. Ordower, that you would get us my father's Oppenheimer accounts financials in an Excel Spreadsheet"). That day the Arbitrator rejected Oppenheimer's attempt to condition production on a confidentiality agreement, directed it to "produce all documents regarding the accounts at issue and the account holder" by March 24, and recorded Oppenheimer's commitment in these words: "Oppenheimer has represented that it has already produced a client activity report in excel format. If it has not already produced it, it will produce such document." Ex. 5 at 2 (Rulings ¶¶ 1, 3, 4). "Client activity report" was the order's label, not Claimants' request. Oppenheimer's arbitration counsel, John T. McGuire, then told the Arbitrator that Oppenheimer "did produce" the "Client Activity Report" in Excel and "never agreed to produce" financial records in Excel. Ex. 15-C at 1. What he had delivered was a client log file -- a record of the occasions on which Mr. Weiner's accounts were accessed online. It contains no fee or commission data. Ex. 14-B ¶ 4; Ex. 15-D at 1. The client financial Excel spreadsheets were never produced.

On April 2, Claimants moved to compel. They told the Arbitrator in writing that Oppenheimer had "agreed during the prehearing conference to send" the "key financial records in Excel Spreadsheet format," but "then instead sent log files not financial statements," and they asked him to order "[c]omplete Excel spreadsheets showing all fees and commissions." Ex. 6 at 1. On April 10 the Arbitrator denied the motion but reserved the issue: "In the event Claimant still believes at hearing that Respondent has failed to comply with FINRA rules or orders, claimant may raise those issues at the May 7 hearing." Ex. 4 at 1. At the April 28 pre-hearing conference Claimants again asked for the "[t]otal management fees and commissions charged starting in January 2021 till the accounts were closed." 4/28/25 Tr. 37:22–38:3 (Ex. 7). Mr. McGuire called the request "total lunacy," *id.* at 38:12-14, and said, "We have done it twice." Jordan Weiner: "You have never given us a total." *Id.* at 44:1-4. The Arbitrator also told

Claimants that if Oppenheimer's "mid-2022" position "is demonstrably false, then you can demonstrate it" at the hearing. *Id.* at 40:3-5.

By the hearing, neither the Arbitrator nor Oppenheimer could have misunderstood the complaint. Claimants had put the substitution before the Arbitrator in writing in their April 2 motion ("log files not financial statements"), Ex. 6 at 1, and again in their April 10 reply, which explained that what Oppenheimer had produced was "a log file showing account access timestamps with NO financial data whatsoever" and asked for a finding that Oppenheimer had "NOT complied with the March 14, 2025 Order by producing an access log instead of the clearly agreed-upon client financial records." Ex. 15-D at 1-2. Oppenheimer's own response shows it understood the charge: Claimants were asserting that it was "withholding key financial records in Excel Spreadsheet format." Ex. 15-C at 1. Claimants pressed the point a third time, orally, on April 28. 4/28/25 Tr. 37:13-38:9. At the hearing they did what the April 10 order invited. Jordan Weiner told the Arbitrator that Oppenheimer's counsel had "misrepresented discovery compliance by substituting a client log file for the requested client financial Excel spreadsheet," and had then placed that log file among Oppenheimer's own exhibits. 5/7/25 Tr. 119:1-8; *see id.* at 96:22-24. The Arbitrator cut in: "I would suggest we stick to the substance of the dispute rather than -- proceeding." *Id.* at 119:9-14. Oppenheimer then used the log against Claimants: Mr. McGuire presented Respondent's Exhibit 10, "an Excel spreadsheet" of "information that's been previously provided to claimant," which Oppenheimer's witness described as a record of logins to the client access account. *Id.* at 145:6-20. The Excel file Oppenheimer produced was thus a login log, offered to argue capacity. The Excel file Claimants asked for -- the fees -- never came. To the extent paragraph 7 of the Motion can be read to say the Arbitrator declined to order the report, the orders control: Oppenheimer committed on the record to produce it and did not. *Compare* Dkt. 15 at 9.

An arbitrator who tells a party that non-compliance "may [be] raise[d] . . . at the May 7 hearing," and at the May 7 hearing declines to hear it, has "refus[ed] to hear evidence pertinent and material to the controversy." 9 U.S.C. § 10(a)(3). That is hearing conduct, which is exactly

where *Hyatt* locates the statute. The Seventh Circuit requires “adequate notice, a hearing on the evidence, and an impartial decision by the arbitrator.” *Generica Ltd. v. Pharm. Basics, Inc.*, 125 F.3d 1123, 1130 (7th Cir. 1997). Claimants did not receive a hearing on this evidence.

B. Oppenheimer Never Honored the Agreed 30-Megabyte Limit, and No Consequence Followed.

The problem was not only what Oppenheimer withheld but the form of what it sent. Oppenheimer’s production was some 900 megabytes. 4/28/25 Tr. 38:14-15. At the March 14 conference Oppenheimer “voluntarily agreed to produce and reproduce all of its document production in segments which are no more than 30 MB each,” and the Arbitrator recorded that agreement in his order with a March 24 compliance date. Ex. 5 at 2 (Rulings ¶ 2 and § 5). Oppenheimer did not comply. Claimants raised the oversized files with Oppenheimer and FINRA on March 26, Ex. 15-B at 1-2, and with the Arbitrator on April 2 and April 10. Ex. 6; Ex. 15-D at 2. Oppenheimer answered that its largest file was “60MB” and that some files were “unable to be broken up to be under 30MB.” Ex. 15-C at 2. At the April 28 conference its counsel again acknowledged files “bigger than 30 megabytes. One was up to 50 megabytes. Some were 33 megabytes,” 4/28/25 Tr. 39:2-6, and Jordan Weiner answered: “I need every file, as agreed in the prehearing conference, 30 megabytes or less.” *Id.* at 39:17-19. Claimants’ March 3 motion for sanctions was denied only in the Award itself. Ex. 3 at 3; Ex. 15-A. No consequence followed, and the non-compliance was never corrected. Ex. 14-B ¶ 5.

Oppenheimer will point to the end of that conference, where Claimants told the Arbitrator they could proceed. 4/28/25 Tr. 50:12-21. That answer was given nine days before the hearing, at a conference in which the Arbitrator had told Claimants that if he allowed an amended claim that “more than doubled the amount in controversy” he “would almost surely strike the May 7 hearing date.” *Id.* at 11:21-25. Two non-lawyers who had by then compiled the fee figures themselves from Oppenheimer’s account statements, *id.* at 44:18–45:19, 48:17-21, kept their hearing date rather than accept further delay. Ex. 14-B ¶ 8. That answer did not withdraw the

April 10 reservation, and Claimants raised the missing Excel financial spreadsheets at the hearing exactly as that order provided. 5/7/25 Tr. 119:1-8.

C. The Arbitrator Enforced the Rules Against Claimants Only.

The same Arbitrator who treated Oppenheimer's non-production as beside "the substance of the dispute" enforced every production rule against the unrepresented Claimants. Claimants moved for leave to submit the written report of Mr. Weiner's treating physician, Dr. Ami Desai, to spare a practicing internist a day away from her patients. Oppenheimer opposed, asking that the report be precluded "from any consideration," that the Arbitrator enforce "the standard of live testimony," and that the witnesses appear so he could observe their "evident bias, lack of credibility and/or lack of expertise" -- before either had said a word. Ex. 16 at 1-2. The Arbitrator required live testimony. Ex. 14-B ¶ 6. Claimants complied at their own expense, incurring \$9,000 for the hearing testimony and reports of Dr. Desai and of Mr. Weiner's Parkinson's trainer, Nick Gorsline. Ex. 14-B ¶ 6. Dr. Desai's summary documents "a clear progression from mild changes in 2017 to significant impairment by Jan 2021." Ex. 9 at 4. Mr. Gorsline, who worked with Mr. Weiner at the NeuroBalance Center from January 2019 through December 2023, 5/7/25 Tr. 57:20-23, testified that "[b]eginning in 2020" he "noted significant progression in both motor skills and cognitive symptoms" and "marked changes in his ability to follow complex instructions." *Id.* at 58:11-14. Oppenheimer called no medical witness. Ex. 14-B ¶ 7. The Award does not mention the subject.

Petitioner does not ask this Court to reweigh that testimony. She points to it because it shows how the hearing was run. When Claimants offered a one-minute video of Mr. Weiner dated February 2, 2021, three weeks after he signed the letter, 5/7/25 Tr. 70:1-7, the Arbitrator excluded it because it "was never produced," while acknowledging "quite a bit of litigation over production and nonproduction of materials." 5/7/25 Tr. 70:8-72:19. When Jordan Weiner explained that he had "specifically asked for" discovery of any communication from Oppenheimer's advisor about a rate increase and "[i]t was not provided," the Arbitrator

redirected him: “the issues here relate to the fees that were charged.” *Id.* at 91:6-15. Non-production by the pro se side was disqualifying; non-production by the brokerage was not the substance of the dispute.

The treatment of Jordan Weiner’s own status fits the pattern. He and Petitioner filed the case together as claimants; the Award’s own caption and every order list both as “Claimant(s),” Ex. 3 at 1; Ex. 5 at 1, and Oppenheimer’s filings captioned both as “Claimants.” Ex. 16 at 1. Mr. Weiner is a named 50% contingent beneficiary on Oppenheimer’s own beneficiary form for the accounts. Ex. 17-C at 3. After the untranscribed March 14 conference, the Arbitrator wrote that Jordan Weiner had “agreed that he was not a proper complainant.” Ex. 17-A at 2. Jordan Weiner, who is not a lawyer, twice asked to be reinstated: first by motion dated the next day, explaining that the position Oppenheimer’s counsel had urged “resulted in legal consequences that were unknown to [him] at the time” and asking the Arbitrator to “[s]et aside any adverse rulings” made on that basis, Ex. 17-B at 1-2; Ex. 14-B ¶ 9, and then by a “Supplemental Filing in Support of Motion to Be Reinstated as Claimant” attaching Oppenheimer’s form. Ex. 17-C. The Arbitrator denied reinstatement the day the supplement was filed, without stated reasons, Ex. 3 at 3, and later agreed on the record that the fees at issue “directly affect” Jordan Weiner’s “future pocketbook”: “Oh, I’m sure it does.” 4/28/25 Tr. 23:3-8. Petitioner does not ask the Court to decide who was a proper FINRA claimant. The point is narrower: a non-lawyer’s statement at an unrecorded conference was held against him, and his written request to revisit it, supported by Oppenheimer’s own document, was denied the same day without explanation. A hearing run on those terms does not meet “the minimal requirements of fairness.” *Generica*, 125 F.3d at 1130.

D. The Evidence the Arbitrator Declined to Hear Was Material.

The withheld evidence went to the two questions on which the case turned. The first is the fee record. Oppenheimer twice pleaded that the fee was increased in “mid-2022,” Ex. 18 at 2; Ex. 8 at 2; its complaint department had already confirmed in writing that the increase took effect January 1, 2021, Ex. 2 at 2; and its counsel closed on “January 2021.” 5/7/25 Tr. 198:1-2.

The complete fee-and-commission data Oppenheimer committed on March 14 to produce is what would have fixed the amount and period of the overcharge.

The second is authorization. Oppenheimer pleaded that Mr. Weiner authorized the increase “in person and in writing.” Ex. 8 at 2. Its only witness, Jerald Hymen, testified instead that the authorization was arranged in a telephone call followed by the one-sentence letter, and that there were “no subsequent conversations.” 5/7/25 Tr. 177:5-19. He denied telling the family that Mr. Weiner had given him “a bonus” -- “just not true at all,” *id.* at 175:5-8 -- although Ms. Tepper and a second witness, Nona Ullman, each testified that he said it. *Id.* at 22:12-15, 73:13-17. Oppenheimer pointed to a 2021 portfolio review at which Ms. Tepper “was present.” *Id.* at 178:9-21; Ex. 8 at 2. Ms. Tepper did attend a review meeting; no fee increase was mentioned at it, and Mr. Hymen never mentioned a fee increase or a “bonus” to her until after she terminated him. Ex. 14-A ¶¶ 3-4. Claimants asked for any note, email, or other record in which Oppenheimer’s advisor communicated the increase to the family; Oppenheimer produced none. 5/7/25 Tr. 90:19–91:12. Nor did it produce the signed letter concerning Mr. Hymen’s “bonus” that Claimants had requested by motion. Ex. 6 at 1. Whether Oppenheimer’s own files corroborated its only witness on authorization was pertinent and material. The Arbitrator declined to hear about their absence. 9 U.S.C. § 10(a)(3).

E. Claimants Were Prejudiced by “Other Misbehavior.”

Section 10(a)(3) also reaches “any other misbehavior by which the rights of any party have been prejudiced.” On April 21, 2025 -- one week before the April 28 conference -- Oppenheimer’s counsel wrote to Jordan Weiner: “I . . . have done this long enough that it is clear to me you have alienated the Chairman. While I am sure he will do his best to remain impartial, you can best decide if your strategy has been helpful or hurtful.” Ex. 10. Petitioner does not offer this as proof of the Arbitrator’s state of mind. She offers it as opposing counsel’s contemporaneous assessment of how the proceeding stood, and the rulings described above bore it out.