

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

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In the Matter of the Arbitration Between:

Claimant  
The Lawrence Rosenbloom Charitable Remainder  
Trust

Case Number: 13-03412

vs.

Respondent  
Oppenheimer & Co. Inc.

Hearing Site: Dallas, Texas

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Nature of the Dispute: Customer vs. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant The Lawrence Rosenbloom Charitable Remainder Trust: Richard A. Lewins, Esq., LewinsLaw, Dallas, Texas, and Bryan T. Forman, Esq., Forman Law Firm P.C., Tyler, Texas.

For Respondent Oppenheimer & Co. Inc.: Christopher Tovar, Esq., Oppenheimer & Co. Inc., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: November 15, 2013.  
The Lawrence Rosenbloom Charitable Remainder Trust signed the Submission Agreement: November 15, 2013.

Statement of Answer filed by Respondent on or about: February 14, 2014.  
Oppenheimer & Co. Inc. signed the Submission Agreement: February 14, 2014.

**CASE SUMMARY**

Claimant asserted the following causes of action: failure to supervise; breach of fiduciary duty; unsuitable advice; and improper use of margin. The causes of action related to Claimant's allegations that Respondent mismanaged Claimant's account, including over-concentrating the portfolio in unspecified aggressive stocks and buying on margin. Claimant alleged that these actions are contra-indicated by the Prudent Man Rule and best practices that govern charitable remainder trusts.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

Compensatory Damages	\$485,000.00
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

At the close of the hearing, Claimant requested:

Compensatory Damages	\$377,000.00
Attorneys' Fees	\$185,686.00
Expert Fees	\$ 24,000.00
Filing Fee	\$ 1,425.00

Respondent requested that Claimant's claims be dismissed and that it be awarded its expenses incurred in the defense of the claims.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

At the hearing on April 28, 2015, Respondent moved for a directed verdict. The Panel denied the Motion on the record at the hearing.

At the hearing, Respondent requested expungement of all references to this matter from the registration records maintained by the Central Registration Depository ("CRD") of unnamed parties Sean Lewis and Brian Sayers.

At the hearing, Mark Gardner, an unnamed party appearing as a witness, requested expungement of all references to this matter from his registration records maintained by the CRD.

Respondent submitted the BrokerCheck® Reports of Sean Lewis, Brian Sayers, and Mark Gardner for the Panel's consideration on or about May 4, 2015. The Panel reviewed the BrokerCheck® Reports of Sean Lewis, Brian Sayers, and Mark Gardner.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the recorded hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Oppenheimer & Co. Inc. is liable for and shall pay to Claimant The Lawrence Rosenbloom Charitable Remainder Trust the sum of \$308,175.00 in compensatory damages;
2. Respondent Oppenheimer & Co. Inc. is liable for and shall pay to Claimant The Lawrence Rosenbloom Charitable Remainder Trust the sum of \$24,000.00 in costs for expert witness fees;
3. Respondent Oppenheimer & Co. Inc. is liable for and shall pay to Claimant The Lawrence Rosenbloom Charitable Remainder Trust the sum of \$102,725.00 in attorneys' fees pursuant to the contingency fee agreement in the client contract;
4. The Panel denied Oppenheimer & Co. Inc.'s request for expungement on behalf of unnamed parties Sean Lewis (CRD # 2325030) and Brian Sayers (CRD # 1137566);
5. The Panel denied Mark Gardner's (CRD #832102) request for expungement; and
6. Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$ 1,425.00
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*\*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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, Oppenheimer & Co. Inc. is assessed the following:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 2,750.00

#### **Adjournment Fees**

Adjournment granted during these proceedings for which fees were assessed:

December 15-19, 2014, adjournment by Respondent	= \$ 1,125.00
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The Panel has assessed \$1,125.00 of the adjournment fees to Oppenheimer & Co. Inc.

#### **Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

One (1) Decision on discovery-related motions on the papers with one (1) arbitrator @ \$200.00	= \$ 200.00
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Respondent submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees	= \$ 200.00
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The Panel has assessed \$200.00 of the discovery-related motion fees to Oppenheimer & Co. Inc.

**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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: July 22, 2014 1 session	

Five (5) Pre-hearing sessions with the Panel @ \$1,125.00/session	= \$ 5,625.00
Pre-hearing conferences: May 27, 2014 1 session	
August 7, 2014 1 session	
September 30, 2014 1 session	
October 15, 2014 1 session	
December 9, 2014 1 session	

Eight (8) Hearing sessions @ \$1,125.00/session	= \$ 9,000.00
Hearing Dates: April 27, 2015 1 session	
April 28, 2015 2 sessions	
April 29, 2015 2 sessions	
April 30, 2015 2 sessions	
May 1, 2015 1 session	

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Total Hearing Session Fees	= \$15,075.00
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The Panel has assessed \$15,075.00 of the hearing session fees to Oppenheimer & Co. Inc.

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

**ARBITRATION PANEL**

Phillip Lee Scheldt, Ph.D.	-	Public Arbitrator, Presiding Chairperson
Robert Jerry Strader, Sr.	-	Public Arbitrator
Russell Phillips Gandy	-	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**

/s/ Phillip Lee Scheldt, Ph.D.  
Phillip Lee Scheldt, Ph.D.  
Public Arbitrator, Presiding Chairperson

05/07/15  
Signature Date

/s/ Robert Jerry Strader, Sr.  
Robert Jerry Strader, Sr.  
Public Arbitrator

05/07/15  
Signature Date

Russell Phillips Gandy  
Public Arbitrator

Signature Date

05/07/15  
Date of Service (For FINRA Dispute Resolution office use only)

**ARBITRATION PANEL**

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Robert Jerry Strader, Sr.	-	Public Arbitrator
Russell Phillips Gandy	-	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**



May 7, 2015

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Phillip Lee Scheldt, Ph.D.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Robert Jerry Strader, Sr.  
Public Arbitrator

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Signature Date

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Russell Phillips Gandy  
Public Arbitrator

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Signature Date

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

**ARBITRATION PANEL**

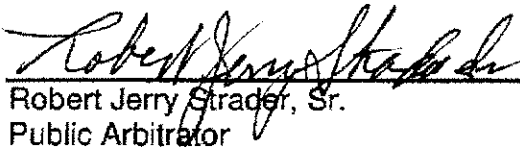
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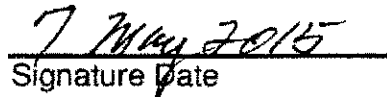
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