

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

Eric Kaplan and Bonnie Kaplan JTWROS,  
Multidisciplinary Business Applications, Inc. 401(k)  
and Bonnie Kaplan IRA

Case Number: 16-01829

vs.

Respondent

Oppenheimer & Co., Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Eric Kaplan and Bonnie Kaplan JTWROS, Multidisciplinary Business Applications, Inc. 401(k) and Bonnie Kaplan IRA (“Claimants”): Jeffrey Erez, Esq., Sonn & Erez, PLC, Miami, Florida.

For Respondent Oppenheimer & Co., Inc.: Cory S. Zadanosky, Esq., Zadanosky & Associates, P.A., Lake Worth, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: June 27, 2016.

Claimants signed the Submission Agreement: June 27, 2016.

Statement of Answer filed by Respondent on or about: September 19, 2016.

Oppenheimer & Co., Inc. signed the Submission Agreement: September 19, 2016.

Claimants’ Emergency Motion for Sanctions for Respondent’s Refusal to Comply with Chairperson’s Discovery Order (“Motion for Sanctions”) filed by Claimants on or about: February 21, 2018.

Opposition to Motion for Sanctions filed by Respondent on or about: February 28, 2018.

Reply in Support of Motion for Sanctions filed by Claimants: March 7, 2018.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; negligence; negligent supervision; fraud; breach of contract; and violation of ERISA. The causes of action relate to Claimants’ investments in various energy sector stocks including, but not limited to, Breitburn Energy Partners, Sandridge Permian Trust, Atlas Resource Partners and Vanguard National Resources.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested: compensatory damages in an amount between \$1,000,000.00 and \$5,000,000.00; punitive damages; interest; costs; attorneys' fees; and such other and further relief as the Panel deemed just and necessary.

In the Statement of Answer, Respondent requested: dismissal of Claimants' Statement of Claim in its entirety; expungement of Claimants' allegations from non-party Evan Fischer's Central Registration Depository ("CRD") records; costs, including arbitrators' fees and expenses; and such other and further relief as the Panel deemed just and equitable.

At the close of the hearing, Claimants requested total damages inclusive of prejudgment interest in the amount of \$973,148.30.

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

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

On or about February 21, 2018, Claimants filed a Motion for Sanctions in which they argued, among other things, that Respondent's failure to produce documents warranted monetary sanctions pursuant to Rule 12212. On or about February 28, 2018, Respondent filed an Opposition to Motion for Sanctions in which it argued, among other things, that it should not be sanctioned because its production of documents was tolled as a result of motions filed by both Respondent and Claimants seeking reconsideration of the Panel's prior discovery order. On or about March 7, 2018, Claimants filed a Reply in Support of Motion for Sanctions in which they argued, among other things, that Respondent's discovery abuse warranted sanctions from the Panel. After hearing oral argument on March 9, 2018, the Panel issued an Order in which it (1) ordered Respondent to produce documents in accordance with a prior discovery order and (2) deferred ruling on the issue of sanctions and costs.

The parties present at the hearing 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 hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for negligence and shall pay to Claimant Eric Kaplan and Bonnie Kaplan JTWR0S the sum of \$720,000.00 in compensatory damages.

2. Respondent is liable for negligence and shall pay to Claimant Multidisciplinary Business Applications, Inc. 401(k) the sum of \$40,000.00 in compensatory damages.
3. Respondent is liable for negligence and shall pay to Claimant Bonnie Kaplan IRA the sum of \$40,000.00 in compensatory damages.
4. The Panel did not find Respondent liable for breach of contract, breach of fiduciary duty or gross negligence.
5. Respondent is liable for and shall pay to Claimants interest on the above-stated sums at the Florida statutory rate from the date of the Award until payment in full.
6. Respondent is liable for and shall pay to Claimants the sum of \$61,517.00 in costs.
7. Respondent is liable for and shall pay to Claimants the sum of \$600.00 which represents Claimant's non-refundable portion of the filing fee.
8. Claimants' Motion for Sanctions is denied.
9. Non-party Fischer's request for expungement of his CRD records is denied.
10. Any and all claims for relief not specifically addressed herein, including Claimants' requests for punitive damages and attorneys' fees, are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim Filing Fee	=\$ 2,000.00
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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(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	=\$ 3,025.00
Member Process Fee	=\$ 6,175.00

### **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:

Three (3) pre-hearing sessions with a single arbitrator @ \$450.00/session    =\$ 1,350.00  
Pre-hearing conferences: December 1, 2017                   1 session  
  January 5, 2018                   1 session  
  January 18, 2018               1 session

Two (2) pre-hearing sessions with the Panel @ \$1,400.00/session                =\$ 2,800.00  
Pre-hearing conferences: December 2, 2016                1 session  
  March 9, 2018                1 session

Eighteen (18) hearing sessions @ \$1,400.00/session                                =\$25,200.00  
Hearing Dates:                April 23, 2018                2 sessions  
  April 24, 2018                2 sessions  
  April 25, 2018                2 sessions  
  April 26, 2018                2 sessions  
  April 27, 2018                2 sessions  
  April 30, 2018                2 sessions  
  May 1, 2018                    2 sessions  
  May 14, 2018                2 sessions  
  May 15, 2018                2 sessions

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Total Hearing Session Fees    =\$29,350.00

The Panel has assessed \$2,075.00 of the hearing session fees to Claimants.

The Panel has assessed \$27,275.00 of the hearing session fees to Respondent.

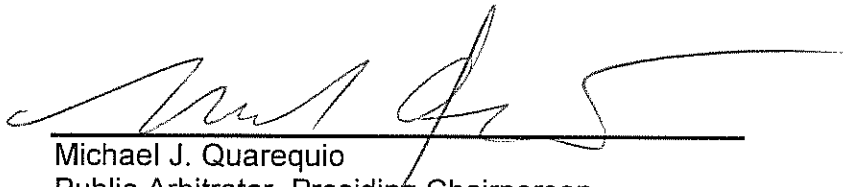
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Michael J. Quarequo	-	Public Arbitrator, Presiding Chairperson
Richard J. Kaplan	-	Public Arbitrator
Sidney J. Wartel	-	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**



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Michael J. Quarequo  
Public Arbitrator, Presiding Chairperson

5/23/18  

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Signature Date

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Richard J. Kaplan  
Public Arbitrator

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Signature Date

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Sidney J. Wartel  
Public Arbitrator

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Signature Date

May 23, 2018  

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

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Public Arbitrator, Presiding Chairperson



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Signature Date

May 23, 2018

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Richard J. Kaplan  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Sidney J. Wartel  
Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Signature Date

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Richard J. Kaplan  
Public Arbitrator

\_\_\_\_\_  
Signature Date

*s/ Sidney J. Wartel*  
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Sidney J. Wartel  
Public Arbitrator

\_\_\_\_\_  
May 23, 2018  
Signature Date

\_\_\_\_\_  
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