



OppenheimerFunds, Custodian Sued for Account Takeover

By Ben Miller October 29, 2020

A former OppenheimerFunds IRA account holder sued the since-absorbed company, as well as custodian Pensco, for failing to stop a fraudster from stealing nearly \$200,000 from his account, court documents show.

OppenheimerFunds allegedly gave the thief clearance to transfer assets after he posed as account holder Michael Eckenwiler, even though he used an incorrect middle name, a fake driver's license and a forged signature, according to a complaint filed in Virginia circuit court.

The complaint was originally filed June 2 in a Virginia circuit court. However, on Monday, it was transferred to a district court.

On June 5, 2018, the con man transferred \$176,262.77 from A shares of the Oppenheimer Capital Income Fund to a Pensco IRA account. Those assets were then moved to American Estate & Trust, where the service provider converted the assets to Bitcoin and handed them to the fraudster.

He then vanished with the money, the complaint says.

The court document also features a photo of the alleged culprit posing with his fraudulent ID card, which lacks a hologram and features the wrong middle name — Ralph instead of Roy. The document also includes a photo of the real Eckenwiler.

“It strikes me as very old-school,” says John Reed Stark, president of Stark Consulting and former head of the Securities and Exchange Commission's Office of Internet Enforcement. “This kind of compliance, with someone standing up and holding a driver's license ... I've always felt that it doesn't pass a straight face test.”

Pensco, which in June became Pacific Premier Trust, and American Estate issued Medallion Guarantees that assured that the fraudster's signature was genuine and verified, the complaint says. That stamp of approval allegedly prompted OppenheimerFunds to initiate the transfers.

Nearly two months later, Eckenwiler discovered that his account had been breached.

"Giving away \$176,262.77 of the plaintiff's retirement funds under these circumstances showed a willful and wanton disregard of his rights," says the complaint. "Rather than go to the police or the federal authorities, they decided that it would be easier and more profitable — not to mention far less humiliating — to keep quiet."

Invesco, which acquired OppenheimerFunds in 2019, declined to comment on pending litigation, as did its lawyers at Ropes & Gray. Pacific Premier Trust and American Estate did not respond to requests for comment.

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Despite Eckenwiler's attempts to recover the lost money, neither OppenheimerFunds, Pensco nor American Estate reimbursed him for the defrauded assets. "That amounts to actual malice," the complaint alleges.

Eckenwiler has accused all three firms of violating Virginia's Uniform Commercial Code, which states that a securities intermediary must comply with entitlement orders from only the appropriate person. He also claims the firms breached their fiduciary duties, committed fraud, and conducted "wrongful exercise or assumption of authority" of his account, the complaint says.

At the time of the theft, OppenheimerFunds was the securities intermediary under state law that received an "ineffective entitlement order" from the fraudster, the complaint says. This compels them to reimburse Eckenwiler in full, along with up to \$35,000 in missed distributions, the document says.

"I'm surprised that a financial firm could be that heartless and would really be willing to go to litigation for this kind of thing, because I think the impact on clients would be significant," Stark says.

Eckenwiler's lawyer at Johnson Rosen and Consumer Litigation Associates declined to comment.

In July, a fraudster was indicted in California for using comparable identity theft tactics to steal assets from Boeing's 401(k). He used participants' names to request withdrawals, and then intercepted their checks at the post office.

In October 2019, a participant in Estée Lauder's 401(k) sued the cosmetics giant and recordkeeper Alight Solutions after she saw more than \$100,000 drained from her account. That case was settled in March.

Across the industry, the issue of account takeovers has prompted many to implement heightened cyber-security measures and develop strategies to combat widespread fraud. Limra's FraudShare, which celebrated its first birthday last week, is one such platform that has attracted many financial services firms with the promise of reporting and preventing takeovers.

"Account intrusions are inevitable," Stark says. "You do the best you can to make sure it doesn't happen."

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