

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

Northwestern Mutual Investment Services, LLC  
Wells Fargo Clearing Services, LLC

Hearing Site: Philadelphia, Pennsylvania

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Dochter Kennedy, Esq., AdvisorLaw, LLC,  
Broomfield, Colorado.

For Respondent Northwestern Mutual Investment Services, LLC ("NMIS"): James A. McGovern, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, P.C., Pittsburgh, Pennsylvania.

For Respondent Wells Fargo Clearing Services, LLC ("WFCS"): Michael Naccarato, Esq., Wells Fargo Law Department, St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: March 3, 2017.  
Amended Statement of Claim filed on or about: May 5, 2017.  
Opposition to NMIS' Motion to Dismiss filed on or about: July 24, 2017.  
Claimant signed the Submission Agreement: March 3, 2017.

Statement of Answer filed by NMIS on or about: April 25, 2017.  
Statement of Answer to Amended Statement of Claim filed by NMIS on or about: May 12, 2017.  
Motion to Dismiss filed by NMIS on or about: June 14, 2017.  
Reply to Opposition to Motion to Dismiss filed on or about: August 4, 2017  
NMIS signed the Submission Agreement: April 10, 2017.

Statement of Answer filed by WFCS on or about: April 26, 2017.  
WFCS signed the Submission Agreement: April 20, 2017.

### **CASE SUMMARY**

In the Statement of Claim and Amended Statement of Claim, Claimant asserted the following cause of action: expungement of his CRD records.

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

In the Statement of Answer, WFCS had no objection to the relief sought by Claimant in his Statement of Claim.

### **RELIEF REQUESTED**

In the Statement of Claim and Amended Statement of Claim, Claimant requested compensatory damages in the amount of \$1.00 and expungement.

In the Statement of Answer NMIS requested dismissal of the Statement of Claim and an award for costs incurred in defending this matter.

In the Statement of Answer to the Amended Statement of Claim, WFCS requested dismissal of the request for monetary damages and did not object to the request for expungement.

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

The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

On September 8, 2017, the Arbitrator heard oral arguments on NMIS' Motion to Dismiss Claimant's claim regarding occurrence # [REDACTED]. On September 8, 2017, the Arbitrator granted NMIS's Motion to Dismiss pursuant to FINRA Rule 13206 of the Code. The Arbitrator granted NMIS' Motion to Dismiss on the grounds that Claimant's claim against NMIS was time barred because more than six years had elapsed from the occurrence or event giving rise to the claim. Respondent NMIS was removed as a party since the remaining claims involve WFCS.

Respondent's NMIS's Motion to Dismiss Claimant's claim regarding occurrence # [REDACTED] pursuant to Rule 13206 of the Code is granted by the Arbitrator without prejudice to any right the Claimant has to file in court; the Claimant is not prohibited from pursuing his claims in a court pursuant to Rule 13206(b) of the Code.

The Arbitrator ordered Claimant to provide the customers in the underlying complaints with a copy of the Statement of Claim and Notice of the expungement hearing. By correspondence dated September 19, 2017, Claimant filed an Affidavit of Service of the Statement of Claim and Notice of Hearing to the customers in the underlying complaints related to occurrence #s [REDACTED], [REDACTED], [REDACTED]. The customers did not attend the expungement hearing and did not contest Claimant's request for the expungement of his CRD record.

The Arbitrator conducted a recorded telephonic hearing on December 18, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement.

In the Amended Statement of Claim, Claimant requested expungement of the underlying customer complaints related to occurrence #s [REDACTED], [REDACTED], [REDACTED] hereinafter referred to as ("occurrences") while he was employed by Respondent Wells Fargo Advisors LLC, or Wachovia Securities (which merged with Wells Fargo Advisors). Respondent WFSC in its Answer to Claimant's Statement of Claim had no objection to the relief sought by Claimant; Respondent WFSC's representative appeared at the expungement hearing, but asked no questions, and presented no evidence, nor argument regarding Claimant's request for expungement of his CRD records.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: the pleadings, the testimony of the Claimant, the Claimant's BrokerCheck Report, Claimant's Individual Snapshot Report, Claimant's letter to FINRA dated May 18, 2009 related to occurrence # [REDACTED], Claimant's email dated May 27, 2010 related to occurrence # [REDACTED], emails between the customer and Claimant dated May 2010 related to occurrence # [REDACTED], and a letter from Respondent WFCS to the customer dated June 15, 2010.

### AWARD

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

1. Claimant's request for compensatory damages is denied.
2. The Arbitrator recommends the expungement of all references to occurrence # [REDACTED] from [REDACTED] (CRD # [REDACTED]) registration records maintained by the Central Registration Depository ("CRD"), with the understanding that, pursuant to Notice to Members 04-16, [REDACTED] must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

Regarding occurrence # [REDACTED]: The customer filed a complaint with Respondent WFCS on May 27, 2010, which was promptly denied on or about June 15, 2010. From the evidence, it is clear that the Claimant did not have discretion to buy or sell securities in the customer's account without his express authority. The drop in value of the securities was from an unfortunate period when the customer could not be available for communication with the Claimant, and not because of any fault or dereliction by the Claimant. The Claimant could not receive direction from the customer other than in-person or by telephone contact. Thus the claim, allegation, or information was clearly erroneous, under FINRA Rule 2080(b)(1)(A).

3. The Arbitrator recommends the expungement of all references to occurrence #s [REDACTED] and [REDACTED] from [REDACTED] (CRD # [REDACTED]) registration records maintained by the Central Registration Depository ("CRD"), with the understanding that, pursuant to Notice to Members 04-16, [REDACTED] must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

Regarding occurrence # [REDACTED]: The customer filed a complaint with Respondent WFCS April 27, 2009 which was promptly denied on or about May 19, 2009. From the evidence, it appears that the customer was clearly advised that she was purchasing a mutual fund and not T-Bills (as alleged in the complaint). As such, the claim, allegation or information was clearly erroneous or false, under FINRA Rule 2080(b) (1) (A) and (C).

Regarding occurrence # [REDACTED] The customer filed a complaint with Respondent Wells Fargo on June 16, 2009, which was promptly denied on or about June 30, 2009. From the evidence, it appears that the customer clearly knew she was purchasing a tax-free mutual fund, as she invested additional funds to the mutual fund on three separate occasions after the initial purchase. The customer's claim, that she was not informed that the security purchased was a mutual fund was clearly erroneous or false, under FINRA Rule 2080 (b) (1) (A) and (C).

4. Claimant's request for expungement of all references to occurrence # [REDACTED] from his CRD records is dismissed without prejudice pursuant to FINRA Rule 13206 of the Code.
5. Any and all relief not specifically addressed herein is 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	=\$ 50.00
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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 person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents Northwestern Mutual Investment Services, LLC and Wells Fargo Clearing Services, LLC are each assessed the following:

Member Surcharge	=\$ 300.00
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#### **Hearing Session Fees and Assessments**

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with a single arbitrator @ \$50.00/session	=\$ 100.00
Pre-hearing conferences: June 23, 2017	1 session
September 8, 2017	1 session
One (1) hearing session on expungement request @ \$50.00/session	=\$ 50.00
Hearing Date: December 18, 2017	1 session
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Total Hearing Session Fees	=\$ 150.00

The Arbitrator has assessed the \$150.00 hearing session fees to Claimant.

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

**ARBITRATOR**

Guillermo L. Bosch

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Sole 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.

**Arbitrator's Signature**



Guillermo L. Bosch  
Sole Public Arbitrator

January 4, 2018  
Signature Date

January 10, 2018

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