

AWARD

FINRA Office of DISPUTE RESOLUTION

CASE #: [REDACTED]

[REDACTED] (Claimant) vs. Wells Fargo Clearing Services, LLC (Respondent)

REPRESENTATION OF PARTIES:

For Claimant [REDACTED]: Dochter Kennedy, MBA, J.D., and Michael O’Gara, J.D., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Wells Fargo Clearing Services, LLC: Steven L. Satter, Esq., Wells Fargo Advisors, LLC, St. Louis, Missouri.

NATURE OF DISPUTE: Associated Person vs. Member

Statement of Claim filed on or about: July 7, 2017.

Respondent filed a Statement of Answer on: January 5, 2018.

CASE SUMMARY: Claimant asserted a claim for expungement of customer complaint occurrence number [REDACTED] from his Central Registration Depository (“CRD”) record.

In the Statement of Answer, Respondent advised that it does not contest Claimant’s request for expungement.

RELIEF REQUESTED: In the Statement of Claim, Claimant requested:

1. Expungement of occurrence number [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(A), as the claims, allegations, or information is factually impossible or clearly erroneous;
 2. Expungement of occurrence number [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(B), as the Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriate, or conversion of funds;
 3. Expungement of occurrence number [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claims, allegations, or information is false;
 4. An award of damages in the amount of \$1.00; and
 5. Any and all other relief that the Arbitrator deems just and equitable.
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OTHER ISSUES: The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

On August 24, 2017, Claimant filed a copy of a letter sent to the underlying customers in occurrence number [REDACTED], Mr. and Mrs. S, with a copy of the Statement of Claim.

On August 31, 2017, Claimant filed an Affidavit of Service signed by Claimant’s counsel advising that Mr. and Mrs. S were served with a copy of the Statement of Claim.

On November 2, 2017, Claimant filed a copy of a letter sent to Mr. and Mrs. S with notice of the expungement hearing.

The Arbitrator conducted a recorded in-person hearing on January 31, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not contest the request for expungement. The Arbitrator determined that Mr. and Mrs. S were provided with information on the case by Claimant's counsel but they did not participate in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on Mr. and Mrs. S not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

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: Claimant's Exhibits 1-6 and Claimant's testimony.

The parties present at the hearing have agreed that a handwritten, signed Award may be entered.

The Arbitrator notes that the full names of the customers are not used in this Award. This is to maintain their privacy and identity, as the customers are not named parties in this case.

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. The Arbitrator recommends the expungement of occurrence number [REDACTED] from registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), 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 of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous;

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and

The claim, allegation, or information is false.

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

The BrokerCheck® Report for Claimant, page 8 contains the following customer allegations:

“[Utah] resident used brokerage account to collateralize a loan. She claimed [Claimant] did not leave \$150,000 liquid in the account as instructed. Client felt forced to pay off loan on 11/21/08 to free up assets and was subject to a pre-payment penalty of \$11,535.59 for which client believes financial advisor should be responsible.”

Review of the evidence shows no support for the above allegations:

1. Mr. and Mrs. S’s claim was that Claimant did not leave \$150,000 liquid in the account as instructed. In fact, in both his testimony at the hearing and in his letter to FINRA dated June 30, 2009, Claimant testified that in early October 2008, Mrs. S contacted Claimant and stated that her entire Wachovia account had been collateralized in connection with a real estate purchase by Mr. and Mrs. S. Claimant, who had moved to a different brokerage firm, contacted his old firm, Wachovia, and confirmed that the \$150,000 was available. Claimant called Mrs. S and left her a message confirming this.
2. In November or December, 2008, Mrs. S called Claimant and told him that the \$150,000 was not available and she had to pre-pay the loan thereby incurring a \$12,000 pre-payment penalty for which Claimant was somehow responsible. By this point, Mr. and Mrs. S had moved their accounts to Merrill Lynch. No evidence was presented as to why the \$150,000 was not available when it previously had been confirmed that it was. Also, no evidence was presented with respect to the pre-payment penalty.
3. Finally, Claimant testified that Mr. and Mrs. S told him that they did not feel that he was responsible for their financial problems. This was not contradicted either by Mr. and Mrs. S (who did not appear) or Respondent.
4. In summary, no evidence was presented that supported Mr. and Mrs. S’s claim in the BrokerCheck® Report. If there was a conflict in the evidence, which there was not, the Arbitrator resolves the conflict by accepting the evidence as presented by Claimant.

2. Any and all claims for relief not specifically addressed herein are denied.

OTHER FEES: Pursuant to the Code, 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

*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 = \$150.00

Discovery-Related Motion Fee

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

One (1) decision on a discovery-related motion on the papers with one (1) arbitrator @ \$200.00/decision = \$200.00

Claimant submitted 1 discovery-related motion

Total Discovery-Related Motion Fees = \$200.00

The Arbitrator has assessed \$200.00 of the discovery-related motion fees to Claimant.

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(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 @ \$50.00/session = \$50.00
Pre-hearing conference: October 30, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$50.00
Hearing Date: January 31, 2018 1 session

Total Hearing Session Fees = \$100.00

The Arbitrator has assessed \$100.00 of the hearing session fees to Claimant.

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

ARBITRATOR

Merton E. Marks

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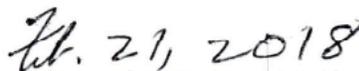
Sole Public Arbitrator

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



Merton E. Marks
Sole Public Arbitrator



Signature Date

February 22, 2018

Date of Service (For FINRA-ODR office use only)