

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Hearing Site: Baltimore, Maryland

Wells Fargo Clearing Services, LLC

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] Dochter Kennedy, Esq., MBA, J.D.,
AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Wells Fargo Clearing Services, LLC: Deirdre C. Wolff, Esq., Wells
Fargo Law Department, St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: June 8, 2017.

[REDACTED] signed the Submission Agreement: June 8, 2017.

Statement of Answer filed by Respondent on or about: August 1, 2017.

Wells Fargo Clearing Services, LLC signed the Submission Agreement: August 1, 2017.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository ("CRD") records. The cause of action relates to three specific disclosures: Occurrence Nos. [REDACTED], [REDACTED] and [REDACTED] ("the Occurrences"), that were recorded by Respondent on Claimant's CRD records.

In its Answer to the Statement of Claim, Respondent did not oppose the expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Nos. [REDACTED], [REDACTED] and [REDACTED] from his CRD records; compensatory damages in the amount of \$1.00; and any and all other relief deemed just and equitable by the Arbitrator.

Collateralized Mortgage Obligations; Claimant's Exhibits 5-25 (of the Expungement Hearing Exhibits); and the Statement of Claim along with its Exhibits and credible testimony of Claimant.

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded telephonic 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 all references to Occurrence Nos. [REDACTED] and [REDACTED] from registration records maintained by the CRD for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 (the "Code"), the Arbitrator has made the following Rule 2080 affirmative finding of fact with respect to all three occurrences:

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

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

Occurrence No [REDACTED]

On or about October 17, 2005, the Customers purchased an annuity. In order to purchase the annuity, the Customers received a prospectus on the investment and were required to complete an application for the annuity. The prospectus explained the nature of the investment, and potential benefits and risks associated with the investment. In addition to the prospectus, the Customers executed a Wachovia Securities Variable Annuity Disclosure Statement, which cited the benefits and risks of investing in an annuity. The Customers received from the annuity issuer a copy of their contract, which again contained information about the benefits and risks of the annuity. It was represented that none of the documents provided to the Customers stated that the value of the annuity would be \$200,000.00 after a 10 year holding period (Testimony of Claimant and Claimant's Exhibit 6).

It is a well-founded axiom of law, that absent some extraordinary circumstance, if a person signs a document, there is a presumption that the person reviewed the document, understood the document and executed same with knowledge of its content.

and that the fund invested in 100% noninvestment grade securities. The investment in the FHY was considered a 5 to 10 year investment.

After receiving the annual report, the Customers purchased the FHY. By November 2007, there was a decline of almost 10% in the original investment. At all times relevant hereto, the Customers' had the right to direct the Claimant to sell the FHY.

The Customers filed a complaint with Wachovia Securities, alleging that Claimant should have monitored the account closer and notified the Customers to liquidate the FHY sooner (Claimant's Exhibit 14).

On or about March 17, 2009, a formal arbitration claim was filed with FINRA, Case No. [REDACTED], by Customers' counsel (Claimant's Exhibit 20).

On or about May 19, 2009, counsel for Wachovia Securities and the Claimant filed an answer to the Customers' Statement of Claim denying all of the Customers' claims, and seeking expungement on behalf of Claimant (Claimant's Exhibit 19).

On or about November 23, 2009, Respondent, the successor in interest to Wachovia Securities, entered into a Settlement Agreement with the Customers, which did not contain a provision with respect to expungement.

In the case of the Customers, Respondent, like many other brokerage firms, paid CMO losses, as the brokerage firms sold them as safe investments. Due to the failure of financial models, combined with an increase in foreclosures, the value of the CMO's dropped dramatically, which was a precipitating factor in the 2008 stock market crash.

As Claimant provided information to the Customers setting forth the risks and rewards, it is the opinion of the Arbitrator that this claim should be expunged based on Claimant's reasonable belief that the CMO's were safe investments being offered by Respondent.

Based on the above, the Arbitrator finds that the claims of the Customer are factually impossible. As such, the Arbitrator is recommending expungement.

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

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.*

ARBITRATOR

Joseph J. Dougherty

-

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



Joseph J. Dougherty
Sole Public Arbitrator

5/30/18

Signature Date

5/31/2018

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