

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

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In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondents

First Wall Street Corp.  
SagePoint Financial, Inc.

Hearing Site: San Diego, California

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant ██████████ ("Claimant"): Dochter Kennedy, J.D., MBA, and Harris Freedman, J.D., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent First Wall Street Corp. ("First Wall Street"): Charles Lazzaro, President, First Wall Street Corp., La Jolla, California.

For Respondent SagePoint Financial, Inc. ("SagePoint"): Bradley S. Fishman, Esq., SagePoint Financial Services, Inc., Jersey City, New Jersey.

Hereinafter, First Wall Street and SagePoint are collectively referred to as "Respondents."

**CASE INFORMATION**

Statement of Claim filed on or about: February 9, 2018.  
Claimant signed the Submission Agreement: February 9, 2018.

Statement of Answer filed by First Wall Street on or about: March 5, 2018.  
First Wall Street did not sign the Submission Agreement.

Statement of Answer filed by SagePoint on or about: April 11, 2018.  
SagePoint signed the Submission Agreement: April 11, 2018.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of two customer complaints, occurrence numbers [REDACTED] and [REDACTED] (“Underlying Complaints”) from his Central Registration Depository (“CRD”) records.

In its Statement of Answer, First Wall Street advised that it went out of business December 31, 2008 and that all documents relative to the broker dealer have been destroyed.

In its Statement of Answer, SagePoint advised that it does not oppose Claimant’s request for expungement and set forth affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaints from his CRD record pursuant to FINRA Rule 2080(b)(1)(A), as the claims, allegations, or information are factually impossible or clearly erroneous;
2. Expungement of the Underlying Complaints from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claims, allegations, or information are false;
3. Damages in the amount of \$1.00 from the Respondents; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statements of Answer, Respondents did not set forth specific relief requests.

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

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

First Wall Street did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is bound by the determination of the Arbitrator on all issues submitted.

On July 23, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing was served on one of the customers in occurrence number [REDACTED] (“Mr. C”). The Arbitrator found that service upon Mr. C was sufficient service on both Mr. C and his wife (“Mrs. C”), the other customer in occurrence number [REDACTED]

On July 27, 2018, Claimant submitted an Affidavit of Service signed by Claimant’s counsel advising that Mr. C was served with the Statement of Claim and that Claimant could not serve the customers in occurrence number [REDACTED] (“Mr. and Mrs. S”), as a search of public records indicated that they are deceased.

Hereinafter, Mr. and Mrs. C and Mr. and Mrs. S are collectively referred to as “Customers.”

The Arbitrator conducted a recorded telephonic hearing on August 30, 2018 so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondents did not participate in the expungement hearing. First Wall Street provided no position on Claimant's request for expungement. SagePoint did not contest the request for expungement.

At the expungement hearing, Claimant withdrew his request for \$1.00 in damages from Respondents.

On August 30, 2018, Claimant submitted an Affidavit of Claimant's counsel attesting that Claimant's counsel was unable to narrow the search parameters necessary to locate any information about the "heir" for Mr. and Mrs. S. The Arbitrator found that Mr. and Mrs. S could not be served with notice of the expungement request as they are deceased.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents in occurrence number [REDACTED], 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. C not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

The Arbitrator was unable to review the settlement documents in occurrence number [REDACTED] as First Wall Street is no longer in business and records are no longer available (including settlement documents). Although CRD reflects that Claimant contributed to the settlement of occurrence number [REDACTED], the Arbitrator found, based on Claimant's testimony, that First Wall Street settled with Mr. and Mrs. S (after Claimant left the firm) and simply deducted the settlement amount from commissions owed to Claimant, without Claimant's prior consultation. The Arbitrator could not determine whether First Wall Street's settlement was not conditioned on Mr. and Mrs. S not opposing the request for expungement.

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

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: pleadings, settlement document for occurrence number [REDACTED], and Claimant's testimony.

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

### **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 the Underlying Complaints, occurrence numbers [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 [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 false.

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

**Occurrence Number [REDACTED] (Mr. C and Mrs. C)**

Expungement is appropriate in accordance with FINRA Rule 2080(b)(1)(C)—the claim allegation, or information is false. Over the course of several meetings with Mr. and Mrs. C, based on Mr. and Mrs. C's investor profile, the Claimant recommended the Behringer Harvard Real Estate Investment Trust ("Behringer REIT"). The Claimant told Mr. and Mrs. C that the Behringer REIT would diversify their investment portfolio, lower the overall risk of the portfolio, and provide income. The Claimant told Mr. and Mrs. C that the objective of the Behringer REIT was principal stability and consistent income. The Claimant explained in detail the terms, risks, fees, advantages, and disadvantages of the Behringer REIT with Mr. and Mrs. C and they agreed with Claimant's recommendation. The claim of unsuitability is false because Claimant recommended the Behringer REIT in accordance with Mr. and Mrs. C's stated investment objective of capital appreciation and their moderate risk tolerance. The Claimant explained in detail the terms, risks, fees, advantages, and disadvantages of the Behringer REIT with Mr. and Mrs. C. Mr. and Mrs. C agreed with Claimant's recommendation, and they chose to purchase the Behringer REIT without any reservations. Although Respondent settled with Mr. and Mrs. C for a nominal amount, Claimant was not a party to the settlement agreement, and he did not make any contributions. Respondent settled solely as a business decision to avoid the cost of uncertainty of arbitration, and the settlement amount is nominal compared to the alleged damages. Based on the reasons above, the allegation of unsuitability is patently false.

**Occurrence Number [REDACTED] (Mr. and Mrs. S)**

Expungement is appropriate in accordance with FINRA Rule 2080(b)(1)(C)—the claim, allegation, or information is false. Based on conversation and an investor profile form completed by Mr. and Mrs. S, Claimant and Mr. and Mrs. S ascertained Mr. and Mrs. S's investment objective to be capital preservation and their risk tolerance to be conservative. Mr. and Mrs. S stated that they did not want to own any investments that fluctuated with the market. Based on this request and Mr. and Mrs. S's investor profile, the Claimant recommended two fixed-index annuities, the Fidelity Guarantee Life Annuity (the "Fidelity Annuity") and the Allianz IRA (together, the "Disputed Investments"). The Disputed Investments met Mr. and Mrs. S's

objective of capital preservation where the principal did not fluctuate, and still provided the opportunity to make a decent return. Claimant explained in detail the terms, risks, fees, advantages, and disadvantages of the Disputed Investments with Mr. and Mrs. S, including the annuities' surrender charge period, the ten percent fee annual withdrawal, and the fact that the principal of the Disputed Investments was guaranteed. Claimant also provided Mr. and Mrs. S with documents that detailed the terms, risks, fees, advantages, and disadvantages of the Disputed Investments. **The claim that the Disputed Investments were thrust upon Mr. and Mrs. S with no explanation of the consequences, particularly the limited access without penalty, is false** because all of the details of these Disputed Investments were explained to Mr. and Mrs. S, including all of the risks, fees, and disadvantages associated with the Disputed Investment. The Respondent settled with Mr. and Mrs. S solely to avoid the uncertainty and potential costs of arbitration. Neither the Claimant nor the Respondent admitted liability in settling this claim with Mr. and Mrs. S. Based on the reasons above, Mr. and Mrs. S's allegations are completely false.

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
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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, First Wall Street is assessed the following:

Member Surcharge	= \$ 150.00
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Accordingly, as a party, SagePoint is assessed the following:

Member Surcharge	= \$ 150.00
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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(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:



**ARBITRATOR**

Robert F. Saint-Aubin

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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**



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Robert F. Saint-Aubin  
Sole Public Arbitrator



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Signature Date

September 19, 2018

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