

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

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In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Wells Fargo Investments, LLC

Hearing Site: Los Angeles, California

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Eric Litow, Esq. and Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Wells Fargo Investments, LLC (“Respondent”): Judy Louie, Esq., Wells Fargo Law Department, Pasadena, California.

**CASE INFORMATION**

Statement of Claim filed on or about: February 26, 2018.  
Claimant signed the Submission Agreement: February 26, 2018.

Statement of Answer filed by Respondent on or about: April 18, 2018.  
Non-party Wells Fargo Clearing Services, LLC signed the Submission Agreement: April 18, 2018.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of a customer complaint, occurrence number ██████████ (“Underlying Complaint”) from his Central Registration Depository (“CRD”) record.

Unless specifically admitted in the Statement of Answer, non-party Wells Fargo Clearing Services, LLC denied any wrongdoing by Respondent and asserted that it has no objection nor opposition to Claimant’s request for expungement so long it is not required to pay any damages or take any action in this matter, including amending Claimant’s CRD record, and so long as any FINRA fees are assessed against Claimant and costs associated with confirming an expungement award are borne by Claimant.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

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

In the Statement of Answer, Respondent did not set forth a specific relief request.

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

The Arbitrator acknowledges that they have each read the pleadings and other materials filed by the parties.

Respondent 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.

In the Statement of Answer, non-party Wells Fargo Clearing Services, LLC advised that Respondent is a previously registered securities broker-dealer and investment adviser firm that withdrew its registration from FINRA in December 2010. Further, non-party Wells Fargo Clearing Services, LLC advised that it is the parent company of Wells Fargo brokerage services and was served with the Statement of Claim. While Respondent and non-party Wells Fargo Clearing Services, LLC may have had the same owner, Wells Fargo & Company, in common, non-party Wells Fargo Clearing Services, LLC is not the same entity as Respondent and was wrongfully served. Notwithstanding the above, non-party Wells Fargo Clearing Services submitted its Statement of Answer to the Statement of Claim filed by Claimant.

On August 13, 2018, Claimant provided notice that the Statement of Claim and notice of expungement hearing was served on the customer in the Underlying Complaint (“Customer”).

On September 5, 2018, Claimant also submitted an Affidavit of Service signed by Claimant’s counsel advising that the Customer was served with a copy of the Statement of Claim.

The Arbitrator conducted a recorded telephonic on September 13, 2018 so the parties could present oral argument and evidence on Claimant’s request for expungement.

Non-Party Wells Fargo Clearing Services, LLC participated in the expungement hearing and did not contest the request for expungement. The Arbitrator found that the Customer was given notice of the expungement hearing but did not participate.

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

The Arbitrator reviewed the BrokerCheck® Report for Claimant. The Arbitrator found that the Underlying Complaint was not settled.

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: Statement of Claim, BrokerCheck® Report which confirmed that Respondent conducted an investigation and denied the claim and that there was no settlement and no further action taken by the Customer. The Arbitrator also relied on Claimant's sworn testimony and the collateral circumstantial evidence that the Customer operated his account for approximately 15 months before claiming that he didn't sign the customer agreement when the value of his portfolio declined.

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 all references to the Underlying Complaint, occurrence number [REDACTED] 2, 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:

The evidence, including the Statement of Claim and Claimant's sworn testimony makes it clear that after a year of doing business with Claimant and Respondent, the Customer made the allegation that he never signed the customer agreement and accused Claimant of forgery. Respondent conducted an investigation and denied the claim. There was no settlement with the Customer and no further

action took place. The Arbitrator determined the claim is false, because Respondent investigated the claim at the time it was made and found it to be false; and the Customer's account at issue was open for 15 months, he received monthly statements for the account during that time and did not raise any claim about forgery on the customer agreement until his portfolio dropped in value.

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, Respondent 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:

One (1) pre-hearing session with a single arbitrator @ \$50.00/session	= \$50.00
Pre-hearing conference: June 13, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: September 13, 2018	1 session

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Total Hearing Session Fees	= \$100.00
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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**

Robert D. Sussin

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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 D. Sussin  
Sole Public Arbitrator

09/19/2018  
Signature Date

September 20, 2018  
Date of Service (For FINRA Office of Dispute Resolution office use only)