

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number ██████████

vs.

Respondents

A. G. Edwards & Sons, Inc. and  
Wells Fargo Clearing Services, LLC

Hearing Site: Houston, Texas

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Erica Harris, Esq. and Docthor Kennedy, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondents A. G. Edwards & Sons, Inc. (“AGES”) and Wells Fargo Clearing Services, LLC (“Wells Fargo”) (collectively “Respondents”): Michael Naccarato, Esq., Wells Fargo Law Department, St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: February 20, 2018.  
Claimant signed the Submission Agreement: February 23, 2018.

Statement of Answer filed by Respondents on or about: May 15, 2018.  
Respondents signed the Submission Agreements: May 15, 2018.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer complaints, related to Occurrence Numbers ██████████ and ██████████, from his registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondents did not oppose the request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers ██████████ and ██████████ from his CRD, \$1.00 in compensatory damages, and other relief as the Arbitrator deems just and proper under the circumstances.

In the Statement of Answer, Respondents did not request any relief.

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

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

On or about August 24, 2018, Claimant filed a copy of the letter sent to the customer for Occurrence Number [REDACTED], providing her with the Statement of Claim, notice of the expungement hearing date and time, and the option to participate in the expungement hearing. On or about September 7, 2018, Claimant filed an Affidavit of Service for the letter sent to the customer for Occurrence Number [REDACTED].

On or about August 30, 2018, Claimant filed a copy of the obituary of the customer in Occurrence Number [REDACTED].

The Arbitrator conducted a recorded telephonic hearing on September 26, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement. Respondents participated in the expungement hearing but did not contest the request for expungement. The customer for Occurrence Number [REDACTED] did not participate in the expungement hearing. The Arbitrator took judicial notice that the customer for Occurrence Number [REDACTED] is deceased and could not participate in the hearing.

On the record at the expungement hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

The Arbitrator reviewed the BrokerCheck® Report for Claimant. The Arbitrator noted that the settlement documents for Occurrence Numbers [REDACTED] and [REDACTED] were not provided for review.

Occurrence Number [REDACTED] was resolved as a result of a regulatory settlement between AGES and the Attorney General of Missouri. The Arbitrator considered the amount of payment made to any party and noted that this settlement was not conditioned on the customer not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount in relation to Occurrence Number [REDACTED].

The Arbitrator noted that the settlement document for Occurrence Number [REDACTED] was unavailable due to the limitations of Wells Fargo's record retention policy. Based upon Claimant's testimony and the representations of the parties, the Arbitrator considered the amount of payments made to any party and the amount of Claimant's contribution and noted that the settlement was not conditioned on the customer not opposing the request for expungement.

The Arbitrator found 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 sworn testimony of Claimant, Statement of Claim, Statement of Answer, and the notice of the expungement hearing provided to the customer for Occurrence Number [REDACTED].

## AWARD

After considering the pleadings, the testimony, and the 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 Occurrence Number [REDACTED] from the 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 of Arbitration Procedure (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

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

The customer's investment objective was income with a low-risk tolerance and a long-term investment time horizon. Her portfolio included bonds and money market accounts. Around 2007, she met with Claimant to discuss her account. She had picked up a brochure in the Wells Fargo lobby, and she discussed money market alternatives with Claimant. One of these alternatives was auction rate securities ("ARS").

Historically, ARS had provided liquidity and a higher rate of interest. The industry regarded ARS as highly liquid instruments and a safe alternative to the money market. The customer agreed with the recommendation and purchased the ARS. In 2008, the ARS market unexpectedly began to fail until they became illiquid.

At the time the recommendation and purchase was made, the ARS met the customer's investment profile and goals. The unexpected and historically unprecedented failure was not foreseeable.

2. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from the 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 factually impossible or clearly erroneous

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

Around 1998, the customer wished to bequeath some funds to a beneficiary, avoid probate, and keep the name of his beneficiary from his family. At that time the only way to do that was with an annuity. The customer agreed and purchased a variable annuity. The stock market began to decline around 2000. The decline continued through 2002. The dot.com crash and the 2001 terrorist attack were all factors to the decline.

The variable annuity accomplished the customer's goal of a named beneficiary, avoiding probate, and keeping the name of the beneficiary secret. The customer continued to meet with Claimant every 4-5 months to review the status of his overall investment portfolio. The customer mentioned to Claimant that he had seen an advertisement by a law firm seeking clients who may have lost money in the stock market.

On October 14, 2005, the customer alleged an inappropriate and unsuitable investment and sought damages. AGES settled with the customer on November 16, 2005 for an amount less than the expense of defending in an arbitration. Claimant was not a part of the settlement negotiations but was required to pay half the amount by AGES.

### **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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents are each assessed the following:

AGES:  
Member Surcharge = \$ 150.00

Wells Fargo:  
Member Surcharge = \$ 150.00

**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: July 23, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: September 26, 2018 1 session

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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.

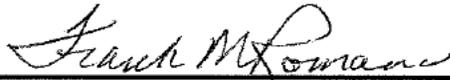
**ARBITRATOR**

Frank M. Romano

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**



Frank M. Romano  
Sole Public Arbitrator



Signature Date

October 19, 2018

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