

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Wells Fargo Clearing Services, LLC

Hearing Site: Philadelphia, Pennsylvania

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Owen Harnett, Esq., HLBS Law, Westminster, Colorado and Dochter D. Kennedy, MBA, AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Wells Fargo Clearing Services, LLC: Demian J. Betz, Esq., Wells Fargo & Co. Law Department, Charlotte, North Carolina.

**CASE INFORMATION**

Statement of Claim filed on or about: November 14, 2017.

Claimant signed the Submission Agreement: November 14, 2017.

Statement of Answer filed by Respondent on or about: January 5, 2018.

Respondent signed the Submission Agreement: January 5, 2018.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

In the Statement of Answer, Respondent took no position on Claimant's expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of customer complaints from his CRD records, compensatory damages of \$1.00, and any and all other relief deemed just and equitable.

In the Statement of Answer, Respondent requested an in-person expungement hearing.

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

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

The Arbitrator conducted a recorded telephonic hearing on September 19, 2018 so that 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.

On April 11, 2018, Claimant provided the Death Record for the customer in the underlying complaint for Occurrence Number [REDACTED] indicating that he died on June 1, 2015.

On April 12, 2018, Claimant notified the customers in the underlying complaints for Occurrence Numbers [REDACTED] and [REDACTED] of his request for expungement and of their right to participate in the expungement hearing and also provided the customers with a copy of the Statement of Claim.

On April 17, 2018, the customers for the underlying complaint in Occurrence Number [REDACTED] opposed Claimant's expungement request.

On June 4, 2018 and September 17, 2018, Claimant provided additional notice of the expungement hearing to the customers in the underlying complaint for Occurrence Number [REDACTED].

On October 9, 2018, the Arbitrator ordered Claimant to provide notice of the September 19, 2018 expungement hearing to the customers in the underlying complaint for Occurrence Number [REDACTED] and inquire if they wish to be heard. If so, the record will be reopened and a new date to hear their testimony will be ordered. On October 10, 2018, Claimant provided the notice as ordered by the Arbitrator. The customers did not respond to Claimant's notice.

The Arbitrator finds that the customers do not desire to participate in the expungement hearing and that a decision on the merits of Claimant's request can be entered.

The Arbitrator did not review the settlement documents for Occurrence Number [REDACTED] since they could not be located due to the age of the complaint. Based on Claimant's testimony, the Arbitrator finds that the settlement was not conditioned on the customer not opposing the request for expungement, and that Claimant did not participate in the settlement nor contribute to the settlement amount.

The Arbitrator reviewed Claimant's BrokerCheck® Report and noted that Claimant did not previously request expungement of the same disclosures in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, Claimant's BrokerCheck Report, Claimant's testimony, the letter dated April 17, 2018 submitted by the customers in the underlying complaint for Occurrence Number [REDACTED], and, Claimant's Exhibits 8 and 10.

### **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 Occurrence Number [REDACTED] from registration records maintained by the Central Registration Depository ("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 finding of fact:

The claim, allegation, or information is false.

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

The Claimant credibly testified that he had authorizations to make the trades and there was documentary evidence supporting that he had authority.

2. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from registration records maintained by the Central Registration Depository ("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 finding of fact:

The claim, allegation, or information is false.

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

The Claimant credibly testified that the trades were authorized. The settlement was made by the firm without Claimant participating or admitting the allegations.

3. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from registration records maintained by the Central Registration Depository ("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 finding of fact:

The claim, allegation, or information is false.

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

The customers' claim was denied. The customers stated in a letter dated April 27, 2018 that they authorized the transactions.

4. Any and all claims for relief not specifically addressed herein, including compensatory damages, are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, 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 a party, Respondent Wells Fargo Clearing Services, LLC is assessed the following:

Member Surcharge = \$ 150.00

**Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

June 25, 2018 postponement by Claimant = \$ 50.00  
July 13, 2018 postponement by Respondent = \$ 50.00

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Total Postponements Fees = \$100.00

1. The Arbitrator has assessed \$50.00 of the postponement fees to Claimant.
2. The Arbitrator has assessed \$50.00 of the postponement fees to Respondent.

**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, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session @ \$50.00/session = \$ 50.00  
Pre-hearing conference: March 22, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: September 19, 2018 1 session

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Total Hearing Session Fees = \$100.00

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

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

**ARBITRATOR**

Diane Ciccone

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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**



\_\_\_\_\_  
Diane Ciccone  
Sole Public Arbitrator

10.24.18

\_\_\_\_\_  
Signature Date

October 24, 2018

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