

**Award  
FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

Case Number

vs.

Respondents

Hearing Site: San Francisco, California

Wells Fargo Investments, LLC,  
Wells Fargo Securities Inc., and Wells Fargo  
Clearing Services, LLC.

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] ("Claimant"): Dochter Kennedy, Esq., AdvisorLaw LLC, Westminster, Colorado and Michael Bessette, Esq. HLBS Law, Westminster, Colorado.

For Respondents Wells Fargo Investments, LLC ("WF Investments") and Wells Fargo Securities Inc. ("WF Securities"), now known as Wells Fargo Clearing Services, LLC ("WF Clearing"), collectively "Respondents": Thomas F. Kopshever, Esq., Wells Fargo Law Department, San Francisco, California.

**CASE INFORMATION**

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

Statement of Answer filed by Respondents on or about: July 13, 2018.  
Respondents signed the Submission Agreement: July 13, 2018.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer complaints, Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED] from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer, Respondents denied any allegation of wrongdoing but did not oppose expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED] from the CRD, \$1.00 in compensatory damages, and

all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondents requested that the Arbitrator deny the request for \$1.00 in compensatory damages and assess all forum and hearing fees assessed in connection with this matter to Claimant.

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

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

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

On or about November 9, 2018, in compliance with the Initial Pre-Hearing Conference Order, Claimant filed a copy of the letter sent to the customer for Occurrence Number [REDACTED] providing the customer with the Statement of Claim, notice of the expungement hearing date and time, and the option to participate in the expungement hearing. Claimant's counsel also filed an Affidavit stating that he was unable to serve the customers for Occurrence Numbers [REDACTED] and [REDACTED].

The Arbitrator conducted a recorded, telephonic hearing on November 20, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement. The customers for Occurrence Numbers [REDACTED], [REDACTED] and [REDACTED] did not participate in the expungement hearing. None of the customers appeared at the expungement hearing. Upon review of the file and the representations made by and on behalf of the Claimant, the Arbitrator determined that the customer for Occurrence Number [REDACTED] was properly served with the Statement of Claim and that Claimant made reasonable efforts to serve the customers for Occurrence Numbers [REDACTED] and [REDACTED]. Therefore, arbitration of the matter proceeded without said customers.

On record at the hearing, the parties agreed that WF Clearing, as successor in interest to WF Investments and WF Securities, would proceed as the sole respondent in this matter. Accordingly, Claimant orally amended the Statement of Claim to substitute WF Clearing for WF Investments and WF Securities. Thereafter, WF Clearing participated in the expungement hearing as the sole respondent ("Respondent").

The Arbitrator reviewed the BrokerCheck® Report for Claimant and found that there were no settlements for Occurrence Numbers [REDACTED], [REDACTED] and [REDACTED].

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: Exhibits 1 through 6, the BrokerCheck® Report, Claimant's testimony, statements made by Wells Fargo's counsel, and the Affidavit of Claimant's counsel regarding service.

### 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 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; and
- The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

The customer claimed damages for misrepresentation regarding a variable annuity investment. Claimant testified that he did not sell the customer this investment, did not provide any advice to her regarding this investment, and serviced her account only. After Respondents denied her claim in November 2000, the customer did not pursue her claim in arbitration or court.

I find that Claimant has established sufficient evidence to support granting expungement of this claim. Pursuant to FINRA Rule 2080(A), I find that the customer's claim is factually impossible and erroneous because there was unopposed testimony by Claimant that he did not sell to her or advise her regarding this investment and she chose not to pursue her claim against Claimant. Further, pursuant to FINRA Rule 2080(B), I find that the customer's oral claim that Claimant made misrepresentations to her regarding the variable annuity investment is not supported by the evidence because Claimant did not sell her the investment or advise her regarding the investment. Consequently, the customer's claim may mislead anyone viewing Claimant's CRD and will not provide valuable information for informed decisions.

2. The Arbitrator recommends the expungement of all references to Occurrence Number [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 factually impossible or clearly erroneous; and
- The claim, allegation, or information is false.

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

According to Claimant's testimony, in a complaint to Wells Fargo, the customer allegedly claimed damages because Claimant did not close-out an annuity held with another firm and transfer the proceeds as cash. According to the unopposed testimony of Claimant, the customer was not a client of Claimant at the time of his interaction with Claimant and his request was unsolicited. Claimant testified that he advised the customer against the close-out of the annuity because of the taxes that would be incurred. Claimant further testified that the customer repeated his request of Claimant at a later time and was reminded of Claimant's prior advice. Claimant testified he had no further contact with the customer.

According to Claimant, after Wells Fargo denied the claim in September 2006, the customer did not pursue his claim in arbitration or court. Claimant also testified that the customer did not himself make the complaint and did not want to pursue the claim that Claimant advised him to liquidate the annuity. Claimant recommended against liquidating the annuity.

I find that Claimant presented sufficient evidence to support granting expungement of this claim. Pursuant to FINRA Rule 2080(A) and (C), I find that the customer's claim is factually impossible and erroneous because Claimant took no action with respect to the annuity held by another firm other than to advise the customer of the tax consequences of closing-out that annuity. Claimant significantly testified that the customer had indicated he did not actually make the claim, did not know about it, and did not want to pursue it. Consequently, the customer's claim may mislead anyone viewing Claimant's CRD and will not provide valuable information for informed decisions.

3. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, [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; and
- The claim, allegation, or information is false.

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

According to Claimant's testimony, the complaint was made by the customer's daughter, who did not have a power of attorney or other proof that she was authorized to make a complaint on her mother's behalf. I find that the daughter was not the customer and that she should have provided a power of attorney prior to making a claim on behalf of her mother.

Claimant testified that the customer did not pursue a claim in arbitration or court. According to Claimant, the oral complaint made by the daughter asserted that Claimant had not advised the customer about the purchase of a Certificate of Deposit (the "CD") for her account and that she did not receive a confirmation of the sale or delivery of a prospectus. Claimant testified that the daughter was not present at the in-person meetings between Claimant and the customer and the daughter did not participate in telephone communications between Claimant and the customer. There was sufficient evidence to show that the customer actually had information about her investment available to her.

Claimant testified to the following facts: 1) After discussing several possible investments with Claimant, the customer selected the CD which she held to maturity, earning interest; 2) The customer's account was non-discretionary so she was required to authorize the purchase of the CD; 3) Periodic reports sent to the customer revealed her asset allocations, so she could see the percentage of her investments which represented the CD. She and Claimant communicated quarterly and she received a confirmation of the purchase and monthly reports; 4) The customer had been a client of Claimant since the early 1990's. After Claimant returned to work in the financial industry after a hiatus of several years, the customer approached him and asked if she could become a client again; 5) The customer never made a complaint about Claimant's services and was a moderately experienced investor who had concurrent investments with other brokers; 6) Respondent investigated the allegations made by the daughter and denied them; and 7) The customer did not suffer any financial loss.

I find that Claimant presented sufficient evidence to support granting expungement of this claim. Pursuant to FINRA Rule 2080 (A) and (C), I find the oral complaint made by the daughter, regarding the CD investment, is factually impossible, erroneous, and false. The customer received documents regarding her investment that indicated to her the percentage of her assets that were invested in the CD as well as the risks of the investment. The oral complaint lodged by the daughter was unauthorized because she was not the customer and had no power of attorney. The client acknowledgment agreement only listed the customer—not her daughter—and indicates that the customer received a prospectus that "contain[ed] detailed information about the fund, including sales charges, management fees, and expenses" for the investment. For these reasons, the claim lacks merit and the expungement would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

4. 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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a parties, WF Investments and WF Securities, are each assessed the following:

WF Investments:

Member Surcharge	= \$ 150.00
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WF Securities:

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
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Pre-hearing conference:	September 13, 2018	1 session	
One (1) hearing session on expungement request @ \$ 50.00/session			=\$ 50.00
Hearing Date:	November 20, 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**


Mary Margaret Bush

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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**

  
\_\_\_\_\_  
Mary Margaret Bush  
Sole Public Arbitrator

12/17/18  
\_\_\_\_\_  
Signature Date

December 17, 2018

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