

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

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In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondents

Merrill Lynch Pierce Fenner & Smith Inc.  
Wells Fargo Clearing Services, LLC

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 Armin Sarabi, Esq, AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch Pierce Fenner & Smith Inc. (“Merrill Lynch”): Randi P. Spallina, Esq., Bressler, Amery & Ross, Fort Lauderdale, Florida.

For Respondent Wells Fargo Clearing Services, LLC (“Wells Fargo”): Judy Louie, Esq., Wells Fargo Legal Department, Pasadena, California.

Hereinafter, Merrill Lynch and Wells Fargo are collectively referred to as “Respondents.”

**CASE INFORMATION**

Statement of Claim filed on or about: April 2, 2018.

Claimant signed the Submission Agreement: April 2, 2018.

Statement of Answer filed by Merrill Lynch on or about: May 29, 2018.

Merrill Lynch signed the Submission Agreement: May 29, 2018.

Statement of Answer filed by Wells Fargo on or about: May 29, 2018.

Wells Fargo signed the Submission Agreement: May 29, 2018.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement three customer disputes from his Central Registration Depository (“CRD”) records: one civil litigation, occurrence number

[REDACTED], and two customer complaints, occurrence numbers [REDACTED], (“Underlying Claims”).

In its Statement of Answer, Merrill Lynch advised that it takes no position as to the expungement request but objected to Claimant’s request for \$1.00 in compensatory damages. Merrill Lynch also set forth various affirmative defenses.

In its Statement of Answer, Wells Fargo advised that it has no objection or opposition to Claimant’s request for expungement, so long as it is not required to take any action, pay any award, and so long as FINRA fees are assessed against Claimant and costs associated with confirming an expungement award are paid by Claimant.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims 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 Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. If the Panel chooses not to exercise its discretions in expungement of occurrence number 1894586, Claimant requests expungement of occurrence number 1890297, as it is a duplicate claim involving the same customers, products, and events;
4. An award of damages in the amount of \$1.00 from Respondents; and
5. 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.

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

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

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

The Arbitrator conducted a recorded telephonic hearing on November 16, 2018 so the parties could present oral argument and evidence on Claimant’s request for expungement.

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. Claimant's request for expungement of the Underlying Claims, occurrence numbers [REDACTED], from his CRD records is denied.
2. Any and all claims for relief not specifically addressed herein 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute.

Accordingly, as a party, Merrill Lynch is assessed the following:

Member Surcharge	= \$ 150.00
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Accordingly, as a party, Wells Fargo 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: July 23, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: November 16, 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**

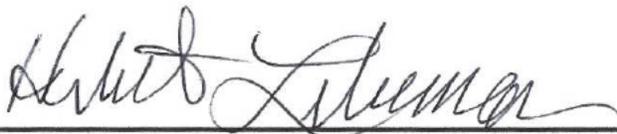
Herbert Liberman

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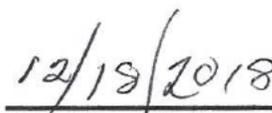
Sole Public Arbitrator

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**



Herbert Liberman  
Sole Public Arbitrator



Signature Date

December 18, 2018  
Date of Service (For FINRA Office of Dispute Resolution office use only)