

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

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In the Matter of the Arbitration Between:

Claimant

[REDACTED]

Case Number:

[REDACTED]

vs.

Respondent

Wells Fargo Clearing Services, LLC

Hearing Site: Wilmington, Delaware

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] Doctor Kennedy, MBA, JD, and Christopher Cummins, Esq., AdvisorLaw, LLC, Westminster, Colorado.

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

**CASE INFORMATION**

Statement of Claim filed on or about: May 29, 2018.

Claimant signed the Submission Agreement: May 29, 2018.

Statement of Answer filed by Respondent on or about: August 6, 2018.

Respondent signed the Submission Agreement: August 6, 2018.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$1.00 and expungement of occurrence numbers [REDACTED], and [REDACTED]

In the Statement of Answer, Respondent took no position regarding Claimant's request for expungement and the substantive allegations made by Claimant in support of the request.

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

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

Claimant withdrew his request for \$1.00 in compensatory damages during the October 8, 2018 conference call.

The Arbitrator conducted a recorded telephonic hearing on February 28, 2018 so the parties could present oral argument and evidence on Claimant's' request for expungement.

The Arbitrator ordered Claimant to provide proof of service of notice of the expungement request along with the Statement of Claim and notice of the hearing. Claimant complied and/or provided proof that the customer for occurrence number [REDACTED] was deceased.

The customers in the aforementioned occurrence numbers did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents for occurrence numbers [REDACTED] and [REDACTED], considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlements were not conditioned on the customers not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: Claimant's exhibits.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's request for expungement of occurrence numbers [REDACTED] and [REDACTED] denied in their entirety.
2. The Arbitrator recommends the expungement of all references to occurrence number [REDACTED] from registration records maintained by the Central Registration Depository ("CRD"), for [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant 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:

On August 22, 2002, the customer complained that the Claimant had engaged in unauthorized trading of a stock. The stock was purchased on January 30, 1998 and sold on June 23, 2000.

That claim is false and erroneous. By way of background, the customer is deceased (Claimant's Exhibit #28). Since there is no record of the customer having filed a claim by submitting a demand to arbitrate and there is no testimony from the customer, the arbitrator is left with the testimony of the Claimant and the actions of Respondent.

Claimant testified that the account was non-discretionary and that it was impossible for him to have sold shares of the dispute stock without permission and authorization from the customer. Further, the Claimant testified that the stock at issue was a preferred stock of high quality and the losses were due to market correction during the dot.com bubble in 2000.

The customer filed a written complaint with the Respondent, then known as First Union. Respondent investigated the matter and denied the customer's complaint. The customer did not pursue the matter through arbitration or the courts.

### **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, Wells Fargo Clearing Services, LLC is assessed the following:

Member Surcharge	= \$150.00
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**Postponement Fees**

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

February 14, 2019 postponement by Respondent	= \$ 50.00
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Total Postponements Fees	= \$ 50.00
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The Arbitrator has assessed the \$50.00 postponement fee to Respondent.

**Last Minute Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within ten calendar days before the start of a scheduled hearing session:

February 14, 2019 postponement requested by Respondent	= \$600.00
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Total Last Minute Cancellation Fees	= \$600.00
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The Arbitrator has assessed the \$600.00 last minute cancellation 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 with a single arbitrator @ \$50.00/session	= \$ 50.00
Pre-hearing conference: October 8, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: February 28, 2019	1 session

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Total Hearing Session Fees	= \$100.00
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The Arbitrator has assessed \$75.00 of the hearing session fees to Claimant.  
The Arbitrator has assessed \$25.00 of the hearing session fees to Respondent.

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

**ARBITRATOR**

Jim Geiger

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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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Jim Geiger  
Sole Public Arbitrator

3/12/20  
\_\_\_\_\_  
Signature Date

March 14, 2019  
\_\_\_\_\_  
Date of Service (For FINRA Office of Dispute Resolution office use only)