

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Wells Fargo Advisors Financial Network

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████: Dochter Kennedy, MBA, J.D., and Owen Harnett, Esq.
AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Wells Fargo Advisors Financial Network: Deirdre Wolff, Esq., Wells
Fargo Law Department, St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: March 1, 2018.

Amended Statement of Claim filed on or about: March 13, 2018

██████████ signed the Submission Agreement: March 1, 2018.

Statement of Answer filed by Respondent on or about: April 23, 2018.

Respondent signed the Submission Agreement: April 23, 2018.

CASE SUMMARY

Claimant asserted the following causes of action: Expungement of Occurrence
Numbers ██████████ and ██████████

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested:

1. Expungement of occurrence numbers ██████████ and ██████████ from his CRD record pursuant to FINRA Rule 2080(b)(1)(A) and 2080(b)(1)(C).

2. An award of damages in the amount of \$1.00 from the Respondent.
3. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer Respondent, did not object to or oppose Claimant's Statement of Claim for expungement. However, Respondent requested that the Panel dismiss Claimant's claim in its entirety, since the claim is beyond the eligibility period for FINRA arbitration and for compensatory damages in the amount of \$1.00.

At the beginning of the hearing, Claimant withdrew his demand for compensatory damages in the amount of \$1.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

Claimant provided FINRA Office of Dispute Resolution with proof that he notified the customers related to occurrence numbers [REDACTED] and [REDACTED] of the expungement request and of their right to participate and testify at the expungement hearing and included a copy of the Statement of Claim with the notice.

The Arbitrator conducted a recorded in-person hearing on December 4, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

The customers in the underlying complaints related to occurrence numbers [REDACTED] and [REDACTED] did not appear at, or otherwise participate in the expungement hearing.

Claimant indicated that he did not have a copy of the two Settlement Agreements involved. The record was left open for Claimant to locate and submit copies of these Settlement Agreements. Claimant's counsel subsequently submitted Claimant's Affidavit which indicated that Claimant was unable to obtain copies of the Settlement Agreements which date back to June 24, 2008. Claimant contributed to the settlements and testified that the settlements were entered into as business decisions to avoid the expenses of formal proceedings and in the interest of customer relations. Claimant's counsel asserted that Claimant never admitted any wrongdoing. The Arbitrator noted that the settlements were not conditioned on the customers not opposing the request for expungement.

The Arbitrator reviewed Claimant's BrokerCheck® Report and 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: The pleadings, evidence and credible testimony of Claimant presented at the expungement hearing.

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 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:

Customer 1 had been a client of Claimant's for approximately three (3) years before he purchased shares of the Kelmoore Fund, the stock symbol for which is KSEAX. Customer's account application (Exhibit C-1), signed by him on March 21, 2002, showed that his investment objectives were "growth" and "growth & income" and that his risk tolerance was "moderate". It also showed that Customer 1 had "average" knowledge and experience in investing with respect to stocks/bonds, mutual funds, UITs, annuities and options, with 15+ years of investment experience. The claimant testified that when Customer 1 first became his client, Customer 1 was a Vice-President of the company for which he worked, that he ran the company and that he had a good understanding of finance and business.

The Claimant testified that when the account was opened with the Claimant, Customer's investment assets were concentrated in the Franklin New York Tax Free Income Fund, which Claimant testified exposed Customer 1 to interest rate risk. Claimant testified Customer 1 had told him that he was looking for an alternative strategy that would create income but which would not be correlated to interest rates. Claimant testified that he recommended various types of investment alternatives to Customer 1, including corporate bonds, managed investment accounts, unit investment trusts and mutual funds. One of the mutual funds recommended by Claimant, according to the Claimant's testimony, was the Kelmoore Fund from Kelmoore Investment Company, Inc. Claimant testified that he explained to Customer 1 that the Kelmoore Fund was a diversified mutual fund that could generate income and that was not going to decline because of interest rates increasing. He testified that the Kelmoore Fund was diversified in different stocks and that it

wrote covered calls. Claimant testified that the Customer had received the prospectus for the Kelmore Fund. The Claimant testified that he explained the advantages, disadvantages and risks of the Kelmore Fund to Customer 1 in detail, that investing in this fund was intended to be a long term investment and that Customer 1 completed documents affirming that he understood the risks involved with the investment and that his investment was to be long-term. Claimant testified that in or around 2003, after a number of conversations with the Claimant, Customer 1 invested in the Kelmore Fund. The Claimant testified that Customer's investment in the Kelmore Fund was made at different times and that it was a step in the right direction of diversification and that it also provided income. Claimant testified that considering the income earned from the Kelmore fund, Customer 1 had a net gain from his investment in the Kelmore Fund as of the time he filed the complaint on March 25, 2006.

Based on the foregoing, I find that the investment in question was authorized by Customer 1, suitable for him and consistent with his investment objectives. I find that the allegation that the investment was "imprudent" is clearly erroneous. Accordingly, I recommend that the complaint in question should be expunged from the Claimant's CRD record pursuant to FINRA Rule 2080(b)(1)(A).

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 factually impossible or clearly erroneous.

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

The customer in regard to this complaint ("Customer 2") is the sister of the customer (Customer 1) who made the complaint in Occurrence Number [REDACTED]. Customer 2's brother (Customer 1) held a power of attorney ("POA") with respect to his sister's account. The Claimant testified that he consulted with both Customer 2 and her brother (who held the POA) with respect to Customer 2's account and that Customer 2 made all the decisions with respect to her account.

Customer 2 completed an account application (Exhibit C-4), signed by her on May 6, 2001, which showed that her investment objective was "growth" and

that her risk tolerance was "moderate". It also showed that customer 2 had "average" knowledge and experience in investing in stocks/bonds, mutual funds, UITs, and annuities with 15 years of investment experience.

The Claimant testified that Customer 2 needed less current income than her brother and that when she became his client, her account had had less equity exposure than a typical moderate portfolio. Claimant testified that Customer 2 had two concentrated positions, Dupont stock and the Franklin New York Tax Free Income Fund and that by investing in the Kelmoore Fund, Customer 2 decreased her overconcentration in the Franklin New York Tax Free Income Fund. Claimant testified that Customer 2 wanted to retain her position in Dupont. Claimant testified that the investment in the Kelmoore Fund would act differently than the investment in the Franklin New York Tax Free Income Fund, as the Kelmoore Fund was essentially a stock fund, not a bond fund.

Claimant testified that he reviewed the investment decisions with Customer 2 on the phone, more than in face-to-face meetings. Customer 2's complaint was filed on September 10, 2006.

Based on the foregoing, I find that the investment in question was authorized by Customer 2, suitable for Customer 2 and consistent with Customer 2's investment objectives. I find that the allegation that the investment was "imprudent" is clearly erroneous.

3. Any and all claims for relief not specifically addressed herein is 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 event giving rise to the dispute. Accordingly, as a party, Respondent Wells Fargo Advisors Financial Network, LLC 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, 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: June 13, 2018 1 session	
Two (2) hearing session on expungement request @ \$50.00/session	= \$ 100.00
Hearing Date: December 4, 2018 2 sessions	
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Total Hearing Session Fees	= \$ 150.00

The Arbitrator assessed the \$150.00 hearing session fees to the Claimant.

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

ARBITRATOR

Ted M. Rosen

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Arbitrator's Signature



Ted M. Rosen
Sole Public Arbitrator



Signature Date

February 11, 2019

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