Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant [redacted]

Case Number: [redacted]

vs.

Respondent
Wells Fargo Clearing Services, LLC

Hearing Site: Atlanta, Georgia

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [redacted] ("Claimant"): Dochtor Kennedy, MBA, J.D., and Erica Harris, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Wells Fargo Clearing Services, LLC ("Respondent"): Deirdre Wolff, Esq., Wells Fargo Legal Department, St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: March 15, 2018.
Claimant signed the Submission Agreement: March 15, 2018.

Statement of Answer filed by Respondents on or about: May 18, 2018.
Respondent signed the Submission Agreement: May 18, 2018.

CASE SUMMARY

Claimant asserted a claim seeking expungement of three customer complaints, occurrence numbers [redacted], [redacted], and [redacted] ("Underlying Complaints") from his Central Registration Depository ("CRD") records.

In the Statement of Answer, Respondent advised that it has no objection nor does it oppose Claimant's request for expungement, however, pursuant to FINRA Rule 13206, Respondent requested that the Arbitrator dismiss Claimant's claim in its entirety. Respondent also generally denied the allegations in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaints 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 Complaints from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. An award of damages in the amount of $1.00 from the Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. Dismissal of Claimant's claim in its entirety under FINRA Rule 13206;
2. Dismissal of Claimant's claim for compensatory damages in the amount of $1.00; and
3. No other relief be awarded against Respondent.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 18, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing was served on: the customers in occurrence number [redacted] ("Mr. T and Ms. S"); the customers in occurrence number [redacted] ("Mr. C and Mrs. C"); and the customer in occurrence number [redacted] ("Mr. E").

Hereinafter, Mr. T, Ms. S, Mr. C, Mrs. C and Mr. E are collectively referred to as "Customers."

On October 3, 2018, Claimant submitted an Affidavit of Service signed by Claimant's counsel advising that the Customers were served with the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on October 23, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

The Customers did not appear at the hearing. The Arbitrator noted that each of the Customers was served with the Statement of Claim for Expungement and none of the Customers responded. The Arbitrator found that the Customers had notice of the hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator noted that there were no settlements regarding the Underlying Complaints, and therefore no settlement agreements to review.

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: the sworn testimony of Claimant; Claimant's Submission of Expungement Hearing Exhibits 2-8; Claimant's BrokerCheck® Report for Claimant CRD# [redacted]; and Affidavit Showing Service of Claim on the three Customers.

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:

The Arbitrator recommends the expungement of all references to the Underlying Complaints, occurrence numbers [redacted], [redacted], and [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 ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

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

The claim, allegation, or information is false.

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

Respondent answered that Claimant's request for expungement should be dismissed since all three complaints are beyond the eligibility period of FINRA Rule 13206. The Arbitrator rejects the argument that the date of the customer complaints should trigger the occurrence or event giving rise to the claim. Due to the public nature of CRD reports, there is a continuing occurrence transmitted to those who review the report. Therefore, the Arbitrator reviewed each of the three complaints and made his determination as follows:

Occurrence Number [redacted] (in which Mr. T and Ms. S were the customers)

Customers Mr. T and Ms. S (husband and wife) stated in a written complaint on May 14, 2007 the following: In 2001, Ms. S's previous financial advisor, Claimant's predecessor, advised her to sell mutual funds in her Individual Retirement Account ("IRA") and reinvest in the utility sector resulting in a real loss of over $5,000.00. Since then, her previous financial adviser had purchased thirty-nine different funds, and they are so conservative that investments have not grown at the market pace. The claim for damages is not specified, but Ms. S believes that the damages are in excess of $5,000.00.

When Claimant became Mr. T's and Ms. S's Broker in 2001, the dotcom market correction had resulted in their accounts being down 57%. They asked Claimant to assess their account. He did, and after assessing their investor profile and state objectives, he combined their accounts and reallocated their existing portfolio into a more conservative and defensive portfolio—a blend of various funds within the same Mutual Fund Family, the ("Fund"). Claimant explained the costs, risk, terms as well as advantages and disadvantages to them. They signed a disclosure agreement and authorized the reallocation portfolio. Since these were transfers within the Fund, there were no sales charges or commissions. According to Claimant's testimony and account records, during the period of time that Claimant advised them about their account holdings, their account actually increased from $31,440.00 to $36,588.00. As for the alleged investment in 39 funds, this number is unverifiable and Mr. T or Ms. S have not had to pay any commissions or sales charges.

The Arbitrator finds that the complaint involved Claimant's predecessor; Ms. S's previous financial advisor. Claimant was not involved in the alleged losses that occurred before he became their adviser, and the claim is clearly erroneous and false.

Occurrence Number [redacted] (in which Mr. C was the customer)

Mr. C and Mrs. C (husband and wife), filed a claim on March 5, 2009, stating that Claimant misled them by telling them that their principal was safe in a variable annuity.

In 2003, Claimant became Mr. and Mrs. C's financial adviser. They sought a review of a previously purchased annuity and stated they had additional monies to invest. In reviewing their annuity, Claimant found that the only benefit was an advanced death benefit. Claimant showed them another annuity—AXA Annuity—and explained to them all costs, fees, risks, terms and disadvantages as well as advantages. It had a six percent benefit base guarantee and a six percent death benefit. The contract was a dollar for dollar contract with compounding interest and an annual step-up if the market outperformed six percent. The six percent guarantee was good through age 85 and an annual step up good through age ninety. The previous annuity did not have the advanced living and death benefits offered by the AXA Annuity—only a death benefit. Mr. and Mrs. C directed the Claimant to set up two annuities with AXA. Together the annuities totaled $263,764.23. Mr. and Mrs. C signed disclosures demonstrating that they

understood that for the living benefits to be applicable, they were required to hold the AXA contracts for ten years. Claimant actively managed their assets, and on December 11, 2006 became the agent of record on their previous annuity. Even amid the volatility of the 2008 financial crisis the advanced six percent living and death benefits increased their account values—even as the current market values decreased.

In 2009, Mr. C advised Claimant that he wanted to do a 1035 exchange, which is a provision in the tax code that allows policyholders to transfer funds from an annuity to a new policy, without incurring any tax consequence for the exchange. Mr. C wanted to convert his annuities for new annuities offered by an insurance agent he had met at his church. Claimant explained that Mr. and Mrs. C would lose the advanced six percent living and death benefits as well as incur surrender charges. Although Claimant explained in detail the losses that would be incurred by surrendering these annuities at that time, Mr. C stated that his decision was final. Shortly thereafter Mr. and Mrs. C alleged that Claimant misled them by telling them that their investment was safe in a variable annuity.

The Arbitrator finds that the losses that were incurred were fully explained to Mr. and Mrs. C, and they still signed the supporting documentation and disclosures to process the transfer. Their claim is clearly erroneous and false.

Occurrence Number [redacted] (in which Mr. E was the customer)

On May 14, 2007, Mr. E filed a claim alleging that Claimant conducted unauthorized trades in his 401K account when dealing with his variable annuity, and he was damaged $400,000. In 2006 Mr. E had an IRA which contained a Treasury Note ("Note") paying seven percent interest and was due to mature very shortly. Interest rates had declined and Mr. E was concerned about maintaining his income level as he was required to take a minimum distribution from his IRA. He asked Claimant to recommend the best approach to maintain the income level. Claimant determined if the Note was held to maturity, Mr. E would only receive the face amount of the note plus accrued interest. On the other hand, if he sold the Note early, there would be a premium as interest rates had substantially declined. They agreed upon purchasing long term Certificates of Deposit ("CDs") with Bear Sterns and Lehman Brothers. Mr. E was pleased with the transaction as the other notes, including CDs, paid much less interest.

In 2007, it became clear that stress was mounting with the banks. Claimant apprised Mr. E of his concern with the present CDs. They met and decided that a safer way for the future was to invest in a Voya Golden Select Premium Plus Annuity. It provided fixed guaranteed withdrawal benefits, an advanced seven percent living and death benefit. Claimant met with Mr. E and his wife and discussed all the details of the annuity. Claimant verbally disclosed all the details which were then put in writing. According to Claimant's testimony, Mr. E was a detail-oriented person, and he reviewed the terms, conditions, costs and payouts. Mr. E signed all the disclosures. Mr. E also had to seek approval from the firm's compliance department, which he did. Claimant and Mr. E met frequently during this time. All adjustments to his account had to be signed off by him, and the

records were maintained by the compliance department. On September 23, 2009, Mr. E alleged that Claimant made unauthorized trades to his 401K.

The Arbitrator finds that the documents establish that authorizations to reallocate assets defensively in response to market conditions were fully reviewed and accepted by Mr. E therefore, the claim is both erroneous and false.

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

**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, Respondent is assessed the following:

Member Surcharge =$ 150.00

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 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 9, 2018 1 session

One (1) hearing session on expungement request @ $50.00/session =$50.00
Hearing Date: October 23, 2018 1 session

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

James C. Hoover - 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

James C. Hoover/s/	December 10,2018
James C. Hoover Sole Public Arbitrator	Signature Date

December 11, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)