

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

Banc of America Investment Services Inc.
Wells Fargo Clearing Services, LLC
Wells Fargo Investments, LLC

Hearing Site: San Francisco, California

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant ██████████ ("Claimant"): Eric Litow, Esq. and Owen Harnett, Esq., HLBS Law, Westminster, CO.

For Respondent Wells Fargo Clearing Services, LLC, and Wells Fargo Investments, LLC (collectively "Wells Fargo"): Geoffrey S. Beckham, Esq., Wells Fargo, San Francisco, California.

For Respondent Banc of America Investment Services Inc. ("Banc of America"): Randi Perry Spallina, Esq., Bressler, Amery & Ross, P.C., Fort Lauderdale, Florida.

Banc of America and Wells Fargo are hereinafter referred collectively as "Respondents."

CASE INFORMATION

Statement of Claim filed on or about: May 8, 2018.
Claimant signed the Submission Agreement: May 8, 2018.

Statement of Answer filed by Wells Fargo on or about: July 2, 2018.
Wells Fargo signed the Submission Agreement: July 2, 2018.

Statement of Answer filed by Respondent Banc of America on or about: July 10, 2018.
Banc of America signed the Submission Agreement: July 10, 2018.

CASE SUMMARY

In his Statement of Claim, Claimant asserted a claim seeking expungement of three customer disputes ("Underlying Claims"): two customer complaints, occurrence

numbers [REDACTED] and [REDACTED] and a FINRA Arbitration case, occurrence number [REDACTED] from his Central Registration Depository ("CRD") records.

In its Statement of Answer, Wells Fargo denied any allegation of wrongdoing but took no position on Claimant's request for expungement.

In its Statement of Answer, Banc of America denied any allegation of wrongdoing but took no position on Claimant's request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims from his CRD records 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 records 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 Respondents.
4. Any and all other relief that the Arbitrator deems just and equitable.

In its Statement of Answer, Wells Fargo requested:

1. Denial of the \$1.00 in damages; and
2. Claimant pay all forum and hearing fees.

In its Statement of Answer, Banc of America requested denial of the \$1.00 in damages.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On January 4, 2019, Claimant filed a letter which advised that the customer in occurrence number [REDACTED] ("Mr. S"), the customers in occurrence number [REDACTED] ("Mr. and Mrs. W"), and the customers in occurrence number [REDACTED] ("Dr. and Mrs. A") had been served with the notice of the expungement hearing and a copy of the Statement of Claim.

Hereinafter, Mr. S; Mr. and Mrs. W; and Dr. and Mrs. A are collectively referred to as the "Underlying Customers."

The Arbitrator conducted a recorded telephonic hearing on February 8, 2019 so the parties could present oral arguments and evidence on Claimant's request for expungement.

Respondents participated in the expungement hearing and did not contest the request for expungement. None of the Underlying Customers (or their representatives) participated in the expungement hearing. The Arbitrator found that the Underlying Customers had notice of the expungement request and hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator notes that occurrence number [REDACTED] was denied (not settled) and therefore there were no settlement documents.

The Arbitrator reviewed 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 Wells Fargo settled occurrence number [REDACTED] for \$4,000,000, as a business decision and to avoid the costs and expenses of litigation. Although this is a large settlement amount, the Arbitrator took into account the customers' sophistication, large portfolio, and specific decisions to invest as they did (as discussed below), as well as Wells Fargo not objecting to the expungement. The Arbitrator noted that Banc of America settled occurrence number [REDACTED] for \$18,000.00, essentially nuisance value.

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 testimony, Claimant's BrokerCheck® Report, the settlement agreements, and Claimant's exhibits from the Statement of Claim.

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. The Arbitrator recommends the expungement of all mention to the Underlying Claims, occurrence numbers [REDACTED] [REDACTED] and [REDACTED] from registration records maintained by CRD, for Claimant [REDACTED] (CRD# [REDACTED]) with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] [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 claim, allegation, or information is factually impossible or clearly erroneous.

The claim, allegation, or information is false.

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

Occurrence # [REDACTED] (in which Mr. and Mrs. W were the underlying customers)

Mr. and Mrs. W wanted high return investments, concentrating in the technology sector. Mr. and Mrs. W ignored Claimant’s advice to diversify. This was a non-discretionary account and Claimant was under a duty to execute the customers’ orders as given. Mr. and Mrs. W complained a year and a half after Claimant left Banc of America. Banc of America settled the claim, did not inform Claimant of the action or the settlement, and does not oppose expungement. In light of Mr. and Mrs. W’s trading objectives, the allegations in the complaint are false and clearly erroneous.

Occurrence # [REDACTED] (in which Mr. S was the underlying customer)

Mr. S had a nephew working for another retail broker, who strongly recommended an AXA annuity. As Mr. S did not trust his nephew but wanted the perceived high returns of the AXA annuity, Mr. S and Claimant had six meetings to discuss the various options for payouts, accrual, etc. for the annuity - various choices affected the fees. Mr. S later claimed he made a different choice than the one made in his AXA annuity. The claim is directly contradicted by the AXA application form and the annuity actually continued to perform and appreciate. Wells Fargo denied the claim and Mr. S did not pursue it any further. The claim allegation is clearly false and erroneous.

Occurrence # [REDACTED] (in which Dr. and Mrs. A were the underlying customers)

Dr. and Mrs. A were very sophisticated investors. They had \$14,000,000.00 to invest with a stated goal of long term aggressive growth. Claimant recommended a highly diversified portfolio with equities, annuities and a generally wide range of allocations. The portfolio performed well, having grown to \$21,500,000.00 over time, after two withdrawals totaling \$1,500,000.00. More money was deposited in the account, bringing the total value to approximately \$51,000,000. Dr. and Mrs. A wanted more international equities and to invest a significant percentage of the account in the Rogers International Commodities Index (the “RICI Fund”). Claimant informed them that he did not know much about commodities and recommended diversified investments and not putting a lot of money in commodities. As this was a non-discretionary account, Claimant was under a duty to execute the customers’ orders as given. However, they later complained of misrepresentation of investment terms and unsuitable investments after losses occurred. The claim allegation is clearly false and erroneous.

2. 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

**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, Banc of America is assessed the following:

Member Surcharge = \$ 150.00

Accordingly, as a party, Wells Fargo Clearing Services, LLC is assessed the following:

Member Surcharge = \$ 150.00

Accordingly, as a party, Wells Fargo Investments, LLC 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(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: September 14, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$50.00
Hearing Date: February 8, 2019 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

Daniel M. Yamshon

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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



Daniel M. Yamshon
Sole Public Arbitrator

April 10, 2019

Signature Date

April 11, 2019

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