Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
[redacted]

vs.

Respondents
Prudential Equity Group, LLC
Wells Fargo Clearing Services, LLC

Master Consolidated Case Number:
[redacted]

Hearing Site: San Francisco, California

Consolidated with the following cases:

Claimant
[redacted]

vs.

Respondent
Prudential Equity Group, LLC

Subordinate Case Number:
[redacted]

Hearing Site: San Francisco, California

Claimant
[redacted]

vs.

Respondent
Wells Fargo Clearing Services, LLC

Subordinate Case Number:
[redacted]

Hearing Site: San Francisco, California

Claimant
[redacted]

vs.

Respondents
Prudential Equity Group, LLC
Wells Fargo Clearing Services, LLC

Subordinate Case Number:
[redacted]

Hearing Site: San Francisco, California

Claimant
[redacted]

vs.

Respondent
Wells Fargo Clearing Services, LLC

Subordinate Case Number:
[redacted]

Hearing Site: San Francisco, California

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant [redacted] ("Claimant"): Michael Bessette, Esq., Eric Litow, Esq. and Dochtor Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Prudential Equity Group, LLC ("Prudential"): Alan S. Brodherson, Esq., Law Offices of Alan S. Brodherson, New York, New York.

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

Hereinafter, Prudential and Wells Fargo are collectively referred to as "Respondents".

CASE INFORMATION

Case [redacted]

Statement of Claim filed on or about: September 15, 2017.
Claimant signed the Submission Agreement: September 15, 2017.

Statement of Answer filed by Prudential on or about: November 15, 2017.
Prudential did not sign the Submission Agreement.

Statement of Answer filed by Wells Fargo on or about: November 15, 2017.
Wells Fargo signed the Submission Agreement: November 15, 2017.

Case [redacted]

Statement of Claim filed on or about: January 30, 2018.
Claimant signed the Submission Agreement: January 30, 2018.

Case [redacted]

Statement of Claim filed on or about: January 31, 2018.
Claimant signed the Submission Agreement: January 31, 2018.

Case [redacted]

Statement of Claim filed on or about: February 1, 2018.
Claimant signed the Submission Agreement: February 1, 2018.

Case [redacted]

Amended Statement of Claim filed on or about: February 9, 2018.
Claimant signed the Submission Agreement: February 2, 2018.

CASE SUMMARY

Case [redacted]

Claimant asserted a claim seeking expungement of five customer complaints from his Central Registration Depository ("CRD") records: occurrence numbers [redacted]

In their respective Statements of Answer, Respondents denied any allegation of wrongdoing and took no position on Claimant's request for expungement.

Case [redacted]

Claimant asserted a claim seeking expungement of three customer complaints, occurrence numbers [redacted]; and a National Association of Securities Dealers ("NASD") Arbitration, occurrence number [redacted] from his CRD records.

Case [redacted]

Claimant asserted a claim seeking expungement of two customer complaints, occurrence numbers [redacted] and a NASD Arbitration, occurrence number [redacted] from his CRD records.

Case [redacted]

Claimant asserted a claim seeking expungement of three customer complaints, occurrence numbers [redacted] and two New York Stock Exchange ("NYSE") Arbitrations, occurrence numbers [redacted] from his CRD records.

Case [redacted]

Claimant asserted a claim seeking expungement of two customer complaints, occurrence numbers [redacted] and two NASD Arbitrations, occurrence numbers [redacted] from his CRD records.

RELIEF REQUESTED

Case [redacted]

In the Statement of Claim, Claimant requested:

1. Expungement of occurrence numbers [redacted] and [redacted] 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 occurrence numbers [redacted], and [redacted] from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Damages in the amount of $1.00 from Respondents; and

4. Any and all other relief that the Arbitrator deems just and equitable.

In their respective Statements of Answer, Respondents requested that the Arbitrator deny Claimant's request for $1.00 in damages and, pursuant to Rule 13805(d) of the Code of Arbitration Procedure ("Code"), assess all forum fees for hearing sessions in this matter to Claimant.

Case [redacted]

In the Statement of Claim, Claimant requested:

1. Expungement of occurrence numbers [redacted] 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 occurrence numbers [redacted] from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Damages in the amount of $1.00 from Prudential; and
4. Any and all other relief that the Arbitrator deems just and equitable.

Case [redacted]

In the Statement of Claim, Claimant requested:

1. Expungement of occurrence numbers [redacted] 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 occurrence numbers [redacted] from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Damages in the amount of $1.00 from Wells Fargo; and
4. Any and all other relief that the Arbitrator deems just and equitable.

Case [redacted]

In the Statement of Claim, Claimant requested:

1. Expungement of occurrence numbers [redacted], and [redacted] 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 occurrence numbers [redacted] and [redacted] from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Damages in the amount of $1.00 from Respondents; and
4. Any and all other relief that the Arbitrator deems just and equitable.

Case [redacted]

In the Amended Statement of Claim, Claimant requested:

1. Expungement of occurrence numbers [redacted], and [redacted] 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 occurrence numbers [redacted] from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Damages in the amount of $1.00 from Wells Fargo; and
4. Any and all other relief that the Arbitrator deems just and equitable.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

Prudential did not file with FINRA Office of Dispute Resolution ("FINRA ODR") a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim and appeared at the expungement hearing, is bound by the determination of the Arbitrator on all issues submitted.

On February 12, 2018, Prudential filed a motion to the Director of FINRA ODR to consolidate cases [redacted], pursuant to the Rule 13314 of the Code. On February 13, 2018. Wells Fargo filed a motion to the Director of FINRA ODR to consolidate cases [redacted] pursuant to Rule 13314 of the Code. On February 20, 2018, Claimant filed a response to Respondents' motions to consolidate. On February 21, 2018, Prudential filed a reply in support of the motions to consolidate. By order dated March 12, 2018, the Director of FINRA ODR declined to rule on the motions to consolidate and advised that the motions would be referred to the Arbitrator in this case.

On March 30, 2018, the Arbitrator held a prehearing conference on the motions to consolidate and by order of the same date granted the motions to consolidate.

On May 22, 2018, Claimant requested a change in venue from Los Angeles, California to San Francisco, California. Claimant advised that Respondents did not have any objection. By order dated May 26, 2018, the Arbitrator granted Claimant's request to change the hearing location to San Francisco, California.

The Arbitrator conducted a recorded in-person hearing on September 17 and 18, 2018 to hear oral argument and evidence on Claimant's request for expungement. At the expungement hearing, Claimant moved to amend the Statements of Claim in cases [redacted] deleting and replacing factual allegations regarding one of the customers. Respondents did not object and the Arbitrator granted the motion.

Respondents participated in the expungement hearing and did not contest the request for expungement. The Arbitrator noted that none of the underlying customers participated in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

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

Notice to the Underlying Customers

The Arbitrator has addressed notice to the customers for the following occurrence numbers, for which she is recommending expungement: [redacted] ("Underlying Claims").

The Arbitrator noted that Claimant verified that all of the underlying living customers were contacted and were served with a copy of the Statements of Claim with the exception of the customer in occurrence number [redacted] ("Mr. PG"), who Claimant was unable to locate, but is presumed to be deceased. In addition, due to the passage of time, many of the underlying customers had passed away, and this was confirmed by the Claimant's presentation of obituaries/testimony to establish those facts, and is noted in the award below.

Case [redacted] (Occurrence numbers [redacted])

On February 8, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing scheduled for May 30, 2018 had been served on: the customer in occurrence number [redacted] ("Mr. CM"); and the customers in occurrence number [redacted] ("Mr. and Mrs. S"). On the same date, Claimant submitted a death record for the customer in occurrence numbers [redacted] ("Mr. BB").

On February 14, 2018, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that Mr. CM, and Mr. and Mrs. S were served with the Statement of Claim.

On August 16, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing scheduled to begin on September 17, 2018 had been served on Mrs. S.

On August 17, 2018, Claimant provided an obituary for Mr. CM.

On August 21, 2018, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that Mrs. S had been served with a copy of the Statement of Claim.

Case [redacted] (Occurrence number [redacted])

On August 29, 2018, Claimant submitted an Affidavit signed by Claimant's counsel, advising that Claimant was unable to serve the customer in occurrence number [redacted] ("Mr. PG") as counsel was unable to located any information related to Mr. PG. The Arbitrator notes that according to the Statement of Claim in case [redacted], Mr. PG was already in his late 70s when he filed his complaint on December 5, 1996. He is likely deceased.

Case [redacted] (Occurrence number [redacted])

On August 17, 2018, Claimant submitted an obituary for the customer in occurrence number [redacted] ("Mr. MK").

On August 21, 2018, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that Claimant was unable to serve the Statement of Claim on Mr. MK as he is deceased.

Settlement Agreements

The Arbitrator noted that due to the passage of time and the parties' document retention policies, none of the settlement documents in the Underlying Claims were available to the Arbitrator for her review. The Arbitrator further noted that, instead of denying expungement of these complaints outright due to the lack of settlement documents, the Arbitrator concluded that it is equitable to do a case-by-case determination that is grounded in the fundamental basis behind the expungement requirements.

The Arbitrator also noted that in FINRA ODR's Notice to Arbitrators and Parties on Expanded Expungement Guidance, updated September 2017, on the section "Settlement Payments and Prohibited Conditions Relating to Expungement of Customer Dispute Information," FINRA ODR states:

> Arbitrators should consider whether the party seeking expungement contributed to the settlement. In addition, arbitrators should inquire and fully consider whether a party conditioned a settlement of the arbitration upon agreement not to oppose the request for expungement in cases in which the investor does not participate in the expungement hearing or the requesting party states that an investor has indicated that he or she will not oppose the expungement request.
>
> Effective July 30, 2014 FINRA Rule 2081 prohibits firms and registered representatives from conditioning settlement of a customer dispute on—or otherwise compensating a customer for—the customer's agreement to consent to, or not to oppose, the firm's or representative's request to expunge such information from CRD. Arbitrators who learn of such prohibited conditions should review FINRA's information relating to Disciplinary Referrals—FINRA.

The Arbitrator has addressed the settlements in the Underlying Claims below. For each of the settled underlying claims, the Arbitrator noted as follows:

- Claimant testified that he was not personally involved in any of the settlements and that he did not contribute to the settlement amounts.
- The claims were settled without input from Claimant.
- Without being able to review the settlements, it is impossible to know whether there were any prohibited conditions, linking the settlement compensation to a customer agreeing to consent to or not oppose expungement. The Arbitrator notes that the settlements at issue occurred before FINRA Rule 2081 became effective.

Occurrence numbers [redacted]

None of these occurrences were settled and therefore there were no settlement documents for her to review. Occurrence numbers [redacted] were denied and occurrence number [redacted] was closed/no action.

Occurrence number [redacted]

- This settlement was entered into after Claimant no longer worked for Prudential.
- There was credible testimony that the Customer did not actually sustain any losses.

Occurrence number [redacted]

- Claimant was not found by the firm to have done anything wrong.
- Another important factor is that after alleging $60,000.00 in damages, the firm settled with Mr. MK for $25,000.00, which is less than half of the alleged damages.

Documents Relied Upon

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence:

- Arbitrator's Exhibit No. 1, including all of the documents on the DR Portal, (notices, obituaries, amendments, declarations/affidavits etc.);
- Claimant's testimony;
- Prudential's Exhibit No. 1, the NYSE's Exchange Hearing Panel Decision [redacted] dated November 25, 2003; and
- Each Statement of Claim, including Exhibit No. 1 - Claimant's Broker Report and Individual Snapshot Report; and Exhibit No. 2 attached to the SOC of case [redacted] a Federal Reserve Bank of San Francisco (FRBSF) Economic Letter, 2001-33, dated November 16, 2001 entitled, "Rising Junk Bond Yields: Liquidity or Credit Concerns?"

The parties present at the hearing have agreed that that a handwritten, signed Award may be entered.

FACTS

The Arbitrator noted that prior to going through each individual occurrence, there are some facts that are relevant to the Underlying Claims.

Claimant has been in the securities business since September 1983. Except for a brief period in 2000, when Claimant was the Director of a Business-to-Business pharmaceutical start-up, he worked as a financial advisor. He worked at M.L. Stern & Co. Inc. from September 1983 – May 1993; then at Prudential from May 1993 – September 1996[1]; then at Everen Securities, Inc. ("Everen") which was purchased and merged into First Union Securities, Inc. ("First Union") from October 1996 – April 2000 and again at M.L. Stern & Co., LLC from February 2001 through 2008 and is now

[1] Claimant was fired from Prudential on September 5, 1996 for allegedly violating company policy concerning the sale and purchase of a bond. Claimant contested the termination through legal action and the matter was ultimately settled.

registered with Hilltop Securities, Inc. There were various acquisitions of some of these companies at various junctures by Respondents[2].

Claimant is requesting that twenty-one (21) customer disputes, identified as and listed as occurrence numbers in the Statements of Claim, be expunged from his CRD records. Out of the 21 customer claims, twelve (12) of them date back to the late 1990's; six (6) of the claims were filed in 2000; one (1) complaint in 2001, one (1) complaint in 2002 and one (1) complaint in 2004. Claimant testified that although he was not aware that he had lost business due to the number of these old claims, he nonetheless wanted to clear up his CRD records. He testified that he has already received an arbitration award to have another complaint expunged, and is seeking to have all of the complaints expunged (in addition to those sought in this case).

The fact that all of these claims are quite old, the majority of which are over 20 years old, presented the Arbitrator with a difficult task. Given the dearth of documentary evidence, the Arbitrator relied on what was available, and relied heavily on Claimant's testimony. The Arbitrator found Claimant to be a credible witness, and despite the passage of time, Claimant recalled significant details about his clients, their relationships and demonstrated significant familiarity with their portfolios. Claimant testified that in his 35 years as a financial advisor, he had up to 5,000 - 10,000 customers; was a member of the Leadership and President's Council for over a decade, which represented recognition of the top-producing financial advisors and performance for clients as well as their mentoring of other brokers. Claimant also testified about his charitable activities, including work for the Guardians, which assisted underprivileged, homeless youth, and Make-a-Wish-Foundation.

The Arbitrator also gave due consideration to Prudential's Exhibit 1, which was the NYSE's Exchange Hearing Panel Decision 03-216, dated November 25, 2003 which resolved an enforcement action initiated against Claimant, as well as Claimant's testimony regarding the enforcement action. That enforcement proceeding concluded with a stipulation of certain facts, and with Claimant consenting to censure, a two-month bar, and a $20,000 fine, without admitting or denying guilt. Claimant testified that the NYSE enforcement unit reviewed all of his existing complaints at the time, going through the CRD, which would have included the complaints at issue in this arbitration. He also testified that he disagreed with and wanted to challenge the enforcement action, but relied on the recommendation of his counsel, to resolve the matter. He noted that he was not terminated as a manager following the enforcement action. The Arbitrator carefully reviewed the NYSE's Hearing Panel Decision 03-216 and questioned Claimant at length to ascertain whether any of the underlying customer accounts A – F were identical to any of the instant complaints. Given the lack of identification of the complainants in the NYSE's Hearing Panel Decision 03-216 and the lack of other corroborating documentary evidence, it was difficult to ascertain the correlation between all those customers and the customers at issue in this arbitration. However, the Arbitrator was able to correlate the customers in that enforcement action

[2] Respondent Wells Fargo was formerly known as Everen Securities, Inc., First Union Securities, Inc. and Wachovia Securities, Inc.

to some of the occurrences under review for expungement and those occurrences were accordingly denied.

The majority of the claims at issue in this arbitration involved high-yield (junk) bonds. These claims took place during the late 90's and the aftermath of the 1997 Asian financial crisis, which culminated in the Russian government's default on its sovereign debt in October 1998. The FRBSF Economic Letter, 2001-33 stated that "[t]his lead to seizing up of the credit market and near collapse of the hedge fund, Long-Term Capital Management. At that time, the large degree of uncertainty in the credit market made it very difficult to liquidate risky bonds, as potential investors exited the corporate bond market in favor of the default-free Treasury market." (Exhibit 2, pp. 3-4).

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 occurrence numbers [redacted] from his CRD records is denied.

2. The Arbitrator recommends the expungement of all references to occurrence numbers [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.

   The Arbitrator recommends expungement of occurrences [redacted] pursuant to Rule 13805 of the Code, and 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:

   Occurrence number [redacted] (in which Mr. CM is the underlying customer)

   During the mid-1990s, Mr. CM became a client of Claimant, and was the trustee for a trust, the "M Trust". Mr. M had previously been Claimant's client as he was the trustee of his own trust and as he got older, Mr. CM, his accountant, took over as trustee. Mr. CM was a Certified Public Accountant in his mid-60's with more than 30

years of investment experience. Claimant testified that Mr. CM became his client as a result of a cold call, and after becoming a client, they spoke often. According to the Statement of Claim, based on Mr. CM's stated investment objective and risk tolerance, Claimant recommended in 1996, a well-diversified portfolio for Mr. CM which included the purchase of certain high-yield bonds. Claimant recalls that Mr. CM had around $2 million in his portfolio, which included municipal bonds ("MUNIs"), Collateral Mortgage Obligations ("CMOs"), and a few corporate bonds. Claimant testified that Mr. CM's bonds constituted a very small percentage of the well-diversified portfolio he recommended to Mr. CM. Claimant was paid by commission for his services as a financial advisor. Mr. CM had a non-discretionary account and Claimant traded frequently on Mr. CM's behalf through verbal authorization. Mr. CM also received trade confirmations and regular account statements. Claimant testified that they spoke a couple of times a week, and Claimant would present Mr. CM with recommendations and Mr. CM would ask questions and, if interested, would request that Claimant place trades on his behalf.

As a result of the Asian financial crisis and its aftermath, Mr. CM's bonds lost value along with the rest of the high-yield bond market, as the credit crisis negatively impacted corporate debt. On September 15, 1997, Mr. CM requested that NASD, FINRA's predecessor, mediate Claimant's "alleged unauthorized and excessive equity trading." The alleged damages were $670,000.00. The BrokerCheck® Report indicates that after Prudential investigated this claim, "it was determined that it completely lacked merit." Additionally, Prudential's calculations reflected that the account was profitable while at Everen. There is no evidence in the BrokerCheck® Report that Mr. CM pursued this complaint after it was denied by Prudential.

Occurrence number [redacted] relating to Mr. CM, meets the standards for expungement. The claim is false. Mr. CM had a non-discretionary account that required Mr. CM's authorizations in order for Claimant to make any trades on Mr. CM's behalf. Claimant testified that he always received verbal authorization from Mr. CM prior to making any trades and that Mr. CM also received trade confirmations and regular account statements. There was no evidence presented that Claimant made any trades without Mr. CM's authorization. Prudential investigated the claim and denied it because its investigation found it to be completely without merit. No subsequent action was taken by Mr. CM following Prudential's denial of the claim. The public disclosure of the false allegation herein does not offer any public protection and has no regulatory value. The Arbitrator grants expungement of this complaint.

Occurrence numbers [redacted] (in which Mr. BB is the underlying customer)

Claimant testified that Mr. BB became a customer of Claimant in the late 1980's and Mr. BB was in his early 70's at the time. Mr. BB was Claimant's wife's uncle through marriage, having married her aunt, Mrs. EB. Mrs. EB raised Claimant's wife as her own. And Claimant's wife and her cousin were beneficiaries of their aunt's trust. Claimant testified that Mr. BB was an experienced investor with a net worth of $10 - $15 million and had $3 - $4 million invested with Claimant. Claimant testified that Mr. BB's investment objective was for income with a moderate risk tolerance over a

long-term horizon. His portfolio was a combination of MUNIs, corporate bonds, CMOs and mutual funds. Claimant went over every investment with Mr. BB, did due diligence researching the investments and also relied on his broker-dealer's due diligence and research recommendations. They spoke weekly. Mr. BB had a non-discretionary account and always received trade confirmations and regular account statements. Mr. BB was Claimant's client at M.L. Stern & Co. Inc.; then went with Claimant to Prudential; then with Claimant to Everen, which was subsequently acquired by Wachovia, and then by Wells Fargo.

Between 1993–1996, Mr. BB became a customer of Claimant at Prudential and purchased certain equities. Claimant testified that he discussed all the details of the specific investments with Mr. BB, including the risks, fees, advantages and disadvantages and general stock market investment risks, including risk of losing principal. When Claimant moved to First Union (now Wells Fargo), Mr. BB transferred his account with Claimant. On January 30, 1998, Mr. BB filed two complaints against Claimant alleging unsuitability and excessive trading. Claimant testified that he didn't know what led to the complaints, but that there was a downturn in the market. As has been previously discussed, the downturn in the market was related to the Asian market failure and aftermath and the collapse of the credit market. The BrokerCheck® Report shows what appears to be two complaints filed on January 30, 1998 where Mr. BB sought compensatory damages in excess of $400,000.00.

Although the two complaints were filed on the same day, the BrokerCheck® Report indicates that after Prudential investigated the claims, it found: (1) "[t]here was no excessive trading in customer's account and the only major loss was the F&M Dist. Bonds which defaulted," and (2) "[c]ustomer alleges excessive trading and turnover in stock purchases with damages in excess of $400,000." As a result, Prudential denied occurrence number [redacted], and listed the outcome occurrence number [redacted] as Closed/No Action.

Claimant testified that Mr. BB filed three complaints related to the same thing and that there should only be one occurrence number. Claimant testified that the F&M Bank Corporate Distribution bonds defaulted and went bankrupt in 1996 and constituted a very small piece of Mr. BB's portfolio. Mr. BB's account was performing well. However, the bond products disputed in occurrence number [redacted] appear to be unrelated to the equity products alleged in occurrence number [redacted] which is being denied. Therefore, the Arbitrator finds that although expungement is being granted with respect to occurrence numbers [redacted] and [redacted], there was insufficient evidence to conclude that Mr. BB's third complaint was the same as the other two complaints.

There was a fair amount of family drama surrounding Mr. BB's account. Claimant testified that these complaints came shortly after the death of Mrs. EB, and Mr. BB had quickly remarried. Shortly before Mrs. EB's death, she gave Claimant's wife an antique worth $100,000 and gave the cousin some expensive handbags. After Mrs. EB's death, Mr. BB wanted the handbags back for his new wife, who had Mrs. EB's jewelry "draped around her neck." Mr. BB changed the beneficiaries of Mrs. EB's trust from Claimant's wife and her cousin to Mr. BB's new wife and then changed the

handling of his accounts to his new wife's son, who was also a financial advisor. Needless to say these developments were very upsetting to Claimant's wife, who asked her uncle, "How can you do this?" Claimant testified that Mr. BB died mysteriously two years later.

Occurrence numbers [redacted], relating to Mr. BB meet the standards for expungement. The claims are false. Mr. BB had a non-discretionary account that required Mr. BB's authorizations in order for Claimant to make any trades on Mr. BB's behalf. Claimant testified that he received verbal authorization from Mr. BB prior to making any trades and that Mr. BB received trade confirmations and regular account statements. There was no evidence presented that Claimant made any trades without Mr. BB's authorization. There was no evidence presented indicating that there was excessive trading. The Arbitrator concludes that these two occurrence numbers were filed on the same day, were essentially the same complaint of unsuitability and excessive trading. Prudential investigated the claims and denied them, taking no action because its investigation found that there were no excessive trades and that the only loss was the F&B Bank Distribution Bonds which had defaulted. A bond default has nothing to do with the allegation of excessive trading, and is likely related to the collapse of the credit market at the time which negatively impacted the hi-yield bond market. Furthermore, no subsequent action was taken by Mr. BB following Prudential's denial of the claim. The public disclosure of the false allegation herein does not offer any public protection and has no regulatory value. The Arbitrator grants expungement of these complaints.

Occurrence number [redacted] (in which Mr. and Mrs. S are the underlying customers)

Claimant testified that Mr. and Mrs. S became customers of Claimant in the early 1990s. Mr. and Mrs. S, who were retired and in their mid-70s sought a fixed-income investment with a moderate risk tolerance with a long-term outlook horizon. They had been investing for 25 years in stocks and bonds. They would come in to meet with Claimant a couple of times a year, and rarely traded but they talked every 2 - 3 weeks. They had a non-discretionary account and Claimant would only trade with their verbal authorization, would talk with them before any purchases and performed due diligence on all his recommendations. They would receive trade confirmations after every trade and received regular account statements. Claimant testified that Mr. and Mrs. S had a diversified portfolio with MUNIs, high-yield corporate bonds, maybe some CMOs and mutual funds. Mr. and Mrs. S had about $1 million invested with Claimant with less than 5% in high-yield investments. The investments at issue were high-yield bonds. Mr. and Mrs. S were initially very happy with the bonds, but after the collapse of the Asian markets and the credit markets, their investment lost value.

On February 5, 2004, Mr. and Mrs. S filed a complaint alleging that, while with the successor firm of Wachovia (succeeded by Wells Fargo), Claimant misled them by stating the defaulted bonds purchased between May 1998 – November 1999 were being restructured during the time he was trying to sell him. The complaint alleged damages of $54,703.00. When Claimant left the industry in 2000, Mr. and Mrs. S were transferred to another financial advisor. Claimant testified that at the time of the

drop in value of the bonds, Mr. and Mrs. S did not make any complaints to Claimant. He further testified that he doesn't recall having any bonds in Chapter 11 restructuring when he was at Wachovia. He has no idea what Mr. and Mrs. S are talking about. This complaint was filed over 3 years after he left Wachovia. Wachovia did an investigation and denied the claim.

Occurrence number [redacted] relating to customers Mr. and Mrs. S meets the standards for expungement. The claim is false. Mr. and Mrs. S had a non-discretionary account that required their authorizations in order for Claimant to make any trades on their behalf. Claimant testified that he discussed Mr. and Mrs. S' bond investments in detail and answered all of their questions, performed due diligence on the investment recommendations and received verbal authorization from Mr. and Mrs. S prior to making any trades and that Mr. and Mrs. S received trade confirmations and regular account statements. There was no evidence presented that Claimant made any trades without Mr. and Mrs. S' authorization. There was no evidence that Claimant had mislead Mr. and Mrs. S about the bonds being restructured. Claimant testified that he was not aware of any of the bonds being restructured in Chapter 11 at that time and that, other than asking questions about the drop in value of the bonds, Mr. and Mrs. S did not complain to Claimant at the time. He denies misleading Mr. and Mrs. S. Wachovia (successor Wells Fargo) investigated the claims and denied them. Furthermore, no subsequent action was taken by Mr. and Mrs. S following Wachovia's denial of the claim.

The Arbitrator recommends expungement of occurrences [redacted], pursuant to Rule 13805 of the Code, and 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 number [redacted] (in which Mr. PG is the underlying customer)

In 1993, Mr. PG became a client of Claimant. Mr. PG was in his late 70s and was retired. Mr. PG had more than 30 years of experience as an investor, investing in stocks and bonds. According to Claimant, Mr. PG stated that his investment objective was income with a moderate risk tolerance. Claimant testified that he handled about $400,000 – $500,000 of Mr. PG's investments and that Mr. PG had a diversified portfolio. Mr. PG was looking for fixed monthly income. Mr. PG was about 10% invested in CMOs and tax-free MUNIs. The CMOs had both Fannie Mae and Ginny Mae mortgages. Claimant states that Mr. PG chose to purchase the CMO himself. While Claimant told Mr. PG that the CMO was a safe income-generating investment, the CMO was unsolicited. Claimant testified that the CMOs were backed by the US government, and were a type of complex debt security that repackages and directs the payments of principal and interest from a collateral pool to different

types and maturities of securities and unlike other fixed income instruments, the bonds paid back both principal and interest, so over time, the value of the principal dropped. Claimant testified that he explained in detail the terms, risks, fees, advantages, and disadvantages of the CMO with Mr. PG prior to the purchase, including the terms of the CMO's pay down of principal, which meant that the CMO would pay Mr. PG part of its principal, as well as dividends, quarterly, thereby reducing in value over time. Claimant testified that Prudential had a brochure that explained how CMOs worked which was provided to Mr. PG. Mr. PG had a non-discretionary account that required authorization and Claimant testified that he never made trades without Mr. PG's authorization and he discussed any investment with Mr. PG prior to Mr. PG authorizing a trade. Subsequently, the CMO performed as expected, paying Mr. PG's dividends and principal payments quarterly, according to the predetermined rules of the CMO. The value of the CMO was reduced quarterly, as expected. Claimant testified that Mr. PG never spoke with Claimant about filing a complaint and Mr. PG never lost any money from his investment in the CMO.

Following his termination from Prudential in September, 1996, Claimant began work at First Union in October 1996. On December 5, 1996, after Claimant was no longer at Prudential, Mr. PG filed a complaint alleging that his account was mishandled and sought damages of approximately $19,000.00. Mr. PG expressed to Prudential his dissatisfaction with his investment in the CMO. Claimant testified that he believed that Mr. PG's dissatisfaction with the CMO was based on a misunderstanding, as Mr. PG did not understand the investment's pay down of principal and the resulting decrease in its value and, therefore, its dividends. Mr. PG had never complained to Claimant. Prudential never contacted Claimant regarding Mr. PG's complaint. Claimant testified that he found out about the complaint when it appeared on his CRD. Prudential settled with Mr. PG in the amount of $15,000.00.

Occurrence number [redacted] relating to Mr. PG, meets the standards for expungement. The claim is false and factually impossible because there is no evidence that Claimant mishandled Mr. PG's accounts or traded without Mr. PG's authorization. Mr. PG had a non-discretionary account that required his authorization in order for Claimant to make any trades on his behalf. Claimant testified that he discussed any investment in detail with Mr. PG and answered all of his questions, performed due diligence on the investment recommendations and received verbal authorization from Mr. PG prior to making any trades and that Mr. PG received trade confirmations and regular account statements. There was no evidence presented that Claimant made any trades without Mr. PG's authorization. All of Claimant's customers had non-discretionary accounts that required customer authorization. Claimant testified credibly concerning his process for obtaining verbal authorizations prior to conducting any trades. Claimant explained in detail the terms, risks, fees, advantages, and disadvantages of the CMO with Mr. PG prior to its purchase, including the fact that the CMO paid interest and principal quarterly according to predetermined rules, and therefore, the value of the CMO would be reduced quarterly. As an investor with more than 30 years of experience with investments, Mr. PG understood, or should have understood, as explained by Claimant, that the terms of the CMO, including the fact that it's principal would be reduced as it paid him quarterly dividends and principal.

Claimant testified that Mr. PG never lost any money from his investment in the CMO. The CMO performed as expected, paying Mr. PG monthly dividends and principal payments according to the predetermined rules of the CMO. Mr. PG's complaint seems to stem from a misunderstanding of the basic terms of the CMO, which, as Claimant had explained to Mr. PG in detail prior to the purchase of the CMO, was designed to, and did, pay monthly dividends and principal to Mr. PG, thereby slowly devaluing the CMO over time. Any misunderstanding on Mr. PG's part of a verbal representation made by Claimant would be clearly and accurately explained by the written documents given to Mr. PG.

Since the Arbitrator finds that Claimant did not mishandle Mr. PG's account the public disclosure of false and factually impossible allegations herein does not offer any public protection and has no regulatory value. If not expunged, this customer dispute will mislead any person viewing Claimant's CRD records and will not provide valuable information for knowledgeable decision making. The Arbitrator grants expungement of this complaint.

Occurrence number [redacted] in which Mr. MK is the underlying customer)

In the early 1990s, Mr. MK became Claimant's client. Mr. MK was retired and in his late 70s. Claimant testified that based on conversations with Mr. MK, the two ascertained Mr. MK's investor profile. Mr. MK, who was a very experienced investor, had 20 - 25 years of investment experience. Mr. MK stated that his investment objective was to secure an overall higher rate of return with income in his well-diversified portfolio with a moderate risk tolerance. Mr. MK had a non-discretionary account, which required his authorization prior to any trade. Claimant testified that he explained in detail the terms, risks, fees, advantages, and disadvantages of his investment recommendations with Mr. MK prior to their purchase. Mr. MK had a portfolio of between $1.5 - $2 million which included MUNIs, CMOs and high-yield bonds. Mr. MK received trade confirmations and regular statements. In the late 1990's, based on Mr. MK's stated investment objectives, Claimant recommended the purchase of three high-yield bonds. Claimant testified that the purchase of the bonds was consistent with Mr. MK's expressed investment objective to secure an overall higher rate of return in Mr. MK's account and that he spoke with him a few times about the investment prior to the purchase. As usual, Claimant explained in detail the terms, risks, fees, advantages, and disadvantages of the bonds with Mr. MK prior to their purchase. The bonds represented about 5% of his investment portfolio. Subsequently, Claimant spoke with Mr. MK frequently regarding the performance of his portfolio. Claimant and Mr. MK maintained a verbal authorization agreement and Mr. MK traded frequently. Claimant testified that at no time did Claimant execute any trades on Mr. MK's behalf without first obtaining his authorization. Later, the value of the bonds declined in the wake of the Asian financial collapse and the collapse of the credit markets. Mr. MK did not express any dissatisfaction to Claimant regarding the performance of Mr. MK's account, nor did he speak with Claimant about filing a complaint. On July 17, 1998, Mr. MK filed a complaint with Respondent, alleging "unsuitable purchases of high yield bonds" seeking compensatory damages in the amount of $60,000.00. On September 29, 1998, without admitting wrongdoing, Everen settled with Mr. MK in the amount of $25,000.

Occurrence number [redacted] relating to Mr. MK, meets the standards for expungement. Mr. MK had a non-discretionary account that required his authorization in order for Claimant to make any trades on his behalf. Mr. MK's allegations of "unsuitable purchases of high yield bonds" are erroneous and factually impossible, and false and therefore, meet both the FINRA Rule 2080(b)(1)(A) standard and the Rule 2080(b)(1)(C) standard for expungement.

The allegation of unsuitability is false, because Claimant had a reasonable basis to believe that the bonds were suitable for Mr. MK based on the reasonable diligence of Claimant, Everen and Mr. MK himself to ascertain Mr. MK's investor profile. With 20 – 25 years of investment experience, Mr. MK had demonstrated that he was capable of evaluating investment risks independently, both in general and with regard to the bonds. Mr. MK authorized the trades, and Claimant also testified that the trades were reviewed by the broker after the trade to ensure that the trades were suitable. The allegation of suitability is factually impossible, because the suitability of an investment is determined at the time the investment is made, and the suitability of the bonds was based upon the information provided to Claimant by Mr. MK at the time the investment was made. Claimant testified that at that time, Claimant and Mr. MK confirmed that the investment in question was suitable for Mr. MK based upon his investor profile and his stated objectives. The bonds subsequent diminution in value, does not determine the quality of the investment and its suitability when the bonds were purchased, nor render the investment unsuitable retroactively. The claim of unsuitability is clearly erroneous, because Mr. MK, was an experienced investor and he chose to purchase the bonds himself. As an experienced investor he was in control of his own account and represented his investment profile in a way that was suitable for the investments he chose to purchase, and any losses were attributable to his own decision making and market conditions.

Since the Arbitrator finds that Claimant did not make an unsuitable recommendation, the public disclosure of erroneous, false and factually impossible allegations does not offer any public protection and has no regulatory value. If not expunged, this customer dispute will mislead any person viewing Claimant's CRD records and will not provide valuable information for knowledgeable decision making. The Arbitrator grants expungement of this complaint.

3. 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, Prudential is assessed the following:

Member Surcharge	=$ 150.00

Accordingly, as a party, Wells Fargo 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:

Three (3) pre-hearing sessions with a single arbitrator @ $50.00/session			=$150.00
Pre-hearing conferences:	January 22, 2018	1 session	
	March 30, 2018	1 session	
	April 30, 2018	1 session	
Three (3) hearing session on expungement request @ $50.00/session			=$150.00
Hearing Dates:	September 17, 2018	2 sessions	
	September 18, 2018	1 sessions	
Total Hearing Session Fees			=$300.00

The Arbitrator has assessed $300.00 of the hearing session fees to Claimant.

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

ARBITRATOR

Arocles Aguilar - 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

Arocles Aguilar
Sole Public Arbitrator

March 7, 2019
Signature Date

March 8, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)