

**Stipulated Award
FINRA Dispute Resolution Services**

In the Matter of the Arbitration Between:

Claimants

Robert Paul Hart
Thomas Lee Tonkovich

Case Number: 17-03280

vs.

Respondent

Wells Fargo Advisors, LLC

Hearing Site: Jersey City, New Jersey

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Persons vs. Member

REPRESENTATION OF PARTIES

For Claimants Robert Paul Hart (“Hart”) and Thomas Lee Tonkovich (“Tonkovich”): Thomas H. Chiacchio, Esq., The Chiacchio Firm, Philadelphia, Pennsylvania.

For Respondent Wells Fargo Advisors, LLC (“Wells Fargo”): Sandra D. Grannum, Esq., Faegre Drinker Biddle & Reath LLP, Florham Park, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: December 7, 2017.

Answer to Counterclaims and Affirmative Defenses filed on or about: March 14, 2018.

Robert Paul Hart signed the Submission Agreement: December 6, 2017.

Thomas Lee Tonkovich signed the Submission Agreement: December 6, 2017.

Statement of Answer and Counterclaims filed by Respondent on or about: February 22, 2018.

Wells Fargo Advisors, LLC signed the Submission Agreement: February 22, 2018.

CASE SUMMARY

Claimants asserted the following causes of action: fraudulent inducement; negligent misrepresentation; violation of FINRA conduct Rule 2010; breach of contract; breach of implied covenant of good faith and fair dealing; and constructive termination.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In its Counterclaim, Respondent asserted the following causes of action: breach of promissory notes and conversion of load funds.

Unless specifically admitted in their Answer to the Counterclaims, Claimants denied the allegations made in the Counterclaims and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested, Claimant Hart and Tonkovich requested unspecified compensatory damages; punitive damages; attorneys' fees and costs; and other relief that may be deemed equitable, just and necessary.

In the Statement of Answer, Respondent requested that the Statement of Claim be denied.

In its Counterclaim, with respect to Hart, Wells Fargo requested (a) compensatory damages in the amount of \$2,103,067.84; (b) interest at the rate of 5.18% per annum on the balance due and owing under the September 5, 2012 Promissory Note executed by Hart from the date of default to the date of payment; (c) interest at the rate of 6.27% per annum on the balance due and owing under the December 1, 2013 Promissory Note executed by Hart from the date of default to the date of payment; (d) interest at the rate of 5.70% per annum on the balance due and owing under the December 1, 2014 Promissory Note executed by Hart from the default to date of payment; (e) interest at the rate of 5.70% per annum on the balance due and owing under the December 15, 2014 Promissory Note executed by Hart from the date of default to the date of payment; (f) interest at the rate of 5.58% per annum on the balance due and owing under the first December 1, 2015 Promissory Note executed by Hart from the date of default to the date of payment; (g) interest at the rate of 5.58% per annum on the balance due and owing under the second December 1, 2015 Promissory Note executed by Hart from the date of default to the date of payment; (f) post-hearing interest at the New Jersey rate for any amount not paid 30 days from the date of an Award; (g) attorneys' fees; (h) costs and (i) any and all further relief deemed just and proper.

In its Counterclaim, with respect to Tonkovich, Wells Fargo requested (a) compensatory damages in the amount of \$643,962.75; (b) interest at the rate of 5.18% per annum on the balance due and owing under the September 5, 2012 Promissory Note executed by Tonkovich from the date of default to the date of payment; (c) interest at the rate of 6.27% per annum on the balance due and owing under the December 1, 2013 Promissory Note executed by Tonkovich from the date of default to the date of payment; (d) interest at the rate of 5.70% per annum on the balance due and owing under the December 1, 2014 Promissory Note executed by Tonkovich from the default to date of payment; (e) interest at the rate of 5.70% per annum on the balance due and owing under the December 15, 2014 Promissory Note executed by Tonkovich from the date of default to the date of payment; (f) interest at the rate of 5.58% per annum on the balance due and owing under the first December 1, 2015 Promissory Note executed by Tonkovich from the date of default to the date of payment; (g) interest at the rate of 5.58% per annum on the balance due and owing under the second December 1, 2015 Promissory Note executed by Tonkovich from the date of default to the date of payment; (f) post-hearing interest at the New Jersey rate for any amount not paid 30 days from the date of an Award; (g) attorneys' fees; (h) costs and (i) any and all further relief deemed just and proper.

In the Answer to Counterclaims, Claimants requested that Wells Fargo's Counterclaims be denied with prejudice; an award of attorneys' fees and costs; and such other relief as the Arbitration Panel may deem equitable, just and necessary.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On January 4, 2021, the parties filed a Joint Motion for Entry of a Stipulated Award and notified FINRA Dispute Resolution Services that the parties settled this matter.

Hart and Wells Fargo resolved all disputes at issue in this Arbitration, including their dispute arising out of, and in connection with, the aforementioned 6 Promissory Notes executed by Hart by executing the Settlement Agreement on or about December 22, 2020 (the "Hart Settlement Agreement"). Pursuant to the terms of the Hart Settlement Agreement, this award shall be signed by the arbitrators, but no action will be taken by Wells Fargo to enforce the award against Hart unless Hart fails to comply with the payment terms of the Hart Settlement Agreement. Should Hart abide by the terms of the Hart Settlement Agreement and pay Wells Fargo the monies as agreed to, this Stipulated Award shall be deemed to be satisfied.

Tonkovich and Wells Fargo resolved all disputes at issue in this Arbitration, including their dispute arising out of, and in connection with, the aforementioned 6 Promissory Notes by executing the Settlement Agreement on or about December 22, 2020 (the "Tonkovich Settlement Agreement"). Pursuant to the terms of the Tonkovich Settlement Agreement, this award shall be signed by the arbitrators, but no action will be taken by Wells Fargo to enforce the award against Tonkovich unless Tonkovich fails to comply with the payment terms of the Tonkovich Settlement Agreement. Should Tonkovich abide by the terms of the Tonkovich Settlement Agreement and pay Wells Fargo the monies as agreed to, this Stipulated Award shall be deemed to be satisfied.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies.

To the extent that any facts or other information described in this Stipulated Award are inconsistent with the Settlement Agreements executed by the Parties, the Statement of Claim or Answer with Counterclaims, those documents are controlling.

AWARD

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and after considering the pleadings, and the stipulation of the parties, the Panel grants the motion and enters this award granting the following relief:

1. Pursuant to the Hart Settlement Agreement, Hart shall pay to Wells Fargo Advisors a total sum of \$1,925,000.00.
2. Pursuant to the Tonkovich Settlement Agreement, Tonkovich shall pay to Wells Fargo Advisors a total sum of \$575,000.00.

3. Except as otherwise specified herein, each party shall bear its own costs and attorneys' fees.
4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages are denied.
5. This award shall not be enforced by Wells Fargo Advisors against Hart unless Hart fails to abide by the terms of the Hart Settlement Agreement executed by him and which is incorporated herein and in full by reference. If Hart fails to abide by the terms of the Hart Settlement Agreement, he shall pay (a) a lump sum of \$2,477,165.05, minus any amounts paid pursuant to the Hart Settlement Agreement (b) additional costs and fees, including reasonable attorneys' fees, incurred by Wells Fargo Advisors in enforcing this award, and (c) interest accrued on the amount in "(a)" at the New Jersey Statutory Rate from the date of the default until the date of payment.
6. This award shall not be enforced by Wells Fargo Advisors against Tonkovich unless Tonkovich fails to abide by the terms of the Tonkovich Settlement Agreement executed by him and which is incorporated herein and in full by reference. If Tonkovich fails to abide by the terms of the Tonkovich Settlement Agreement, he shall pay (a) a lump sum of \$,758,385.64 minus any amounts paid pursuant to the Tonkovich Settlement Agreement (b) additional costs and fees, including reasonable attorneys' fees, incurred by Wells Fargo Advisors in enforcing this award, and (c) interest accrued on the amount in "(a)" at the New Jersey Statutory Rate from the date of the default until the date of payment.

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	=\$ 1,575.00
Counterclaim Filing Fee	=\$ 3,400.00

**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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Wells Fargo Advisors, LLC is assessed the following:

Member Surcharge	=\$ 1,900.00
Member Process Fee	=\$ 6,175.00

Postponement Fees

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

December 9-13, 2019, postponement requested by Claimant = \$ 1,400.00

Total Postponement Fees = \$ 1,400.00

The Panel has assessed \$700.00 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$700.00 of the postponement fees to Respondent.

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

Seven (7) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision = \$ 1,400.00

Total Discovery-Related Motion Fees = \$ 1,400.00

The Panel has assessed \$700.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$700.00 of the discovery-related motion fees to Respondent.

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing Conference: January 14, 2020 1 session

Five (5) pre-hearing sessions with the Panel @ \$1,400.00/session = \$ 7,000.00
Pre-hearing Conferences: April 9, 2018 1 session
October 23, 2019 1 session
February 28, 2020 1 session
June 18, 2020 1 session
July 23, 2020 1 session

Decision on the papers: = \$ 300.00

Total Hearing Session Fees = \$ 7,750.00

The Panel has assessed \$3,875.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$3,875.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

James M. Rhodes	-	Public Arbitrator, Presiding Chairperson
Robert J. McDonnell	-	Public Arbitrator
Joseph Rudolph Guarino, Jr.	-	Non-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.

Concurring Arbitrators' Signatures

James M. Rhodes

James M. Rhodes
Public Arbitrator, Presiding Chairperson

01/19/2021

Signature Date

Robert J. McDonnell

Robert J. McDonnell
Public Arbitrator

01/19/2021

Signature Date

Joseph Rudolph Guarino, Jr.

Joseph Rudolph Guarino, Jr.
Non-Public Arbitrator

01/19/2021

Signature Date

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January 21, 2021

Date of Service (For FINRA Dispute Resolution Services use only)