

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Sergio Praslin

Case Number: 18-03524

vs.

Respondents
Wells Fargo Advisors Financial Network
Wells Fargo Investments, LLC
Wendy Lee Behner

Hearing Site: Los Angeles, California

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: Customer vs. Members and Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Sergio Praslin (“Claimant”): Marc I. Zussman, Esq., Law Offices of Marc I. Zussman, Beverly Hills, California.*

For Respondents Wells Fargo Advisors Financial Network (“WFA”), Wells Fargo Investments, LLC (“WFI”), and Wendy Lee Behner (“Behner”): Deirdre Wolff, Esq., Wells Fargo Legal Department, St. Louis, Missouri.

Hereinafter, Behner, WFA and WFI are collectively referred to as “Respondents.”

*FINRA recorded the appearance of Claimant’s counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimant may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant’s counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: October 7, 2018.
Claimant signed the Submission Agreement: October 7, 2018.

Statement of Answer filed by Respondents on or about: December 19, 2018.
WFA signed the Submission Agreement: December 19, 2018.
WFI signed the Submission Agreement: January 8, 2019.

Behner signed the Submission Agreement: December 17, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: fraud; negligent misrepresentation; breach of fiduciary duty; and violation of FINRA Rules 2111, 2120, 2310, and 2310.2. The causes of action relate to the sale of five market linked Certificates of Deposit to Claimant's IRA retirement account.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Compensatory damages against Respondents for an amount according to proof but no less than \$330,801;
2. Disgorgement and restitution of fees, commissions, and other remuneration paid to Respondents according to proof;
3. Other economic, consequential, special and general damages according to proof;
4. Punitive damages in an amount to be determined at the time of trial;
5. Attorneys' fees, expert witness fees, and costs of suit incurred in this matter;
6. Pre-award and post-award interest at the legal rate; and
7. Such other and further relief as the Panel deems just and proper.

In the Statement of Answer, Respondents requested:

1. All claims be denied and dismissed;
2. Claimant takes nothing;
3. Costs expended for defense of this claim; and
4. Expungement of this matter from Behner's Central Registration Depository ("CRD") records.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 10, 2019, Claimant filed a notice of voluntary dismissal with prejudice of all claims against Behner. On January 23, 2020, Claimant filed a notice of voluntary dismissal with prejudice of all remaining claims against WFA and WFI. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On April 16, 2020, Behner filed a Motion for Expungement, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on July 8, 2021, so the parties could present oral argument and evidence on Behner's request for expungement.

Claimant did not participate in the expungement hearing.

The Panel reviewed Behner's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Behner did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Statement of Claim; Statement of Answer; Behner's Motion for Recommendation for Award of Expungement; Behner's exhibits; Behner's BrokerCheck® Report; and Behner's testimony.

The Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 1962815) from registration records maintained by the CRD for Respondent Wendy Lee Behner (CRD Number 2007441) with the understanding that, pursuant to Notice to Members 04-16, Respondent Wendy Lee Behner 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 12805 of the Code of Arbitration Procedure ("Code"), the Panel 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 Panel has made the above Rule 2080 findings based on the following reasons:

Claimant's allegation that Behner sold him a large amount of market linked Certificates of Deposit ("MLCDs") in 2010 that were unsuitable for him and promised that he would receive 100% point to point interest from the opening index level to the closing index level for each MLCD is false and clearly erroneous because:

- a. Claimant had a non-discretionary account with Behner and thus, had to approve, and did approve, every investment in his portfolio. Claimant specifically directed and authorized each transaction made in his account. Claimant received a trade

confirmation after each transaction in his account, as well as monthly and annual account statements from Behner that detailed all activity in the account. Prior to opening the account in 2008, Behner and Claimant discussed his investment objectives, risk tolerance, financial experience, liquid net worth, and goals. This was documented in the new account application.

- b. Behner provided Claimant with written materials for a variety of available MLCs describing each and how interest was to be calculated. This clearly stated that none of the MLCs offered 100% point to point participation. Behner went over the Disclosure Statement and Terms Supplement, explained the features, benefits, and risks, including the fact that Claimant's principal was guaranteed so long as he held the MLCs to maturity, and explained in the baskets, the participation rate, and how the participation rate was calculated. Behner never promised 100% point to point participation where none existed. Only after Behner and Claimant thoroughly reviewed the investment profile and the risks associated with such investment, did Claimant, in 2010, choose to invest in five of the MLCs recommended by Behner. The Disclosure statements were also sent under separate cover from the confirmation statements for the MLCs.

- c. At the time of Claimant's complaint, Behner was no longer handling the account as it had been transferred to another broker. Claimant held his five disputed MLCs to maturity, which occurred prior to his complaint filed in 2018. Claimant made money on three of the five MLCs as he was able to participate in the market without risk of loss of principal and make money with a return believed to be greater than cash equivalent yields for that time. The other two MLCs returned principal without a loss. Claimant earned a 5.4% yield on his total investment over the 5.5 year holding period of the MLCs.

Behner performed her duties as a representative in an ethical and professional manner.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	=\$ 1,425.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as parties, WFA and WFI are each assessed the following:

Member Surcharge	=\$ 1,900.00
Member Process Fee	=\$ 3,750.00

Postponement Fees

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

December 10-12, 2019, postponement requested by all parties = \$ Waived

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

Fees apply when a hearing on the merits is cancelled within three business days before the start of a scheduled hearing session:

December 10-12, 2019, postponement requested by all parties = \$ 1,800.00

Total Last-Minute Cancellation Fees = \$ 1,800.00

The Panel has assessed \$900.00 of the last-minute cancellation fees to Claimant.

The Panel has assessed \$900.00 of the last-minute cancellation fees jointly and severally to Respondents.

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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 2,250.00
Pre-Hearing Conferences: February 25, 2019 1 session
May 19, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: July 8, 2021 1 session

Total Hearing Session Fees = \$ 3,375.00

The Panel has assessed \$562.50 of the hearing session fees to Claimant.

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$2,250.00 of the hearing session fees jointly and severally to WFA and WFI.

ARBITRATION PANEL

Erik R. Siering	-	Public Arbitrator, Presiding Chairperson
Eric Gad Forster	-	Public Arbitrator
Steven H. Gentry	-	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

Erik R. Siering

Erik R. Siering
Public Arbitrator, Presiding Chairperson

07/29/2021

Signature Date

Eric Gad Forster

Eric Gad Forster
Public Arbitrator

07/28/2021

Signature Date

Steven H. Gentry

Steven H. Gentry
Public Arbitrator

07/29/2021

Signature Date

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July 30, 2021

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