

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Kenneth Snodgrass Revocable Trust
Kenneth W. Snodgrass

Case Number: 19-00539

vs.

Respondents

Wells Fargo Clearing Services, LLC
Jeffrey Anthony Rupp

Hearing Site: San Francisco, 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: Customers vs. Member and Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Kenneth Snodgrass Revocable Trust (“Snodgrass Trust”) and Kenneth W. Snodgrass (“Kenneth Snodgrass”): Fran Cole, Esq., Diamond Baker Mitchell, LLP, Grass Valley, California.

Hereinafter, Snodgrass Trust and Kenneth Snodgrass are collectively referred to as “Claimants”.

For Respondents Jeffrey Anthony Rupp (“Jeffrey Rupp”) and Wells Fargo Clearing Services, LLC (“Wells Fargo”): Judy Louie, Esq., Wells Fargo Clearing Services, LLC, Pasadena, California.

Hereinafter, Jeffrey Rupp and Wells Fargo are collectively referred to as “Respondents”.

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

CASE INFORMATION

Statement of Claim filed on or about: February 26, 2019.

Claimants signed the Submission Agreement: February 26, 2019.

Statement of Answer filed by Respondents on or about: May 17, 2019.
Jeffrey Rupp signed the Submission Agreement: May 15, 2019.
Wells Fargo signed the Submission Agreement: May 17, 2019.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; fraud and deceit; negligent misrepresentation; violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10B-5; negligent failure to supervise; violations of California Insurance Code; and elder abuse. The causes of action relate to investment in a variable annuity issued by Lincoln Financial Group (“Annuity”).

In their 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, Claimants requested:

Unspecified Compensatory damages, plus treble damages, prejudgment interest, attorneys’ fees, experts’ fees, related legal costs, and punitive damages, in an amount determined by the Panel; or

Rescission of the investment in the Annuity, along with prejudgment interest, treble damages, attorney’s fees, experts’ fees, costs, punitive damages, and such other relief as the Panel deems appropriate.

In the Statement of Answer, Respondents requested:

1. Dismissal of the claim in its entirety and with prejudice;
2. Expungement of Occurrence Number 1842565 from Jeffrey Rupp’s Central Registration Depository (“CRD”) records;
3. Costs and expenses of this arbitration; and
4. Such other and further relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 23, 2020, Claimants filed a notice of voluntary dismissal of all claims asserted against Jeffrey Rupp with prejudice. On November 10, 2020, Claimants filed a notice of voluntary dismissal of all claims asserted against Wells Fargo with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On December 10, 2020, Wells Fargo filed a motion for expungement on behalf of Jeffrey Rupp, requesting that the above-captioned arbitration (Occurrence Number 1842565) be expunged from his CRD records, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on March 11, 2021, so the parties could present oral argument and evidence on Jeffrey Rupp's request for expungement.

Claimants participated in the expungement hearing and opposed the request for expungement.

The Panel reviewed Jeffrey Rupp'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 Jeffrey Rupp did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: all exhibits, including Claimants' exhibits and Wells Fargo's exhibits; Jeffrey Rupp's BrokerCheck® Report; the settlement agreement; Kenneth Snodgrass' testimony; and Jeffrey Rupp's testimony.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, 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 1842565) from registration records maintained by the CRD for Respondent Jeffrey Anthony Rupp (CRD Number 1107506) with the understanding that, pursuant to Notice to Members 04-16, Respondent Jeffrey Anthony Rupp 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 finding of fact:

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 finding based on the following reasons:

After receiving both documentary evidence and hearing the oral testimony of Jeffrey Rupp and Kenneth Snodgrass, the Panel found that the claim, allegation, or information is false. The underlying complaint alleges various violations including, 1) Breach of Fiduciary Duty, 2) Fraud and Deceit, 3) Negligent Misrepresentation, 4) Violation of Section 10(B) of the Securities and Exchange Act of 1934 and Rule 10B-5, 5) Negligent Failure to Supervise, 6) Violations of California Insurance Code, and 7) Elder Abuse. The core of Claimants'

allegations is that the Annuity was unsuitable and illiquid and that the annualized investment advisory fees were misrepresented.

Based on the documentary evidence presented and testimony provided, the Panel found that Jeffrey Rupp performed a detailed and thorough review of Kenneth Snodgrass' financial situation, his goals, and risk tolerance and performed a detailed analysis of the suitability of the Annuity, required by Wells Fargo Compliance Department which required supervisory review and approval. That review confirmed the suitability of the Annuity for Kenneth Snodgrass at his age. The documentation demonstrated that the underlying facts relating to the Annuity and all the investment advisory and management fees were fully disclosed and that Kenneth Snodgrass signed numerous documentations acknowledging the details of the Annuity and all associated fees as well as any investment advisory and management fees. The evidence also demonstrated that the Annuity was profitable and had a lifetime guarantee rider that provided Kenneth Snodgrass with important benefits. The Panel found Jeffrey Rupp to be a credible witness and he presented detailed notes that were created contemporaneously supporting his handling of Kenneth Snodgrass' account. Kenneth Snodgrass testified that he had no problem with having a 7-year surrender period, because he expected to keep the investment. He did have difficulty remembering a lot of important details, and some of his testimony was contradicted by documentary evidence as well his testimony that he replaced the Annuity in question with another new annuity with a different financial advisor, replacing the Annuity which no longer had a surrender penalty with a new annuity that had a new 10-year surrender penalty schedule and no lifetime guarantee. The evidence thus was clear that Kenneth Snodgrass' claims that he was sold an unsuitable investment and that the investment advisory fees were misrepresented were false.

The Panel also reviewed the settlement agreement and found that Jeffrey Rupp did not participate or contribute to the settlement and the settlement agreement did not contain an agreement for Kenneth Snodgrass to support the expungement. Kenneth Snodgrass appeared at the expungement hearing, testified and contested the expungement. The Panel also reviewed the most recent BrokerCheck Report and found that Jeffrey Rupp had only one complaint, which was the instant complaint on his CRD BrokerCheck Report after nearly 40 years in the business, which the Panel also considered in its deliberation.

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

**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, Wells Fargo is assessed the following:

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

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 the Panel @ \$1,125.00/session	
Pre-Hearing Conference: August 9, 2019	1 session
	= \$ 1,125.00

Two (2) hearing sessions on expungement request @ \$1,125.00/session	
Hearing: March 11, 2021	2 sessions
	= \$ 2,250.00

Total Hearing Session Fees	= \$ 3,375.00
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The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Claimants.

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 to Jeffrey Rupp.

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

ARBITRATION PANEL

Arocles Aguilar	-	Public Arbitrator, Presiding Chairperson
Nancy Hutt	-	Public Arbitrator
Gary H. Kahn	-	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

Arocles Aguilar

Arocles Aguilar
Public Arbitrator, Presiding Chairperson

04/01/2021

Signature Date

Nancy Hutt

Nancy Hutt
Public Arbitrator

04/01/2021

Signature Date

Gary H. Kahn

Gary H. Kahn
Public Arbitrator

03/31/2021

Signature Date

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April 05, 2021

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