

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant

Francesco D. Umbriaco

Case Number: 19-00994

vs.

Respondents

Wells Fargo Advisors Financial Network, LLC  
Allen Scott Wagner

Hearing Site: Philadelphia, Pennsylvania

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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. Member and Associated Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Francesco D. Umbriaco: Christopher B. Jones, Esq., Christopher B. Jones, P.C., Scranton, Pennsylvania\*.

For Respondents Wells Fargo Advisors Financial Network, LLC (“Wells Fargo”) and Allen Scott Wagner (“Wagner”): Demian J. Betz, Esq., Wells Fargo & Co, Law Department, Charlotte, North Carolina.

\*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: April 11, 2019.

Amended Statement of Claim filed on or about: March 20, 2020.

Francesco D. Umbriaco signed the Submission Agreement: April 11, 2019.

Joint Statement of Answer filed by Respondents on or about: August 26, 2019.  
Wells Fargo signed the Submission Agreement: August 24, 2019.  
Allen Scott Wagner signed the Submission Agreement: August 24, 2019.

### **CASE SUMMARY**

In the Statement of Claim and Amended Statement of Claim, Claimant asserted the following causes of action: unsuitability; fraud; misrepresentation; unauthorized trading; violation of the Pennsylvania Securities Act; violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law; and failure to supervise. The causes of action relate to various securities.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$50,000.00; attorneys' fees; punitive damages; and costs.

In the Amended Statement of Claim, Claimant requested compensatory damages in excess of \$100,000.00; attorneys' fees; punitive damages; and costs.

In the Statement of Answer, Respondents requested that the Panel deny all claims and grant such other and further relief as is just.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On February 15, 2021, Respondents filed a Motion to Dismiss pursuant to Rules 12504 and 12212 of the Code of Arbitration Procedure ("Code"). In the motion, Respondents also requested expungement of this matter from Respondent Wagner's CRD records. On June 8, 2021, Claimant filed a response opposing the Motion to Dismiss. On June 9, 2021, the Panel heard oral arguments on the Motion to Dismiss. By Order dated June 10, 2021, the Panel denied Respondents' Motion to Dismiss without prejudice and stated that Respondents may resubmit a Motion to Dismiss following the completion of Claimant's case-in-chief.

On September 23, 2021, Claimant filed a notice of settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Amended Statement of Claim.

On October 11, 2021, Respondents filed a Motion for Expungement of Respondent Wagner's CRD records to which no response was filed.

The Panel conducted a recorded hearing by videoconference on October 13, 2021, so the parties could present oral argument and evidence on Respondent Wagner's request for expungement.

Claimant and counsel did not participate in the expungement hearing and did not oppose the request for expungement.

The Panel reviewed Respondent Wagner'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 Respondent Wagner did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: pleadings, exhibits, Respondent Wagner's testimony, Respondent Wagner's BrokerCheck® Report, and the settlement agreement.

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

### **AWARD**

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

1. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2038408) from registration records maintained by the CRD for Respondent Allen Scott Wagner (CRD Number 1234103) with the understanding that, pursuant to Notice to Members 04-16, Respondent Allen Scott Wagner 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; and the claim, allegation, or information is false.

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

Claimant and his counsel were properly notified in advance of the hearing about this expungement matter. Claimant did not make an appearance at the hearing or provide a written statement for the Panel's consideration. The Statement of Claim contained several allegations. First, Claimant alleged that he entrusted in excess of \$11,000,000 with Wagner and "lost the bulk of his life savings". No facts were asserted in the Statement of Claim nor produced by Claimant in discovery to support these allegations. Respondent Wagner produced a Profit and Loss statement which demonstrated that the accounts actually made a substantial profit. The Panel finds the claim is false.

Second, Claimant alleged that Respondent Wagner "through fraud and misrepresentation" improperly invested Claimant's funds. The Panel finds the claim of "fraud and misrepresentation" is unsupported by any evidence and is false.

Third, Claimant alleged that Respondent Wagner wrongfully liquidated certain long-standing bond funds without Claimant's authorization and/or consent. Claimant produced no evidence to support this claim. Respondent Wagner produced evidence that the claim was untrue. The Panel finds the claim to be false.

Fourth, Claimant alleged that Respondent Wagner recommended and purchased certain investments which were unsuitable for him which he neither authorized nor consented to. The Panel finds that Claimant produced no evidence to support these allegations and Respondent Wagner produced evidence that the investments were suitable and purchased with Claimant's knowledge and consent. The Panel finds the claim to be false.

The Panel finds that the testimony of Respondent Wagner was credible. Specifically, Respondent Wagner was forthright, direct and answered all of the questions posed by his counsel and the Panel. In the absence of any evidence to the contrary, the Panel finds that all of the allegations are either false or erroneous and recommends expungement.

### **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 = \$ 1,425.00

*\*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 person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Wells Fargo is assessed the following:

Member Surcharge = \$ 1,700.00  
Member Process Fee = \$ 3,250.00

**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:

Three (3) pre-hearing sessions with a single Arbitrator @ \$450.00/session	= \$	1,350.00
Pre-Hearing Conferences: January 28, 2020	1 session	
July 29, 2021	1 session	
August 24, 2021	1 session	
Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	2,250.00
Pre-Hearing Conferences: December 14, 2020	1 session	
June 9, 2021	1 session	
Two (2) hearing sessions on expungement request @ \$1,125.00/session	= \$	2,250.00
Hearings: October 13, 2021	2 sessions	
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Total Hearing Session Fees	= \$	5,850.00

The Panel has assessed \$2,362.50 of the hearing session fees to Claimant.  
The Panel has assessed \$3,487.50 of the hearing session fees, including fees for the expungement hearing, jointly and severally to Respondent Wells Fargo and Wagner.

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

**ARBITRATION PANEL**

Jim Geiger	-	Public Arbitrator, Presiding Chairperson
Thomas R Nathan	-	Public Arbitrator
Jason L Pearlman	-	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**

***Jim Geiger***

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Jim Geiger  
Public Arbitrator, Presiding Chairperson

**10/26/2021**

\_\_\_\_\_  
Signature Date

***Thomas R Nathan***

\_\_\_\_\_  
Thomas R Nathan  
Public Arbitrator

**10/27/2021**

\_\_\_\_\_  
Signature Date

***Jason L Pearlman***

\_\_\_\_\_  
Jason L Pearlman  
Public Arbitrator

**10/27/2021**

\_\_\_\_\_  
Signature Date

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October 27, 2021

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