

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Timothy James Ratty

Case Number: 19-01162

vs.

Respondent
Wells Fargo Clearing Services, LLC

Hearing Site: Boca Raton, Florida

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 Person vs. Member

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Timothy James Ratty: Curtis Carlson, Esq., Carlson & Associates, P.A., Miami, Florida.

For Respondent Wells Fargo Clearing Services, LLC: Stephen M. Cox, Esq., Robinson, Bradshaw & Hinson, P.A., Charlotte, North Carolina.

CASE INFORMATION

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

Timothy James Ratty signed the Submission Agreement: April 26, 2019.

Statement of Answer filed by Respondent on or about: July 15, 2019.

Wells Fargo Clearing Services, LLC signed the Submission Agreement: July 15, 2019.

Amended Statement of Claim filed on or about: November 29, 2021.

CASE SUMMARY

In the Statement of Claim, as amended, Claimant asserted the following causes of action: breach of fiduciary duty; negligence; breach of contract; breach of duty of good faith and fair dealing; wrongful termination; violation of FINRA rule 2110; and Central Registration Depository (“CRD”) Form U5 defamation. The causes of action relate to Claimant’s termination of employment with Respondent.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: compensatory damages in an amount to be determined in the form of (1) loss of compensation, (2) general damages, and (3) special damages; punitive damages in an amount to be determined; interest on the compensatory damages; reinstatement of his restricted share rights; costs and forum fees; expungement of Claimant's CRD Form U5; and such other and further relief as the Panel determined appropriate in law and equity.

In the Statement of Answer, Respondent requested: denial of Claimant's Statement of Claim in its entirety, with prejudice; that the Panel assess all costs and fees of the arbitration against Claimant; and that the Panel award Respondent such other and further relief to which it may be justly entitled.

In the Amended Statement of Claim, Claimant requested that the termination language in his CRD Form U5 be expunged and that it be changed to "Voluntary."

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 12, 2021, Claimant filed a notice of settlement as to all relief requested, except for Claimant's request for expungement of his CRD Form U5. Therefore, the Panel made no determination with respect to any of the other relief requests contained in the Statement of Claim.

On November 22, 2021, Claimant and Respondent filed a Joint Motion to Allow Filing of Amended Statement of Claim, in which they advised that they had settled the monetary portion of the Statement of Claim, and that the only relief request pending was Claimant's request for expungement of his CRD Form U5. During the evidentiary hearing on November 29, 2021, the panel heard oral argument and granted the Motion to Amend.

The Panel has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

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

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:

1. Claimant's request for expungement is denied. This case does not involve a customer complaint. It involves a CRD Form U5 entry regarding a termination/resignation. The

facts were largely, if not entirely, undisputed. Claimant took a management position with Respondent. The position was "at will." He received some negative feedback from his supervisor. The area under his supervision was subject to some challenges put in place prior to his arrival. A departing manager communicated with financial advisors to advise them that Claimant would be changing everything. As it turned out, there were significant changes that began on the day Claimant arrived. However, those were due to policies instituted by upper management in response to a Department of Labor ruling, not to any exercise of discretion by Claimant. Nevertheless, it was Claimant's duty to be the messenger of changes that, as he stated, he would have resented if he were in the shoes of the financial advisors.

While the area under Claimant's supervision eventually showed growth and its ranking within the company rose, there were challenges. There were also performance reviews which were critical of some aspects of Claimant's management style. On two occasions, a supervisor suggested to Claimant that he should resign, as things would not "end well" for him if he did not. Claimant did not resign and ultimately was summoned to a meeting at which he was told that he was being terminated and he needed to surrender his identification badge and keys, which he did. Shortly thereafter, Claimant inquired as to whether he could resign instead. There was no discussion of the exact language to be used on his CRD Form U5 if this was allowed. His supervisor told Claimant that he would get back to him after consulting Respondent's Human Resources and/or Legal Departments. Roughly an hour later, Claimant was told he would be allowed to resign, and he immediately did so. Thirty (30) days later, on the last day possible, Respondent made its entry on Claimant's CRD Form U5, noting he had been "Permitted to Resign" as he "[d]id not meet business performance expectations -- not compliance related."

Claimant testified that he expected his CRD Form U5 would read "voluntary resignation." It was undisputed that "permitted to resign" would be perceived very negatively by potential employers in the industry. And, indeed, Claimant testified to multiple attempts to secure similar employment, including in places where he knew someone who had expressed a desire to work with him. Claimant was diligent in attempting to renew his career and testified that he submitted over 100 applications before ultimately securing a new position similar to the last one he held with Respondent.

While it may be unfortunate that prospective employers would give such great weight to a CRD Form U5 entry that simply states that a candidate had been "permitted to withdraw," this is, indeed, exactly what happened. As the entry, which also specified that it was "not compliance related," was truthful and accurate, it was not defamatory, and therefore this Panel cannot order expungement. It should be noted that this in no way represents a conclusion that it was "correct" or wise to terminate Claimant. This Award reflects only that the CRD Form U5 language was accurate in describing what happened.

2. Any and all claims for relief not specifically addressed herein are denied.

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, Respondent 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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), 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 = \$ 1,125.00
Pre-Hearing Conference: August 27, 2019 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: November 29, 2021 1 session

Total Hearing Session Fees = \$ 2,250.00

The Panel has assessed \$1,687.50 of the hearing session fees to Claimant

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

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

ARBITRATION PANEL

Will Murphy	-	Public Arbitrator, Presiding Chairperson
Lawrence S. Silver	-	Public Arbitrator
Anthony Oreste Arcuni	-	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

Will Murphy

Will Murphy
Public Arbitrator, Presiding Chairperson

12/07/2021

Signature Date

Lawrence S. Silver

Lawrence S. Silver
Public Arbitrator

12/07/2021

Signature Date

Anthony Oreste Arcuni

Anthony Oreste Arcuni
Non-Public Arbitrator

12/07/2021

Signature Date

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December 08, 2021

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