

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

The Estate of Anna Walson
Linda A. Cassidy, as executor of the Estate of
Anna Walson

Case Number: 19-01333

vs.

Respondents

Wells Fargo Advisors Financial Network, LLC
Alexander Agostino Aiello
Marc A. Barretta

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: Customers vs. Member and Associated Persons

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants the Estate of Anna Walson (“aka” Anna Wolosonovich) and Linda A. Cassidy, as executor of the Estate of Anna Walson: Samuel M. Braverman, Esq., and Michael Giordano, Esq., Fasulo, Braverman & DiMaggio, LLP, New York, New York.

For Respondents Wells Fargo Advisors Financial Network, LLC and Alexander Agostino Aiello: Michael Naccarato, Esq., Wells Fargo Legal Department, St. Louis, Missouri.

For Respondent Marc A. Barretta: Charles M. O'Rourke, Esq., Law Offices of Charles M. O'Rourke, Esq., Woodbury, New York.

CASE INFORMATION

Statement of Claim filed on or about: May 13, 2019.

The Estate of Anna Walson (“aka” Anna Wolosonovich) signed the Submission Agreement: May 6, 2019.

Linda A. Cassidy, as executor of the Estate of Anna Walson signed the Submission Agreement: May 6, 2019.

Joint Statement of Answer filed by Respondents Wells Fargo Advisors Financial Network, LLC and Alexander Agostino Aiello on or about: August 13, 2019.

Wells Fargo Advisors Financial Network, LLC signed the Submission Agreement: August 13, 2019.

Alexander Agostino Aiello signed the Submission Agreement: July 30, 2019.

Statement of Answer filed by Respondent Marc A. Barretta on or about: August 13, 2019.

Marc A. Barretta signed the Submission Agreement: August 3, 2019.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: excessive trading, unauthorized trading, breach of contract, breach of fiduciary duty, common law fraud, negligent supervision, and conversion. The causes of action relate to unspecified securities.

Unless specifically admitted in the Joint Statement of Answer, Respondents Wells Fargo Advisors Financial Network, LLC and Alexander Agostino Aiello denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in the Statement of Answer, Respondent Marc A. Barretta 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, treble, and punitive damages against Respondents, jointly and severally; pre-judgment interest; attorneys' fees and costs; filing and forum fees; and such other and further relief that the Panel deems just and proper.

In the Joint Statement of Answer, Respondents Wells Fargo Advisors Financial Network, LLC and Alexander Agostino Aiello requested that the Statement of Claim be dismissed in its entirety.

In the Statement of Answer, Respondent Marc A. Barretta requested that the Statement of Claim be dismissed in its entirety; expungement of all references to the above-captioned arbitration from his registration records maintained by the Central Registration Depository ("CRD"); and attorneys' fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 5, 2021, Respondent Alexander Agostino Aiello (“Aiello”) filed a Motion to Dismiss pursuant to Rule 12504 of the Code of Arbitration Procedure (“Code”) and for Expungement. On May 10, 2021, Claimant filed a response opposing the Motion to Dismiss and for Expungement. On May 10, 2021, the Panel heard oral arguments on the Motion to Dismiss and for Expungement. On May 14, 2021, the Panel granted Aiello’s Motion to Dismiss on the grounds that he was not associated with the accounts, securities, or conduct at issue. The Panel reserved decision on Aiello’s Motion for Expungement.

After the conclusion of Claimants’ case-in-chief, Respondents Wells Fargo Advisors Financial Network, LLC (“Wells Fargo”) and Marc A. Barretta (“Barretta”) made a Motion to Dismiss the Statement of Claim based upon Claimants’ failure to establish any claim against either Respondent. Claimants opposed the Motion and contended that they had established various causes of action against the Respondents, including that of excessive or unauthorized trading, breach of contract or fraud, and negligent supervision.

As to Respondent Barretta, the Panel granted the Motion to Dismiss for the reasons stated on the record. Based upon the arguments of counsel and the testimony heard at the hearing on Claimants’ case, as well as the evidence introduced therein, it was apparent to the Panel that during the period from January 2013 through April 2013 in which Respondent Barretta had any connection with the account of Anna Walson, whose Estate is the Claimant herein, the account was maintained as a self-directed one wherein the vast majority of trades were unsolicited ones made by Anna Walson’s brother. The Panel found that Anna Walson’s brother was acting under a valid Power of Attorney which the Claimants had executed in his favor; that Respondent Barretta had no discretionary control over the account; and that the account was a fee-based account and not a commission based account. From the above, the Panel found that there was no proof establishing any claim against Respondent Barretta for unauthorized trading, excessive trading, or for churning as the trading was conducted by Anna Walson’s brother; that Respondent Barretta had no control over the account; and that Respondent Barretta did not receive any commissions for these self-directed trades as the account was fee-based. From what had been presented, the Panel also found that there was no evidence of any breach of contract or fraud for this non-discretionary account. At its inception, Anna Walson had executed documents in which she unequivocally agreed to the self-directed account, and, among other conditions, she agreed that the Respondent Wells Fargo and its employees would not be providing investment advice. There was no evidence presented which would support any theory other than that Anna Walson and her brother were competent to handle their affairs.

As to Respondent Wells Fargo, based upon the testimony and evidence presented up to that time, the Panel denied the Motion to Dismiss for the reason stated on the record.

The Panel reviewed Respondents Aiello’s and Barretta’s BrokerCheck® Reports. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the testimony of all witnesses, including expert testimony; all documents admitted into evidence, specifically account statements which clearly indicated that the accounts in question were non-discretionary, self-directed ones; and the testimony clearly indicating that both Anna Walson and her brother, acting under a Power of Attorney, were clearly competent individuals who had determined goals.

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. Claimants' claims against Aiello and Barretta are dismissed.
2. Claimants' claims against Wells Fargo are denied in their entirety.
3. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2037982) from registration records maintained by the CRD for Respondent Alexander Agostino Aiello (CRD Number 5684639) with the understanding that, pursuant to Notice to Members 04-16, Respondent Alexander Agostino Aiello 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

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

The Panel finds that Aiello did not begin his employment with Respondent Wells Fargo until October 2015, well after any of the allegations in the Statement of Claim occurred. From the testimony, it was apparent to the Panel that Respondent Aiello never had any contact with Respondent Barretta as alleged in the Statement of Claim, nor did he advise Anna Walson, whose Estate is the Claimant herein, on her accounts. In fact, the account statements presented at the hearing and introduced into evidence do not have Respondent Aiello's name on them showing that he was the Registered Representative on those accounts. The Panel finds, pursuant to Rule 2080 (b)(1) (A) (B) and (C), that the claims against Aiello were clearly erroneous; that Aiello could not be involved in any alleged investment sales practice violation or any other claim made by Claimant; and, as well, that the claim against Respondent Aiello was false. Expungement of Aiello's record is appropriate.

4. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2037610) from registration records maintained by the CRD for Respondent Marc A. Barretta (CRD Number 2775578) with the understanding that, pursuant to Notice to Members 04-16, Respondent Marc A. Barretta 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

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

The evidence was clear that Anna Walson exercised full control over her account herself or through her brother during the period that Berretta was her Representative. The Panel found that the vast majority of the trades were done by Anna Walson through her brother whom she had provided with a valid Power of Attorney. Berretta could not have been involved with any unauthorized or excessive trades or any other sale practice violation during the few months he was Anna Walson's Representative since the trades were unsolicited ones. Moreover, there was testimony which revealed that after the account had been transferred to WellsTrade, Anna Walson's brother apparently realized his lack of financial acumen and returned specifically to Berretta to ask if he would return as Anna Walson's representative. The Panel finds, pursuant to Rule 2080 (b)(1) (A) (B) and (C), that the claim was clearly erroneous; that Respondent was not involved in any alleged investment sales practice violation or any other claim made by Claimant and, as well, that the claim against him was false. Expungement of Respondent Berretta's record is appropriate.

5. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, 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
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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 that employed the associated person at the time of the events giving rise to the

dispute. Accordingly, as a party, Respondent Wells Fargo Advisors Financial Network, LLC is 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:

March 24-26, 2020, postponement requested by Claimants	= \$	1,125.00
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Total Postponement Fees	= \$	1,125.00
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The Panel has assessed \$562.50 of the postponement fees jointly and severally to Claimants.

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

Contested Motion for Issuance of Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) decision on a contested motion for the issuance of a subpoena with the Panel @ \$600.00	= \$	600.00
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Total Contested Motion for Issuance of Subpoena Fees	= \$	600.00
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The Panel has assessed \$480.00 of the contested motion for issuance of subpoena fees jointly and severally to Claimants.

The Panel has assessed \$120.00 of the contested motion for issuance of subpoena 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:

Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	3,375.00
Pre-Hearing Conferences: October 15, 2019	1 session	
September 22, 2020	1 session	
May 10, 2021	1 session	

Five (5) hearing sessions @ \$1,125.00/session	= \$	5,625.00
Hearings: June 8, 2021	2 sessions	
June 9, 2021	2 sessions	
June 10, 2021	1 session	

Total Hearing Session Fees	= \$	9,000.00
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The Panel has assessed \$3,975.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$900.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$1,125.00 of the hearing session fees jointly and severally to Respondents Wells Fargo Advisors Financial Network, LLC and Marc A. Barretta.

The Panel has assessed \$1,312.50 of the hearing session fees to Respondent Wells Fargo Advisors Financial Network, LLC.

The Panel has assessed \$187.50 of the hearing session fees to Respondent Alexander Agostino Aiello.

The Panel has assessed \$375.00 of the hearing session fees to Respondent Marc A. Barretta.

The Panel waived the \$1,125.00 fees for the September 22, 2020 pre-hearing conference.

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

ARBITRATION PANEL

Paul Allan Massaro	-	Public Arbitrator, Presiding Chairperson
Fred S. Pieroni	-	Public Arbitrator
John A. Scudiero	-	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

Paul Allan Massaro

Paul Allan Massaro
Public Arbitrator, Presiding Chairperson

06/20/2021

Signature Date

Fred S. Pieroni

Fred S. Pieroni
Public Arbitrator

06/17/2021

Signature Date

John A. Scudiero

John A. Scudiero
Public Arbitrator

06/21/2021

Signature Date

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.

June 24, 2021

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