

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

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In the Matter of the Arbitration Between:

Claimants

Gail Higashi  
Kevin Higashi

Case Number: 19-01766

vs.

Respondents

Wells Fargo Clearing Services, LLC  
Ruth Lenore Transue

Hearing Site: Phoenix, Arizona

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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: Customers vs. Member and Associated Person

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Gail Higashi and Kevin Higashi (collectively “Claimants”): Lisa Anne Smith, Esq., DeConcini McDonald Yetwin & Lacy, P.C., Tucson, Arizona.

For Respondents Wells Fargo Clearing Services, LLC (“Wells Fargo”) and Ruth Lenore Transue (“Transue”): Matthew P. Fischer, Esq., Snell & Wilmer, LLP, Phoenix, Arizona.

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

**CASE INFORMATION**

Statement of Claim filed on or about: June 18, 2019.

Gail Higashi signed the Submission Agreement: June 19, 2019.

Kevin Higashi signed the Submission Agreement: June 19, 2019.

Statement of Answer filed by Respondents on or about: August 15, 2019.

Wells Fargo Clearing Services, LLC signed the Submission Agreement: September 9, 2019.

Ruth Lenore Transue signed the Submission Agreement: August 15, 2019.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: failure to supervise; negligence; and suitability. The causes of action relate to Claimants' Individual Retirement Accounts held at Wells Fargo.

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, Claimants requested:

1. Compensatory damages in an amount not less than \$200,961.00;
2. Exemplary damages in an amount to be determined by the Panel;
3. Attorney's fees and costs, including expert fees;
4. Interest at the legal rate from the date of loss; and
5. Such other and further relief as is just and proper.

In the Statement of Answer, Respondents requested:

1. Claimants' claims be dismissed;
2. Costs; and
3. Expungement of all reference to this arbitration from Transue's Central Registration Depository ("CRD") registration records.

At the hearing, Claimants requested:

1. Compensatory damages in the amount of \$280,000.00;
2. Compensatory damages in the amount of \$232,450.00; or
3. Compensatory damages in the amount of \$114,000.00.

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

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

On April 16, 2020, Respondents filed a Motion to Dismiss pursuant to FINRA Rule 12504(a)(6)(B) of the Code of Arbitration Procedure ("Code"). On June 12, 2020, Claimants filed their opposition to the motion. On June 19, 2020, Respondents filed their reply in support of the motion. On July 8, 2020, the Panel heard oral arguments from the parties. On the same day, the Panel denied the Motion to Dismiss.

During the recorded evidentiary hearing, after the conclusion of Claimants' case-in-chief, Respondents moved for a directed verdict to dismiss Claimants' claims based on statute of limitations. Claimants objected. The Panel heard oral arguments from the parties and deferred the ruling pending the submission of further briefing and Respondents' case-in-chief. After consideration of the parties' submission of further briefs and case authority, the Panel hereby denies the directed verdict.

Also during the recorded evidentiary hearing, Transue presented oral argument and evidence on her request for expungement. Claimants opposed the request for expungement. The Panel

reviewed Transue's BrokerCheck® Report.

In recommending expungement, the Panel relied upon the following documentary or other evidence: pleadings; exhibits; Claimants' testimony; and Respondents' 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, 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 are denied in their entirety.
2. Respondents are jointly and severally liable for and shall pay to Claimants \$300.00 to reimburse Claimants for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
3. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2039633) from registration records maintained by the CRD for Respondent Ruth Lenore Transue (CRD Number 1209797) with the understanding that, pursuant to Notice to Members 04-16, Respondent Ruth Lenore Transue 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, the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

The Panel concludes that the claim, allegation, or information is factually impossible or clearly erroneous. The testimony and exhibits established that Transue neither designed nor implemented the portfolio alleged by Claimants to be unsuitable. Rather, the record established that the portfolio was designed, implemented, and traded exclusively by a financial advisor from Wells Fargo Private Bank, an entity which is separate from Wells Fargo, and not by Transue who was employed at Wells Fargo (also known as Wells Fargo Advisors).

4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees, are denied.

## 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

*\*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 = \$ 1,700.00

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 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 16, 2019 1 session

July 8, 2020 1 session

March 3, 2021 1 session

Seven (7) hearing sessions @ \$1,125.00/session = \$ 7,875.00

Hearings: December 6, 2021 2 sessions

December 7, 2021 2 sessions

December 8, 2021 2 sessions

December 9, 2021 1 session

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Total Hearing Session Fees = \$ 11,250.00

The Panel has assessed \$1,125.00 of the hearing session fees jointly and severally to Claimants.

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

The Panel has assessed \$7,875.00 of the hearing session fees to Wells Fargo.

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

**ARBITRATION PANEL**

Jay Lawrence Witkin	-	Public Arbitrator, Presiding Chairperson
David S. Eisenberg	-	Public Arbitrator
Bryan Thomas Di Lella	-	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**

***Jay Lawrence Witkin***

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Jay Lawrence Witkin  
Public Arbitrator, Presiding Chairperson

**12/21/2021**

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Signature Date

***David S. Eisenberg***

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David S. Eisenberg  
Public Arbitrator

**12/21/2021**

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Signature Date

***Bryan Thomas Di Lella***

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Bryan Thomas Di Lella  
Public Arbitrator

**12/21/2021**

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Signature Date

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December 21, 2021

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