

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Marcia P. Botsford, Thomas S. Botsford as POA

Case Number: 19-01906

vs.

Respondent

Wells Fargo Clearing Services, LLC

Hearing Site: Tampa, 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: Customer vs. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Marcia Botsford (“MB”), Thomas S. Botsford (“TB”) as POA (hereinafter referred to as “Claimant”): Bradford M. Gucciardo, Esq., Gucciardo Law Group, P.A., Lakewood Ranch, Florida.*

For Respondent Wells Fargo Clearing Services, LLC (“Respondent”): Patricia E. Cowart, Esq., Wells Fargo Legal Department, Fort Lauderdale, Florida.

*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: July 10, 2019.

Claimant signed the Submission Agreement: July 9, 2019.

Statement of Answer filed on or about: December 7, 2019.

Respondent signed the Submission Agreement: July 16, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: common law fraud, breach of fiduciary duty, negligence (gross negligence), and breach of contract. The causes of action related to Claimant's allegation that a Lincoln Financial Group life insurance policy was replaced with an unsuitable John Hancock life insurance policy with significant annual premiums, solely to generate a commission.

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; punitive damages of three times the amount of compensatory damages awarded; pre-award and post-award interest, at the legal rate; all costs and fees incurred in this action, including all forum fees, expert witness related fees, and attorneys' fees; and such further relief as the Panel deems just and appropriate.

In the Statement of Answer, Respondent requested an award dismissing the Statement of Claim in its entirety and awarding all costs against Claimant.

Respondent filed a request for expungement, on behalf of Unnamed Party Kevin Wolf, of all references to this matter from Central Registration Depository ("CRD") registration records. Please see the Other Issues Considered and Decided section of this Award for more information.

OTHER ISSUES CONSIDERED AND DECIDED

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

On June 15, 2021, Claimant filed a notice of settlement and withdrawal of all claims with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

Also, on June 15, 2021, Respondent filed a notice of intent to seek expungement and requested that the file remain open in order to pursue the expungement request.

On July 1, 2021, Respondent filed a Petition for Expungement on behalf of Unnamed Party Kevin Wolf ("Wolf"). On August 27, 2021, Claimant filed correspondence stating that there was no objection to Wolf's expungement request.

The Panel conducted a recorded hearing by videoconference on September 17, 2021, so the parties could present oral argument and evidence on the request for expungement.

Neither Claimant nor Claimant's counsel participated in the expungement hearing.

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

In recommending expungement, the Panel relied upon the following documentary or other evidence: Petition for Expungement, Statement of Claim, Statement of Answer, Settlement Agreement and Release, Wolf's BrokerCheck® Report, Respondent's exhibits, and Wolf's 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. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2039348) from registration records maintained by the CRD for Unnamed Party Kevin Bruce Wolf (CRD Number 1067376) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Kevin Bruce Wolf 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:

MB and JB were Wolf's clients since the 1980s. They owned several insurance policies and annuities, went to financial seminars, and were good businesspeople. MB and JB purchased a Lincoln Financial insurance policy in 1999. In 2008, MB asked Wolf to reassess their insurance. Upon review, Wolf determined that a John Hancock policy would offer more in death benefits for the same annual premium.

The actual owners of the initial (and subsequent) policy were MB and JB's children, including TB, an insurance executive. Wolf dealt with MB and JB and all the children in the run-up to exchanging policies, providing them with sufficient information to decide if they approved the 1035 Exchange. During the 1035 Exchange process, all the owners signed the Informed Decision and Insurance Replacement Questionnaire. The former provided justification for the 1035 Exchange.

Based on the evidence, the purchase of the John Hancock policy was suitable and met MB and JB's estate planning needs. Wolf's actions in assisting the 1035 Exchange were reasonable, professional, and, importantly, met their goals.

Following the purchase of the John Hancock policy, Wolf did not receive any correspondence or statements from the insurance carrier, as was John Hancock's standard procedure. All bills, statements, and correspondence were sent directly to the policy owners. Wolf was not directly involved in paying annual premiums, although occasionally he was asked to liquidate funds from other accounts to facilitate MB, JB, and their children paying the premium directly to John Hancock.

Generally, the policy owners were not paying annual premiums but were, instead, allowing the insurance company to pay premiums from the policy's cash value. Wolf did not learn this until the policy owners advised him that the policy's premium protection rider had lapsed for lack of the necessary payments to keep it active. The lapse resulted in a high cost to continue the same benefits, per the policy's terms.

As a strict policy of his employer, Wolf was disallowed from spending client funds for any purpose, unless specifically authorized by the client. None of the policy owners ever asked Wolf to pay premiums, and there did not exist any kind of agreement or duty to do so. Wolf never made a payment from any client account without explicit instructions.

The John Hancock policy was suitable and approved by all interested parties. Wolf acted appropriately in recommending it. He did not receive bills or statements from John Hancock, was not told premiums were paid from internal cash value funds, was never asked to pay the premiums, and had no duty to pay the premiums. Further, Wolf was not alerted that the policy rider was going to lapse and had no duty to continually monitor the policy owners' payments.

2. 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, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

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|--------------------------|---------------|
| 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:

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|--------------------|------|----------|
| 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:

| | | |
|---|-----------|----------|
| Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session | = \$ | 2,250.00 |
| Pre-Hearing Conferences: December 6, 2019 | 1 session | |
| December 14, 2020 | 1 session | |
| One (1) hearing session on expungement request @ \$1,125.00/session | = \$ | 1,125.00 |
| Hearing: September 17, 2021 | 1 session | |
| <hr/> | | |
| Total Hearing Session Fees | = \$ | 3,375.00 |

The Panel has assessed \$1,125.00 of the hearing session fees to Claimant.

The Panel has assessed \$2,250.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

| | | |
|----------------------|---|--|
| Karl A. Vogeler, III | - | Public Arbitrator, Presiding Chairperson |
| Jacquelyn M. Shannon | - | Public Arbitrator |
| Michael I. Rauchway | - | 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

Karl A. Vogeler, III

Karl A. Vogeler, III
Public Arbitrator, Presiding Chairperson

09/30/2021

Signature Date

Jacquelyn M. Shannon

Jacquelyn M. Shannon
Public Arbitrator

09/29/2021

Signature Date

Michael I. Rauchway

Michael I. Rauchway
Public Arbitrator

09/29/2021

Signature Date

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September 30, 2021

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