

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Frank Lestarchick

Case Number: 19-02695

vs.

Respondents
Wells Fargo Advisors Financial Network
Wells Fargo Clearing Services, LLC
Alfonso Allen Gialanella

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: Customer vs. Members and Associated Person

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Frank Lestarchick: Mark E. Margiotta, Law Offices of Mark E. Margiotta, P.C., Scotch Plains, New Jersey.

For Respondents Wells Fargo Advisors Financial Network (“Wells Fargo Advisors”), Wells Fargo Clearing Services, LLC (Wells Fargo Clearing”), and Alfonso Allen Gialanella (“Gialanella”): Michael Naccarato, Esq., Wells Fargo Legal Department, St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: September 6, 2019.

Frank Lestarchick signed the Submission Agreement: September 6, 2019.

Joint Statement of Answer filed by Respondents Wells Fargo Clearing, and Gialanella on or about: November 4, 2019.

Wells Fargo Clearing signed the Submission Agreement: November 4, 2019.

Gialanella signed the Submission Agreement: November 4, 2019.

Statement of Answer filed by Respondent Wells Fargo Advisors on or about: November 5, 2019.
Wells Fargo Advisors signed the Submission Agreement: November 5, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty, negligence, breach of contract, and breach of covenant of good faith and fair dealing. The causes of action relate to various securities.

Unless specifically admitted in the Joint Statement of Answer, Respondents Wells Fargo Clearing and Gialanella denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in the Statement of Answer, Respondent Wells Fargo Advisors 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 the amount of \$65,000.00; costs; attorneys' fees; and any and all other relief which is equitable, appropriate, and just under the circumstances.

In the Statement of Answer, Respondents Wells Fargo Clearing, and Gialanella requested that the Arbitrator dismiss the Statement of Claim in its entirety with prejudice; costs and expenses; expungement of Respondent Gialanella's CRD records; and such other further relief as is just and proper.

In the Statement of Answer, Respondent Wells Fargo Advisors requested that the Arbitrator dismiss the Statement of Claim in its entirety with prejudice; costs and expenses; and such other further relief as is just and proper.

At the hearing, Claimant requested compensatory damages in the amount of \$93,626.57.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Wells Fargo Clearing and Gialanella are jointly and severally liable for and shall pay to Claimant the sum of \$43,000.00 in compensatory damages.
2. Respondents Wells Fargo Clearing and Gialanella are jointly and severally liable for and shall pay to Claimant the sum of \$225.00 for reimbursement of the \$225.00 non-refundable portion of the filing fee previously paid to FINRA.

3. Respondent Gialanella's request for expungement of this matter from his CRD records is denied.
4. Any and all claims for relief not specifically addressed herein, including any requests for 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 = \$ 975.00

**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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents Wells Fargo Advisors Financial Network and Wells Fargo Clearing Services, LLC are each assessed the following:

Member Surcharge = \$ 1,100.00
Member Process Fee = \$ 2,250.00

Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

January 16, 2020, cancellation requested by the parties = \$ 100.00
January 25, 2021, cancellation requested by the parties = \$ 100.00

Total Late Pre-Hearing Cancellation Fees = \$ 200.00

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fees to Claimant.
The Arbitrator has assessed \$125.00 of the late pre-hearing cancellation fees to Respondent Wells Fargo Clearing.
The Arbitrator has assessed \$25.00 of the late pre-hearing cancellation fees to Respondent Wells Fargo Advisors.

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

August 11-13, 2020, postponement requested by the parties = \$ 450.00

Total Postponement Fees = \$ 450.00

The Arbitrator has assessed \$112.50 of the postponement fees to Claimant.

The Arbitrator has assessed \$112.50 of the postponement fees to Respondent Wells Fargo Advisors.

The Arbitrator has assessed \$112.50 of the postponement fees to Respondent Wells Fargo Clearing.

The Arbitrator has assessed \$112.50 of the postponement fees to Respondent Gialanella.

Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) hearing sessions @ \$450.00/session = \$ 1,800.00

Hearings: April 27, 2021 2 sessions
April 28, 2021 2 sessions

Total Hearing Session Fees = \$ 1,800.00

The Arbitrator has assessed the total hearing session fees jointly and severally to Respondents Wells Fargo Clearing and Gialanella.

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

ARBITRATOR

David S. Billet

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Sole 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.

Arbitrator's Signature

David S. Billet

David S. Billet
Sole Public Arbitrator

05/11/2021

Signature Date

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May 11, 2021

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