

**Stipulated Award  
FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant

Wells Fargo Clearing Services, LLC  
d/b/a Wells Fargo Advisors  
vs.

Case Number: 19-03719

Respondent

Mark Boccuzzi

Hearing Site: New York, New York

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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: Member vs. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant Wells Fargo Clearing Services, LLC (“Wells Fargo Advisors”): Tracey Salmon-Smith, Esq., and Jamie Helman, Esq., Faegre Drinker Biddle & Reath LLP, Florham Park, New Jersey.

For Respondent Mark Boccuzzi (“Boccuzzi”): Jeremy L. Bartell, Esq., Bartell Law, PLLC, Washington, District of Columbia.

**CASE INFORMATION**

Statement of Claim filed on or about: December 17, 2019.

Statement of Answer to Counterclaim filed on or about: March 13, 2020.

Wells Fargo Advisors signed the Submission Agreement: December 11, 2019.

Statement of Answer and Counterclaim filed by Respondent on or about: February 24, 2020.

Mark Boccuzzi signed the Submission Agreement: February 24, 2020.

**CASE SUMMARY**

Wells Fargo Advisors asserted the following causes of action in its Statement of Claim: breach of promissory notes and conversion of loan funds.

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

In his Counterclaim, Boccuzzi asserted the following causes of action: fraudulent misrepresentation; promissory fraud; fraud in the inducement; negligent misrepresentation; breach of contract; breach of the implied contract of good faith and fair dealing; promissory estoppel; unfair and deceptive acts and practices; failure to train; failure to supervise; respondent superior / agent-principal liability; and such other claims as developed in the Arbitration.

Unless specifically admitted in its Answer to Boccuzzi's Counterclaim, Wells Fargo Advisors denied the allegations made in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Wells Fargo Advisors requested: (a) compensatory damages in the amount of \$800,709.49; (b) interest at the rate of 6.44% per annum on the balance due and owing under the Promissory Note executed by Boccuzzi on 1/31/14 (the "2014 Note") from the date of default (7/26/18) to the date of payment; (c) interest at the rate of 5.44% per annum on the balance due and owing under the Promissory Note executed by Boccuzzi on 4/1/15 (the "2015 Note") from the date of default (7/26/18) to the date of payment; (d) interest at the rate of 5.23% per annum on the balance due and owing under the Promissory Note executed by Boccuzzi on 4/1/16 (the "2016 Note") from the date of default (7/26/18) to the date of payment; (e) interest at the rate of 5.78% per annum on the balance due and owing under the Promissory Note executed by Boccuzzi on 4/1/17 (the "2017 Note") from the date of default (7/26/18) to the date of payment; (f) post-hearing interest at the Connecticut statutory rate of 8% per annum pursuant to Conn. Gen. Stat. § 37-1 for any Award not paid in 30 days from the Award period provided by the FINRA Code; the costs of collection and this Arbitration, including attorneys' fees as agreed to under the terms of the 2014 Note, the 2015 Note, the 2016 Note, and the 2017 Note (hereinafter, collectively, the "Notes"); and any and all further relief deemed just and proper by the Panel.

In his Answer and Counterclaim, Boccuzzi requested that the Statement of Claim be denied and damages of at least \$800,000.00, plus his attorneys' fees, interest, and costs of the Arbitration.

In its Answer to Boccuzzi's Counterclaim, Wells Fargo Advisors requested dismissal of the Counterclaim with prejudice and an award to it for the relief and amounts requested in its Statement of Claim.

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

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

On or about January 5, 2021, Wells Fargo Advisors notified FINRA Dispute Resolution that the parties settled this matter and resolved all disputes at issue between them. Subsequently, the parties submitted a Stipulated Award and requested that such Stipulated Award be sent to the Arbitration Panel for their review and filing.

On or about January 5, 2021, Wells Fargo Advisors and Boccuzzi resolved all disputes at issue in this Arbitration, including their dispute arising out of, and in connection with, the aforementioned Notes and executed a Confidential Settlement Agreement and Release memorializing their agreements (the "Settlement Agreement"). Pursuant to the terms of the Settlement Agreement, this award shall be signed by the Arbitrators, but no action will be taken by Wells Fargo Advisors to enforce the award against Boccuzzi unless Boccuzzi fails to comply with the payment terms of the Settlement Agreement. Should Boccuzzi abide by the terms of the Settlement Agreement (including, but not limited to, making the agreed-to payments to Wells Fargo Advisors by the agreed-to deadlines), this Stipulated Award shall be deemed to be satisfied.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies.

To the extent that any facts or other information described in this Stipulated Award conflicts with the terms or provisions of the Settlement Agreement executed by the Parties (and, as agreed, deemed effective January 5, 2021), the Settlement Agreement is controlling.

### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for entry of a Stipulated Award, and the written stipulation thereto, the Panel grants the motion and enters this Stipulated Award granting the following relief:

1. Pursuant to the terms and provisions of the Settlement Agreement executed by the parties, Boccuzzi shall pay to Wells Fargo Advisors the sum of \$850,000.00.
2. Except as otherwise specified herein, each party shall bear its own costs and attorneys' fees.
3. Boccuzzi is liable for and shall pay to FINRA Dispute Resolution one-half of any forum fees assessed by the Panel.
4. Wells Fargo Advisors is liable for and shall pay to FINRA Dispute Resolution one-half of any forum fees assessed by the Panel.
5. Respondent's Counterclaim is denied.
6. Any and all relief not specifically addressed herein is denied.

7. This Award shall not be enforced by Wells Fargo Advisors against Boccuzzi unless Boccuzzi fails to abide by the terms of the Settlement Agreement executed by the parties, which is incorporated herein and in full by reference. If Boccuzzi fails to abide by the terms of the Settlement Agreement, he shall pay (a) a lump sum of \$850,000.00, minus any amounts paid pursuant to the Settlement Agreement, (b) additional costs and fees, including reasonable attorneys' fees, incurred by Wells Fargo Advisors in enforcing this award, and (c) interest accrued on the amount in "(a)" at the rate of 8% per annum from the date on which Boccuzzi failed to timely and fully make a payment set forth in the Settlement Agreement until the date of payment.

**FEES**

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

**Filing Fees**

FINRA Dispute Resolution Services will retain or collect the non-refundable filing fees\* for each claim:

Initial Claim Filing Fee	= \$ 2,550.00
Counterclaim Filing Fee	= \$ 1,725.00

*\*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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Wells Fargo Clearing Services, LLC is assessed the following:

Member Surcharge	= \$ 2,475.00
Member Process Fee	= \$ 5,075.00

**Postponement Fees**

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

January 19-21, 2021 postponement requested by parties	= \$ 1,300.00
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Total Postponement Fees	= \$ 1,300.00
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The Panel has assessed \$650.00 of the postponement fees to Claimant.

The Panel has assessed \$650.00 of the postponement fees to Respondent.

**Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision = \$ 200.00

Respondent submitted one (1) discovery-related motion.

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Total Discovery-Related Motion Fees = \$ 200.00

The Panel has assessed \$100.00 of the discovery-related motion fees to Claimant.  
The Panel has assessed \$100.00 of the discovery-related motion fees to Respondent.

**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 Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

Decision on the papers = \$ 300.00

Four (4) pre-hearing sessions with a single Arbitrator @ \$450.00/session = \$ 1,800.00  
Pre-Hearing Conferences: November 10, 2020 1 session  
November 23, 2020 1 session  
November 24, 2020 2 sessions

Two (2) pre-hearing sessions with the Panel @ \$1,300.00/session = \$ 2,600.00  
Pre-Hearing Conferences: April 27, 2020 1 session  
January 4, 2021 1 session

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Total Hearing Session Fees = \$ 4,700.00

The Panel has assessed \$2,350.00 of the hearing session fees Claimant.  
The Panel has assessed \$2,350.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Joseph I. Liebman	-	Public Arbitrator, Presiding Chairperson
David S. Billet	-	Public Arbitrator
Charles L. Henderson	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

**Concurring Arbitrators' Signatures**

***Joseph I. Liebman***

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Joseph I. Liebman  
Public Arbitrator, Presiding Chairperson

**02/27/2021**

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Signature Date

***David S. Billet***

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David S. Billet  
Public Arbitrator

**02/27/2021**

\_\_\_\_\_  
Signature Date

***Charles L. Henderson***

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Charles L. Henderson  
Non-Public Arbitrator

**02/27/2021**

\_\_\_\_\_  
Signature Date

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March 03, 2021

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