

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Joanne Olson-Miller

Case Number: 20-00401

vs.

Respondent
Wells Fargo Advisors Financial Network, LLC

Hearing Site: Houston, Texas

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.

REPRESENTATION OF PARTIES

For Claimant Joanne Olson-Miller (“Claimant”): Kirk G. Smith, Esq., Shepherd Smith Edwards & Kantas, LLP, Houston, Texas.*

For Respondent Wells Fargo Advisors Financial Network, LLC, Wells Fargo Clearing Services, LLC appeared as the real party in interest (“Respondent”): Demian J. Betz, Esq., Wells Fargo Legal Department, Charlotte, North Carolina.

*FINRA recorded the appearance of Claimant’s counsel on July 14, 2020. 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: March 4, 2020.
Claimant signed the Submission Agreement: February 3, 2020.

Statement of Answer filed on or about: April 27, 2020.
Respondent signed the Submission Agreement: April 27, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: failure to supervise, suitability, misrepresentation, omission of facts, and failure to carry out a sale order. The causes

of action related to Claimant's allegations that investments in iShares and ProShares exchange traded funds ("ETFs") were unsuitable for a conservative investor and many of the ETFs were repeatedly sold and repurchased over a 10-month period. Claimant further alleged that Unnamed Party Mary Kristine Cobb ("Cobb") failed to convert the account to cash, as discussed in October 2014, until November 2014.

In the Statement of Answer, Respondent asserted that Claimant's Statement of Claim was ineligible for arbitration.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested \$110,000.00 in compensatory damages.

In the Statement of Answer, Respondent requested that Claimant's Statement of Claim be denied in its entirety.

Respondent filed a request for expungement, on behalf of Unnamed Party Cobb, 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 February 10, 2021, Claimant filed a notice of settlement and dismissal of all claims with prejudice. Therefore, the Panel made no determination with respect to the relief request contained in the Statement of Claim.

On March 22, 2021, Respondent filed a Motion for Expungement on behalf of Cobb, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on April 6, 2021, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Cobb.

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

The Panel reviewed Cobb's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences 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 Cobb did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Statement of Claim, Settlement Agreement and Release, Cobb's BrokerCheck®

Report, Respondent's Motion for Expungement, Respondent's additional exhibits for the Motion for Expungement, Respondent's post-hearing submission, and Cobb'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:

The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 1798715) from registration records maintained by the CRD for Unnamed Party Mary Kristine Cobb (CRD Number 3180627) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Mary Kristine Cobb 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 finding of fact:

The claim, allegation, or information is false.

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

We find that Respondent established that Cobb timely followed properly communicated instructions from Claimant. Respondent had a clearly communicated policy which required customers to speak directly to the financial advisor and not to send instructions by email. The record showed that Claimant failed to respond timely to communications from Cobb.

Also, we find that Respondent established that Cobb did not represent the managed account as without risk. Claimant's claims were clearly contrary to the evidence. Both the Form ADV and the managed account agreement disclosed and discussed the risks. Cobb credibly testified that her consistent practice was to discuss the account agreement and Form ADV with customers, specifically including a discussion of risks.

Additionally, we find that Respondent established that Claimant never stated that she was a conservative investor. For each of Claimant's four accounts with Respondent, in December 2013 and December 2014, her strategic allocation and investment objective/risk tolerance was "Moderate Growth" and her time horizon was "Long Term (10+ Years)." Cobb testified that Claimant had retired early and that Claimant's primary goal was growth, in order to fund future retirement needs. The holdings in Claimant's accounts were not consistent with Claimant being a conservative investor, but rather with Claimant being a moderate growth investor.

Further, we further find that Respondent established that the managed account was suitable for Claimant and find that Cobb's testimony was credible and consistent with the exhibits.

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, Respondent 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:

One (1) pre-hearing session with the Panel @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: July 27, 2020	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: April 6, 2021	1 session	
Total Hearing Session Fees	= \$	2,250.00

The Panel has assessed \$562.50 of the hearing session fees to Claimant.

The Panel has assessed \$1,687.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Robert C. Rice	-	Public Arbitrator, Presiding Chairperson
Jack Chapline Vaughan	-	Public Arbitrator
Daniel D. Hill	-	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

Robert C. Rice

Robert C. Rice
Public Arbitrator, Presiding Chairperson

05/04/2021

Signature Date

Jack Chapline Vaughan

Jack Chapline Vaughan
Public Arbitrator

05/04/2021

Signature Date

Daniel D. Hill

Daniel D. Hill
Public Arbitrator

05/05/2021

Signature Date

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May 05, 2021

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