

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Cooperativa De Ahorro Y Credito Jayuya

Case Number: 20-01009

vs.

Respondent
Wells Fargo Clearing Services, LLC

Hearing Site: San Juan, Puerto Rico

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 a majority-public panel.

REPRESENTATION OF PARTIES

For Claimant Cooperativa De Ahorro Y Credito Jayuya: Edward H. Glenn, Jr., Esq., Zamansky, LLC, New York, New York.

For Respondent Wells Fargo Clearing Services, LLC: Sara Soto, Esq. and Leonel Peraza, Jr., Esq., Bressler, Amery & Ross, P.C., Miami, 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: March 27, 2020.

Cooperativa De Ahorro Y Credito Jayuya signed the Submission Agreement: March 27, 2020.

Statement of Answer filed by Respondent on or about: October 14, 2020.

Wells Fargo Clearing Services, LLC signed the Submission Agreement: April 15, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty (including violation of Regulation 6078 issued under the Uniform Securities Act of Puerto Rico); negligent misrepresentation and omission; breach of contract; fraud; unsuitability; over-concentration; failure to supervise; respondeat superior; agency and control person liability

under the Securities Exchange Act of 1934, the Investment Advisor's Act of 1940, the Uniform Securities Act of Puerto Rico, New York law (pursuant to its account agreement), Puerto Rican law and FINRA rules. The causes of action relate to Claimant's investments in Puerto Rico bonds.

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: an order granting equitable rescission and/or restoring the value of Claimant's account; compensatory damages in the amount of \$1,500,000.00; "well-managed" or market-adjusted account damages; disgorgement of all fees, commissions paid by Claimant; recovery of pre- and post-award interest, costs, expenses, attorneys' fees, expert fees, and forum fees of this arbitration; and punitive damages in such an amount as the Panel deemed appropriate to punish and deter Respondent from any future similar conduct.

In the Statement of Answer, Respondent requested: that Claimant's Statement of Claim be denied with prejudice; that the FINRA costs associated with the arbitration proceeding be assessed against Claimant; and that Claimant's claim be expunged from the Central Registration Depository ("CRD") record of Unnamed Party Fred Berens ("Berens").

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 September 30, 2021, Claimant filed with FINRA Dispute Resolution Services a notice of settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On or about October 13, 2021, Respondent filed a Motion for Expungement on behalf of Unnamed Party Berens, to which no response was filed.

On or about November 15, 2021, Claimant filed with FINRA Dispute Resolution Services a notice advising it would not be objecting nor participating in the expungement hearing.

The Panel conducted a recorded, telephonic hearing on December 14, 2021, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Unnamed Party Berens.

Claimant did not participate in the expungement hearing. The Panel found that Claimant had notice of the expungement request and hearing.

The Panel reviewed the BrokerCheck® Report for Unnamed Party Berens. 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 related to the above-captioned arbitration (Occurrence Number 2067944), 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 Unnamed Party Berens did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Unnamed Party Berens' testimony; BrokerCheck® Report for Unnamed Party Berens; and Settlement Agreement and Release.

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 2067944) from registration records maintained by the CRD for Unnamed Party Berens (CRD Number 18877) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Berens 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

Unnamed Party Berens testified under oath that he made no recommendations to Claimant regarding purchasing, holding or selling the investments included in the claim. Unnamed Party Berens also testified that, in fact, he had no contact whatsoever with Claimant regarding the investments included in the claim. Accordingly, the Panel found that Unnamed Party Berens, per FINRA Rule 2080(b)(1)(B), was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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 = \$ 2,000.00

**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 = \$ 3,025.00
Member Process Fee = \$ 6,175.00

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 @ \$1,400.00/session = \$ 1,400.00
Pre-Hearing Conference: July 22, 2020 1 session

One (1) hearing session on expungement request @ \$1,400.00/session = \$ 1,400.00
Hearing: December 14, 2021 1 session

Total Hearing Session Fees = \$ 2,800.00

The Panel has assessed \$700.00 of the hearing session fees to Claimant.

The Panel has assessed \$2,100.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

| | | |
|-----------------------|---|------------------------------------------|
| Richard James Igou | - | Public Arbitrator, Presiding Chairperson |
| Hiram Lee Tanner, Jr. | - | Public Arbitrator |
| Hector R Lopez-Garcia | - | Non-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

Richard James Igou

Richard James Igou
Public Arbitrator, Presiding Chairperson

12/21/2021

Signature Date

Hiram Lee Tanner, Jr.

Hiram Lee Tanner, Jr.
Public Arbitrator

12/22/2021

Signature Date

Hector R Lopez-Garcia

Hector R Lopez-Garcia
Non-Public Arbitrator

12/22/2021

Signature Date

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December 22, 2021

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