

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Bill Wolfe and Debbie Wolfe

Case Number: 20-02617

vs.

Respondents

Amber N. McCormick
Larry C. Potts

Hearing Site: Columbia, South Carolina

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: Customers vs. Associated Persons

This matter proceeded pursuant to Rule 12800 of the Code of Arbitration Procedure (“Code”).

REPRESENTATION OF PARTIES

Claimants Bill Wolfe and Debbie Wolfe appeared pro se.

For Respondents Amber N. McCormick (“McCormick”) and Larry C. Potts (“Potts”): Joel M. Everest, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: August 14, 2020.

Bill Wolfe and Debbie Wolfe signed the Submission Agreement: August 13, 2020.

Respondents did not file a Statement of Answer and did not sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the cause of action of unauthorized trading. The cause of action related to losses due to the sale of Claimants’ Wells Fargo stock contrary to their expressed instructions as part of the transition of their portfolio to Fidelity Investments.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested compensatory damages in the amount of \$9,468.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondents did not file a Statement of Answer and did not file properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

On December 8, 2020, Respondents filed with FINRA Dispute Resolution Services a notice of settlement and request that the case remain open so they could request expungement.

On December 11, 2020, Claimants filed with FINRA Dispute Resolution Services a notice of settlement of this matter. Therefore, the Panel made no determination with respect to any of the relief requested in Claimants' Statement of Claim.

On December 28, 2020, Respondents filed a Motion for Expungement.

On January 22, 2021, Claimants notified FINRA Dispute Resolution Services that they would not oppose or participate in the expungement hearing for Respondents.

On March 10, 2021, Respondent Potts withdrew his request for expungement. Respondent McCormick confirmed that she would proceed with her request for expungement. Accordingly, the Arbitrator did not make a determination on Respondent Potts' request for expungement.

The Arbitrator conducted a recorded telephonic hearing on March 16, 2021, so Respondent McCormick could present oral argument and evidence on her request for expungement.

As stated in their January 22, 2021, notice, Claimants did not participate in the expungement hearing and did not oppose the request for expungement.

The Arbitrator reviewed Respondent McCormick's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the Central Registration Depository ("CRD").

The Arbitrator also reviewed the settlement documentation related to this case (Occurrence Number 2091614), considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Respondent McCormick did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim and its attachments; an email confirming Claimants' right to participate in the expungement proceeding; emails reflecting transfer instructions; September 2019 Account Statement for Debbie Wolfe's Fidelity managed account; and Respondent McCormick's testimony at the telephonic expungement hearing.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement

hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to this case (Occurrence Number 2091614) from registration records maintained by the CRD for Respondent Amber N. McCormick (CRD Number 6801059) with the understanding that, pursuant to Notice to Members 04-16, Respondent Amber N. McCormick 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 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

Respondent McCormick's oral, recorded and documented evidence established that she was not involved in the alleged sales practice violation and that Claimants' allegation that she was, is clearly erroneous. As heard and testified to during the hearing, in a recorded telephone conversation of September 13, 2019, at 5:32 p.m., six days before the incorrect transfer and sale of Claimants' Wells Fargo stock, Respondent McCormick and Claimant Debbie Wolfe spoke to a Fidelity Investments representative about the funding of Mrs. Wolfe's new managed account. Respondent McCormick states, and Mrs. Wolfe agrees, that Mrs. Wolfe does not want her Wells Fargo stock to be sold and it should not be used to fund the new managed account. This was acknowledged by the Fidelity Investments representative in that call. An email exchange of September 16, 2019, and screen shot of the transfer of the Wells Fargo stock at pages 44-45 in Exhibit D (emails reflecting transfer instructions) show Respondent McCormick telling the Fidelity Investments' Managed Account Operations representative that the Wells Fargo stock is not to be used to fund the managed account. It is in the screen shot of September 19, 2019, that we see that the Fidelity Investments representative has made the incorrect transfer.

Respondent McCormick testified that the September 16, 2019, email exchange was her last communication with Fidelity Investments representatives about this matter and she had no further involvement with the transfers. Claimants remain Respondent McCormick's clients to this day.

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 = \$ 325.00

**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, non-party Fidelity Brokerage Services LLC, is assessed the following:

Member Surcharge = \$ 325.00

Postponement Fees

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

March 11, 2021, Respondents' request for postponement = WAIVED

Total Postponement Fee = WAIVED

The Arbitrator has waived the total postponement fee.

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:

One (1) hearing session on expungement request @ \$250.00/session = \$ 250.00
Hearing: March 16, 2021 1 session

Total Hearing Session Fee = \$ 250.00

The Arbitrator has assessed the entire hearing session fee to Respondent McCormick.

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

ARBITRATOR

Patricia Ann Tracey

-

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

Patricia Ann Tracey

Patricia Ann Tracey
Sole Public Arbitrator

03/26/2021

Signature Date

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.

March 29, 2021

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