

**Award**  
**FINRA Dispute Resolution Services**

---

In the Matter of the Arbitration Between:

Claimant  
Mark Joseph Byelich

Case Number: 20-02724

vs.

Respondent  
Wells Fargo Clearing Services, LLC

Hearing Site: Philadelphia, Pennsylvania

---

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: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant Mark Joseph Byelich: Kurt Zimmerman, Esq. and Dochter Kennedy, J.D., MBA, AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Wells Fargo Clearing Services, LLC: Paul Yarns, Esq., Wells Fargo Legal Department, Saint Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: August 20, 2020.

Mark Joseph Byelich signed the Submission Agreement: August 20, 2020.

Statement of Answer filed by Respondent on or about: October 12, 2020.

Wells Fargo Clearing Services, LLC signed the Submission Agreement: September 11, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent took no position and did not object to Claimant’s expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1475585 and 1702714; compensatory damages in the amount of \$1.00 from Respondent; and any and all

other relief that the Arbitrator deemed just and equitable.

In the Statement of Answer, Respondent requested that: Claimant's request for compensatory damages in the amount of \$1.00 be denied; the costs in this matter be assessed consistent with FINRA rules; and, any other such relief be granted to Respondent as the Arbitrator deemed appropriate.

At the hearing, Claimant withdrew the request for \$1.00 in damages.

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

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

On March 1, 2021, Claimant filed an Affidavit confirming that the customers in Occurrence Numbers 1475585 ("Customer A") and 1702714 ("Customers B and C") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on April 8, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, did not object to the request for expungement.

Customers A, B and C did not participate in the expungement hearing. The Arbitrator found that Customers A, B and C had notice of the expungement request and hearing.

The Arbitrator reviewed Claimant'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 CRD.

On March 17, 2021, Claimant filed a notice with FINRA Dispute Resolution Services in which he advised that, in response to a document request, Respondent confirmed that it did not have a copy of the settlement agreement for Occurrence Number 1475585. Further, the Arbitrator noted that the dispute related to Occurrence Number 1702714 was not settled and, therefore, there were no settlement documents to review.

Based on the testimony and evidence provided as to Occurrence Number 1475585, the Arbitrator reviewed and 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 for Occurrence Number 1475585 was not conditioned on any party to the settlement not opposing the expungement request and that Claimant did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence:

As to Occurrence Number 1475585:

Claimant's Statement of Claim; Respondent's Answer to Statement of Claim; Sworn oral

testimony of Mark Joseph Byelich; Claimant's BrokerCheck® Report; Letter from Claimant's counsel representing reasonable search for settlement agreement and Respondent's confirmation in writing as to its non-existence; Letter from Andrew L. Workman (Wells Fargo) to Customer A, dated 3/12/2009 (Exhibit 1); Respondent Wells Fargo Advisors, LLC's Statement of Answer in FINRA Case No. 09-04103, dated 10/30/2009, and attached exhibits (Exhibit 3).

As to Occurrence Number 1702714:

Claimant's Statement of Claim; Respondent's Answer to Statement of Claim; Sworn oral testimony of Mark Joseph Byelich; Claimant's BrokerCheck® Report; Letter from David Clement (Wells Fargo Advisors) to Customers B and C, dated 6/5/2014, denying claim (Exhibit 2).

**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 Occurrence Numbers 1475585 and 1702714 from registration records maintained by the CRD for Claimant Mark Joseph Byelich (CRD Number 4388024) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

As to Occurrence Number 1475585:

Customer A alleged that, in 2007, Claimant made unsuitable high-risk investments which led to monetary losses of \$70,000.00. Customer A's 2008 claim was denied by Wachovia Capital Markets, LLC ("Wachovia") in 2009 and Customer A filed a FINRA DR arbitration claim (FINRA Case Number 09-04103). The arbitration was settled by Wachovia in 2011 without consultation with or approval by Claimant. Wachovia paid a fraction of the amount of losses alleged to settle, of which amount Claimant did not contribute at all. Customer A was advised of the possible risks by Claimant in numerous meetings and conversations, was given numerous prospectuses and disclosures of the investments (which were mutual funds and variable annuities) and signed these disclosures and receipt of the prospectuses. Customer had a \$10,000,000.00 net worth and was an experienced investor.

As to Occurrence Number 1702714:

In 2008, Customers B and C alleged misinformation pertaining to two (2) variable annuity contracts which led to monetary losses estimated to be \$5,000.00. Customers B and C's claim was denied by Respondent in 2014; Customers B and C did not appeal nor file a FINRA arbitration claim. In 2014, Customers B and C complained about the tax ramifications of withdrawing one of the two (2) variable annuities. Claimant was not consulted by Customers B and C about withdrawal nor about the tax ramifications thereof. Further, Claimant did not hold himself out as a tax advisor.

2. Any and all claims for relief not specifically addressed herein are denied.

**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 = \$ 50.00

\*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 = \$ 150.00

**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) pre-hearing session with a single Arbitrator @ \$50.00/session = \$ 50.00  
Pre-Hearing Conference: December 7, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing: April 8, 2021 1 session

---

Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed the total hearing session fees to Claimant.

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

**ARBITRATOR**

Guillermo L. Bosch

-

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**

***Guillermo L. Bosch***

Guillermo L. Bosch  
Sole Public Arbitrator

**04/12/2021**

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.

April 13, 2021

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