

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jeffrey Lamar Burton

Case Number: 20-03080

vs.

Respondent
Wells Fargo Advisors Financial Network, LLC

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: Associated Person vs. Member

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Jeffrey Lamar Burton: Clayton B. McCullough, Esq., McCullough Khan, LLC, Charleston, South Carolina.

For Respondent Wells Fargo Advisors Financial Network, LLC: Stephen M. Cox, Esq., Robinson, Bradshaw & Hinson, P.A., Charlotte, North Carolina.

CASE INFORMATION

Statement of Claim filed on or about: September 9, 2020.

Jeffrey Lamar Burton signed the Submission Agreement: September 9, 2020.

Statement of Answer filed by Respondent on or about: November 3, 2020.

Wells Fargo Advisors Financial Network signed the Submission Agreement: November 3, 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 on Claimant’s request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 2034687 and any and all other relief that the Panel deems just and equitable.

In the Statement of Answer, Respondent requested that the Panel proceed with a hearing on Claimant's request for expungement and award the parties such relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

On January 19, 2021, Claimant advised FINRA Dispute Resolution Services that the underlying customer in Occurrence Number 2034687 ("Customer") was served on January 4, 2021, with notice of the date and time of the expungement hearing, and was provided with Claimant's counsel's email address in order for the Customer to obtain additional details regarding this matter. On January 7, 2021, in an email to Claimant, counsel for the Customer acknowledged receipt of Claimant's certified mailing and expressed interest in attending the expungement hearing. On January 25, 2021, Claimant provided the Customer's counsel with details to participate in the virtual expungement hearing.

The Panel conducted a recorded hearing by videoconference on January 29, 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 take a position with respect to the request for expungement.

The Customer's counsel, on behalf of the Customer, also participated in the expungement hearing, and opposed the expungement request on the basis that: the account was overconcentrated in GNMA bonds; the investments were unsuitable because they could not be liquidated in a three year horizon; the commissions were too high; and Claimant should have verified that the signatory had the Customer's authority to be the sole signatory on the account. In response, Claimant asserted, among other things, that: commissions were appropriate for such a large account (under 20 basis points); Claimant was not responsible for verifying the signatory's authority, and the signatory had the authority to sign on behalf of the Customer; the investments were not recommended by Claimant but rather the account was transferred from another member firm and assigned to Claimant; and the investments were suitable because (1) they had the full backing and guarantee of the U.S. government; (2) they matched exactly the criteria specified by the Customer's investment guidelines, and (3) they were liquid because there was a market for them.

The Panel reviewed Claimant's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documents, considered the amount of payments 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 expungement request and that Claimant did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimant's Statement of Claim; Claimant's Exhibits 1–13; Claimant's BrokerCheck® Report; the parties' submission agreements; the testimony of Claimant and his expert witness; and, representations and argument made by the Customer's counsel as well as his unfiled complaint (letter of demand).

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement 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 Occurrence Number 2034687 from registration records maintained by the CRD for Claimant Jeffrey Lamar Burton (CRD Number 2366552) with the understanding that, pursuant to Notice to Members 04-16, Claimant Jeffrey Lamar Burton 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 Panel 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 Panel has made the above Rule 2080 findings based on the following reasons:

The Customer's account was established at another member firm prior to Claimant inheriting it on or about April 2014. At that time, the account already was invested in GNMA securities and was not based on a recommendation by Claimant. On or about March 2016, Claimant and others formed Millennium Private Wealth, LLC ("Millennium"). It is not disputed that the same investments from the prior firm in Customer's account were transferred in-kind to Millennium, which is associated with Respondent. The account continued to be maintained at the direction of the Chief Financial Officer ("CFO") of the Customer, who was the actual or apparent representative for the account and funds therein from its initial creation until his termination from employment in February 2017 for "conduct that was seriously prejudicial to the [Customer], including, but not limited to, unprofessional conduct, gross neglect of duty, or gross inefficiency." He was later convicted of criminal embezzlement.

At no time was there a legal or regulatory requirement that Claimant question the number of signatories required for the account. For many years, the Customer never objected to the CFO as the sole decisionmaker and authorized signer for the investment account. The CFO's authority and the Customer's investment objectives were stated in the applicable, signed Wells Fargo Advisor's Account Services Agreement and related instruments. The

account time horizon was marked as Short Term (1-3 years) with significant liquidity needs; however the account was for years, prior to the transfer to broker, and thereafter, invested at the CFO's direction in longer term GNMA securities -- which had the full backing and guarantee of the U.S. Government and were able to be liquidated in an active market. Although there could have been an investment risk in the Customer's decision to continue to hold a significant concentration of GNMA bonds in the account and potentially negating its federal insurance coverage by a liquidation of such investments in the stated 1-3 years' time horizon set forth on the application, no such event occurred. At no time during which the account was handled by Claimant was there a situation whereby the GNMA bonds were not able to be liquidated, or any liquidation caused a financial loss to the Customer. In fact, the Customer liquidated \$5,000,000.00 of the GNMA bonds while at Millennium with no liquidity delay or any adverse investment consequence. It was also presented to the Panel that South Carolina law considers GNMA instruments to be acceptable investments for an entity such as the Customer. The Customer had the power to invest in, and to hold, GNMA bonds in its account, and did so at its election, unchecked and unquestioned, for a significant period of time.

It is not disputed that Claimant decreased the GNMA representation within the total portfolio following the employment termination of the CFO. The revised portfolio was suitable at the time of the investments and the Panel finds no unsuitable investment advice by Claimant. The fact that the portfolio readjustment decision was not made by the Customer for many years raised in the Panel's mind questionable oversight by both the Customer's CFO and Respondent's compliance department.

Claimant was entitled to rely upon the investment decision of the Customer's CFO. This Panel does not consider it to be credible that the Customer's CFO, with an independent auditor that conducted annual reviews of the Customer's finances, was unaware or could not have made itself aware of the GNMA investments with Claimant when they represented approximately \$25,000,000.00 at the commencement of the account. It is noteworthy that of the settlement amount paid to the Customer, 93-1/2% was paid by Wells Fargo Bank as a result of the CFO's embezzlement of the Customer's funds, and not due to Claimant or Respondent -- the latter of which paid the balance with no contribution by Claimant. The Customer suffered damages due to the criminal actions of the now incarcerated CFO and not due to any actions of Claimant.

As to the unreasonable fee accusation, this Panel finds the amount assessed is below the industry standard of what an account of this type would expect to incur in the general marketplace and the Customer maintained the option to have services provided elsewhere at lower costs if available.

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 = \$ 1,575.00

**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 = \$ 1,900.00
Member Process Fee = \$ 3,750.00

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 Panel, including a pre-hearing conference with the Panel, 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: December 31, 2020 1 session

Two (2) hearing sessions on expungement request @ \$1,250.00/session = \$ 2,250.00
Hearing Date: January 29, 2021 1 session

Total Hearing Session Fees = \$ 3,375.00

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

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

ARBITRATION PANEL

John P. Cullem	-	Public Arbitrator, Presiding Chairperson
Richard S. Zaifert	-	Public Arbitrator
Christopher Cecil Lamb	-	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

John P. Cullem

John P. Cullem
Public Arbitrator, Presiding Chairperson

02/04/2021

Signature Date

Richard S. Zaifert

Richard S. Zaifert
Public Arbitrator

02/04/2021

Signature Date

Christopher Cecil Lamb

Christopher Cecil Lamb
Non-Public Arbitrator

02/04/2021

Signature Date

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February 05, 2021

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