

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Anthony Ghibesi
Angela Dugan
Angela Dugan IRA
Anthony Ghibesi IRA
The Estate of Ralph Ghibesi

Case Number: 20-03168

vs.

Respondent

Wells Fargo Clearing Services, LLC

Hearing Site: Jersey City, New Jersey

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. Member

REPRESENTATION OF PARTIES

For Claimants Anthony Ghibesi, Angela Dugan, Angela Dugan IRA, Anthony Ghibesi IRA, and The Estate of Ralph Ghibesi: Kirk G. Smith, Esq., Shepherd Smith Edwards & Kantas, LLP, Houston, Texas*.

For Respondent Wells Fargo Clearing Services, LLC: Nuviah Shirazi, Esq., Wells Fargo Legal Department, St. Louis, Missouri.

*FINRA recorded the appearance of Claimants' counsel at the time of filing of the Statement of Claim. Counsel's representation of Claimants may have ended with the parties' settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimants' counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: September 11, 2020.

Anthony Ghibesi signed the Submission Agreement: September 5, 2020.

Angela Dugan signed the Submission Agreement: September 5, 2020.

Angela Dugan IRA signed the Submission Agreement: September 5, 2020.

Anthony Ghibesi IRA signed the Submission Agreement: September 5, 2020.

The Estate of Ralph Ghibesi signed the Submission Agreement: September 5, 2020.

Statement of Answer filed by Respondent on or about: November 10, 2020.
Wells Fargo Clearing Services, LLC signed the Submission Agreement: October 14, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of contract and warranties; promissory estoppel; violation of securities statutes; breach of fiduciary duty; and claims under common law. The causes of action relate to investments in Bank of America and Nabors Industries, Inc. 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, Claimants requested compensatory damages between \$50,000.00 and \$100,000.00, including consequential damages and statutory and/or punitive damages, plus interest and costs, attorneys' fees, rescission, and any and all other relief available to Claimants, in law or equity or otherwise, which may be granted by the Arbitration Panel.

In the Statement of Answer, Respondent requested that the Panel dismiss the Statement of Claim in its entirety and with prejudice; enter an order to expunge any record of this claim (Occurrence Number 2090052) from the CRD record of Unnamed Party John Andrew Nelson (CRD Number 3090594); award of costs and expenses; and such other and further relief as is just and proper.

Respondent filed a request for expungement on behalf of Unnamed Party John Andrew Nelson 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 Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On September 8, 2021, Claimants filed a notice of voluntary dismissal with prejudice. Therefore, the Arbitrator made no determination with respect to any of the relief requests contained in the Statement of Claim.

On September 22, 2021, Respondent filed a Motion for Expungement on behalf of Unnamed Party John Andrew Nelson, to which no response was filed.

The Arbitrator conducted a recorded, telephonic hearing on November 17, 2021, so the parties could present oral argument and evidence on Unnamed Party John Andrew Nelson's request for expungement.

Claimants and counsel did not participate in the expungement hearing and did not oppose the request for expungement.

The Arbitrator reviewed Unnamed Party John Andrew Nelson's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Arbitrator 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 Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Unnamed Party John Andrew Nelson did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, Unnamed Party John Andrew Nelson's testimony, settlement agreement, and the exhibits.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, 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 the above-captioned arbitration (Occurrence Number 2090052) from registration records maintained by the CRD for Unnamed Party John Andrew Nelson (CRD Number 3090594) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party John Andrew Nelson 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 Arbitrator has made the following Rule 2080 affirmative finding of fact:

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

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

The financial advisor John Andrew Nelson (FA) testified that he is licensed and has been employed in the financial industry for approximately 22 years. The FA testified that this is the sole customer complaint on his CRD. This testimony is supported by the FA's CRD record. More accurately, it was not the FA's customer who complained about his investments, but rather, the beneficiaries of the customer, his niece and nephew, after the customer died.

The FA testified that he serviced the customer's account from 2010 to January 2020. According to the FA's testimony, the customer, age 67, was retired at the time he opened the account. The FA testified that during their 10-year business relationship the customer

never complained about the recommendations he received from the FA or the investments he held in his account. On January 15, 2020, the customer died.

The FA testified that the deceased customer deposited approximately \$100,000.00 into an account in 2010 and invested in two bonds over the 10-year period—Bank of America and Nabors Industries. The FA testified that the investment recommendations were suitable for the customer. The FA testified that the Bank of America corporate bond generated income and that the customer eventually cashed it in for a profit. This testimony is consistent with Respondent's Statement of Answer. The FA testified that, during the life of the account, the customer had a \$38,000 gain.

The FA testified that his recommendations were based on the customer's desire to generate monthly income to offset expenses. This testimony is supported by the FA's notes reflecting that the customer would periodically call to ask when he would receive an interest payment. The FA testified that he also discussed alternative products with the customer. The four (4) Bond Offerings entered into evidence show that the FA offered the customer various FDIC CDs and several corporate bonds. The FA testified that the customer's preference was individual corporate bonds. At the time of the customer's death, the account held the single Nabors bond only. At or around the time of the customer's death, the Nabors bond, which was to mature on September 15, 2023, declined in value. The FA testified that the decline was occasioned by the pandemic.

According to Respondent's Statement of Answer, the Bank of America bond paid interest semi-annually and had a call date of September 28, 2014. The customer directed the interest income from this bond into a bank account as stated in the FA's contact management notes which were introduced into evidence at the hearing. The FA testified that each contact he had with the customer is noted in the contact notes.

According to the Statement of Answer, when the customer redeemed the Bank of America bond on March 30, 2015, it had generated more than \$22,000 in interest and the customer received a return of his principal. This was consistent with the customer's investment objectives. Also, according to the Statement of Answer, the customer invested in Nabors Industries on April 13, 2015. As stated in the Statement of Answer, it generated more than \$24,000 in income during the customer's lifetime.

In 2016, the customer was so satisfied with the FA's servicing of his account that he (the customer) discussed investing an additional \$200,000 with the FA. Specifically, the FA testified that when the customer sold his home and moved to a senior citizen facility, he expressed an interest in investing the proceeds from the sale with the FA and even authorized the FA to speak with his nephew, the broker, about the potential additional investment. This testimony was supported by the notes and various emails exchanged between the nephew and the FA and entered into evidence at the hearing. The FA testified that during these discussions, the nephew did not complain about his uncle's investments.

According to the FA's contact notes, prior to redeeming the Bank of America bond, the customer told the FA that he (the customer) needed \$5,000 income per year to offset his expenses. Thus, also based on the notes, when the Bank of America bond came due, the customer was seeking a coupon of at least 5%. The FA then told the customer about

Nabors Industries, 5.1% coupon maturing in 2023. After discussions with the FA, the customer authorized the purchase of that bond.

The contact notes show that the FA had many discussions with the deceased customer. Notes from November 2014 state that their discussion included that his holding was consistent with his risk tolerance, investment objective, and time horizon; that alternative products such as CDs and annuities were discussed; that the customer's nephew is in the financial industry and advises his uncle, that the Bank of America bond callable date was March 28, 2015; and, that the customer was aware of the risk and duration of that bond.

According to the Statement of Answer, in March 2020, the beneficiaries each received half of the value of the customer's account. The FA testified that the nephew beneficiary, who is a licensed broker, was involved in the account while his uncle was alive. This testimony is supported by the email exchanges between the nephew and the FA that were entered into evidence at the hearing. The FA testified that he never spoke with the niece beneficiary.

The same year the customer died, the beneficiaries commenced a FINRA arbitration against Respondent, the FA's employer, bringing a suitability claim and seeking to recover between \$50,000 to \$100,000 in damages, according to the Statement of Claim. The beneficiaries specifically alleged that the FA had made unsuitable recommendations to their uncle.

According to Respondent, the beneficiaries' Statement of Claim contains factual inconsistencies. Specifically, the beneficiaries alleged that the Bank of America bond had "a 2035 maturity" and was, therefore, unsuitable for the customer. According to Respondent's Statement of Answer, however, the Bank of America bond had a call date of September 28, 2014, and the Nabors bond was to mature in 2023.

Further, the Statement of Claim alleges that a power of attorney naming the nephew was received by the FA, but never acknowledged. The FA testified, however, that he never received a power of attorney from either the customer or the customer's nephew. Discovery failed to reveal a copy of the power of attorney.

The underlying arbitration was settled prior to the evidentiary hearing. The FA testified that he understood this was a business decision on the part of Respondent to avoid the cost of the three days of evidentiary hearings, which would have included expert testimony. The FA testified that he did not participate in the settlement negotiations or contribute to the settlement. The settlement agreement entered into evidence at the hearing supported his testimony that he was not a party to the settlement and as such, did not contribute.

The preponderance of the evidence shows that the allegations brought by the deceased customer's beneficiaries against the FA are clearly erroneous. The FA's expungement hearing testimony was credible. The record contains no contradictory evidence. There was no evidence that the bonds were unsuitable for the customer at the time they were recommended. The customer never expressed any dissatisfaction with the FA's recommendations although they were in contact with each other many times. The

customer never expressed any dissatisfaction with the investments he held for a decade. Furthermore, evidence shows the nephew was involved in his uncle's account, but there is no evidence that the nephew expressed any dissatisfaction during the uncle's lifetime. There is evidence that the customer even wanted to invest an additional sum of money—twice the amount of the initial investment—six years into the 10-year relationship. The Arbitrator finds that the beneficiaries' allegations were clearly erroneous within the meaning of FINRA Rule 2080(b)(1)(A). As such, this customer dispute information has no meaningful investor protection or regulatory value. For these reasons, the Arbitrator recommends expungement of any reference to the underlying arbitration from the CRD record of this FA.

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

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee = \$ 975.00

**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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Wells Fargo Clearing Services, LLC is assessed the following:

Member Surcharge = \$ 1,100.00

Member Process Fee = \$ 2,250.00

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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$450.00/session = \$ 900.00

Pre-Hearing Conferences: January 6, 2021 1 session

October 19, 2021 1 session

One (1) hearing session on expungement request @ \$450.00/session = \$ 450.00

Hearing: November 17, 2021 1 session

Total Hearing Session Fees = \$ 1,350.00

The Arbitrator has assessed \$225.00 of the hearing session fees jointly and severally to Claimants.

The Arbitrator has assessed \$1,125.00 of the hearing session fees to Respondent, which includes the fees for the expungement hearing session.

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

ARBITRATOR

Annamaria Boccia Smith

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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

Annamaria Boccia Smith

Annamaria Boccia Smith
Sole Public Arbitrator

11/23/2021

Signature Date

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November 23, 2021

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