

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Gregory Vincent Katulka

Case Number: 20-03252

vs.

Respondent
Wells Fargo Advisors, LLC and
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Atlanta, Georgia

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. Members

REPRESENTATION OF PARTIES

For Claimant Gregory Vincent Katulka (“Claimant”): Kurt T. Kalberer, II, Esq., Kalberer LLP, New York, New York.

For Respondent Wells Fargo Advisors, LLC, Wells Fargo Clearing Services, LLC appeared as the real party in interest (“Wells Fargo”): Deirdre C. Wolff, Esq., Wells Fargo Law Department, St. Louis, Missouri.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. (“Merrill Lynch”): Kathryn D. Perreault, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: September 14, 2020.
Claimant signed the Submission Agreement: September 13, 2020.

Statement of Answer filed by Wells Fargo on or about: November 9, 2020.
Wells Fargo signed the Submission Agreement: September 28, 2020.

Statement of Answer filed by Merrill Lynch on or about: November 20, 2020.
Merrill Lynch signed the Submission Agreement: December 1, 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, Wells Fargo did not oppose Claimant's expungement request.

In the Statement of Answer, Merrill Lynch took no position on Claimant's expungement request and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1270187 and 1770913 and an award of compensatory damages in the amount of \$1.00.

In the Statement of Answer, Wells Fargo opposed Claimant's request for damages of \$1.00.

In the Statement of Answer, Merrill Lynch requested that it be dismissed from the arbitration and that the Arbitrator deny Claimant's request for \$1.00 in damages.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 22, 2021, Claimant advised that the customers in Occurrence Numbers 1270187 and 1770913 (collectively, "Customers" and each a "Customer") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notices"). Claimant also filed copies of the FedEx proof-of-delivery for the Notices.

The Arbitrator conducted a recorded, telephonic hearing on March 23, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Wells Fargo and Merrill Lynch participated in the expungement hearing and, as stated in the Statement of Answers, Wells Fargo did not oppose the expungement request and Merrill Lynch took no position on the request for expungement.

The Customers did not participate in the expungement hearing. The Arbitrator found that the Customers 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 occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1770913, 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 Claimant did not contribute to the settlement amount.

The Arbitrator noted that the dispute related to Occurrence Numbers 1270187 was not settled and, therefore, there was no settlement documentation to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim, Statements of Answer, Claimant's Exhibits A -C, Affirmation of Service for Notices; and settlement agreement for Occurrence Number 1770913.

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:

The Arbitrator recommends the expungement of all references to Occurrence Numbers 1270187 and 1770913 from registration records maintained by the CRD for Claimant Gregory Vincent Katulka (CRD Number 2955070) with the understanding that, pursuant to Notice to Members 04-16, Claimant Gregory Vincent Katulka 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:

Occurrence Number 1270187

The Customer alleged that Claimant failed to disclose that backend fees would be charged when the mutual fund investment was sold. Wells Fargo (successor to Wachovia Securities) denied the claim, finding that the Customer had been told verbally that there was a sliding backend fee if the fund was sold before ten years. The term was also stated in the written materials for the fund. Despite Claimant's explanation, the Customer sold the fund a few weeks after its purchase and incurred a backend surrender fee. Therefore, the Arbitrator finds that the claim is clearly erroneous and false.

Occurrence Number 1770913

In 2015, the Customer filed an arbitration claim but did not name Claimant (who had not serviced her account for over five years) as a party. The Customer alleged that Claimant recommended an unsuitable variable annuity to her and misrepresented the amount of withdrawal benefits. Wells Fargo settled the arbitration claim to avoid the cost of arbitration. The Arbitrator finds that the variable annuity was suitable. Further, Claimant explained to the Customer, both at the time of purchase in 2007 and subsequently, the written terms for the variable annuity regarding withdrawals. Within two months after the purchase, she began taking a monthly withdrawal, despite Claimant having advised her

that the monthly withdrawals would result in excess distributions. Therefore, the Arbitrator also finds that the claim is clearly erroneous and false.

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
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**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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents are each assessed the following:

Member Surcharge Fee	= \$	150.00
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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 @ \$50.00/session	= \$	50.00
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Pre-Hearing Conference: January 12, 2021	1 session	
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One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
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Hearing: March 23, 2021	1 session	
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Total Hearing Session Fees	= \$	100.00
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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

James C. Hoover

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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

James C. Hoover

James C. Hoover
Sole Public Arbitrator

04/01/2021

Signature Date

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April 01, 2021

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