

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

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In the Matter of the Arbitration Between:

Claimant

Blake Alexander Nakamura

Case Number: 20-03691

vs.

Respondent

Wells Fargo Clearing Services, LLC

Hearing Site: San Diego, California

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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 Blake Alexander Nakamura (“Claimant”): Kurt Zimmerman, Esq., HLBS Law, Westminster, Colorado.

For Respondent Wells Fargo Clearing Services, LLC (“Respondent”): Geoff Beckham, Esq., Wells Fargo Legal Department, San Francisco, California.

**CASE INFORMATION**

Statement of Claim filed on or about: October 30, 2020.

Claimant signed the Submission Agreement: October 30, 2020.

Statement of Answer filed by Respondent on or about: December 22, 2020.

Respondent signed the Submission Agreement: December 22, 2020.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of Occurrence Number 1664146 on his Form U5 of his Central Registration Depository (“CRD”) records, alleging that the information is defamatory in nature.

In the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and noted that it would be filing a Motion to Dismiss Claimant’s claim.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. An award granting expungement of the Form U5 corresponding with Occurrence Number 1664146, and those relevant portions of the Form U4, from Claimant's CRD records on the basis that the statement is defamatory in nature, misleading, inaccurate, and/or erroneous, to include:
  - a. Amendment of the Reason for Termination entry in Section 3 of Claimant's Form U5 to read "Voluntary";
  - b. Expungement of the Reason for Termination explanation on Claimant's CRD records;
  - c. Amendment of any "Yes" answers on Claimant's Form U5, corresponding with Occurrence Number 1664146, from "Yes" responses to "No";
  - d. Deletion of the Termination Disclosure Reporting Pages accompanying Occurrence Number 1664146;
2. An award of damages in the amount of \$1.00 from Respondent for its part in contributing to Claimant's injury; and
3. Any other relief as the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. Dismissal of Claimant's claim pursuant to FINRA Rule 13206 of the Code of Arbitration Procedure ("Code"), following consideration of the forthcoming Motion to Dismiss; or
2. Denial of the expungement request, including the demand for \$1.00 in damages, and all forum and hearing fees be assessed to Claimant in connection with this matter, pursuant to FINRA Rule 13805(d) of the Code.

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

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

On March 12, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 13206 of the Code. On March 22, 2021, Claimant filed a response opposing the Motion to Dismiss. On March 26, 2021, Respondent filed its reply. On April 5, 2021, the Arbitrator heard oral arguments on the Motion to Dismiss. The Arbitrator grants the Motion to Dismiss on the following grounds:

The finding is the request for expungement is outside the time limit in Rule 13206 and is ineligible. Claimant had the ability and opportunity to file a challenge to the U5 filing at the time of his termination in July 2013, and Claimant also had the ability and opportunity to file an expungement request with FINRA within the time limit in Rule 13206.

Respondent's Motion to Dismiss pursuant to Rule 13206 of the Code is granted by the Arbitrator without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing his claims in court pursuant to Rule 13206(b) of the Code.

### **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. Claimant's claims are dismissed pursuant to Rule 13206.

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
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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 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
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#### **Late Pre-Hearing Cancellation Fees**

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

April 1, 2021, cancellation requested by Claimant	= \$	100.00
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Total Late Pre-Hearing Cancellation Fees	= \$	100.00
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The Arbitrator has assessed the total late pre-hearing cancellation fees to Claimant.

#### **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 @ \$50.00/session	= \$	100.00
Pre-Hearing Conferences: February 22, 2021	1 session	
April 5, 2021	1 session	

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Total Hearing Session Fees	= \$	100.00
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The Arbitrator has assessed \$25.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$75.00 of the hearing session fees to Respondent.

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

**ARBITRATOR**

Mary M. O'Neil

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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**

***Mary M. O'Neil***

Mary M. O'Neil  
Sole Public Arbitrator

**04/09/2021**

Signature Date

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April 09, 2021

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