

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
James J. Kennedy, Jr.

Case Number: 21-00221

vs.

Respondent
Wells Fargo Clearing Services, LLC

Hearing Site: Albany, New York

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 James J. Kennedy, Jr.: Doctor Kennedy, MBA, J.D. and Harris Freedman, Esq., AdvisorLaw LLC, Westminster, Colorado.

For Respondent Wells Fargo Clearing Services, LLC: Sandra D. Grannum, Esq. and Edward J. Scarillo, Esq., Faegre, Drinker, Biddle & Reath, LLP, Florham Park, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: January 28, 2021.

James J. Kennedy, Jr. signed the Submission Agreement: January 28, 2021.

Statement of Answer filed by Respondent on or about: March 19, 2021.

Wells Fargo Clearing Services, LLC signed the Submission Agreement: March 17, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following cause of action: expungement of Form U5/Termination based on the defamatory nature of the entry.

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, Claimant requested an award granting expungement of the Form U5 corresponding with Occurrence Number 2095894, and those relevant portions of the Form U4, from Claimant's CRD record, on the basis that the statement is defamatory in nature and tends to mislead, to including: (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; (c) amendment of the answer to question 7F(1) on Claimant's Form U5, to "No"; (d) deletion of the Termination Disclosure Reporting Pages accompanying Occurrence Number 2095894; compensatory damages in the amount of \$1.00; and any other relief as the arbitration Panel deems just and equitable.

In the Statement of Answer, Respondent requested an award dismissing the claim in its entirety; assessing all forum fees, expert fees, and other costs against Claimant; and granting such other and further relief as the Panel deems just and proper.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the 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 the Reason for Termination and Termination Explanation in Section 3 of James J. Kennedy, Jr.'s (CRD Number 6697868) Form U5 filed by Wells Fargo Clearing Services, LLC (CRD Number 19616) on November 13, 2020 and maintained by the Central Registration Depository ("CRD"). The Reason for Termination shall be changed to "Other," and the Termination Explanation shall be deleted in its entirety and replaced with the following language: "As a result of Wells Fargo downsizing, Mr. Kennedy's position was eliminated." This directive shall apply to all references to the Reason for Termination and Termination Explanation.

The Arbitrator further recommends the expungement of all references to Occurrence Number 2095894 from the registration records maintained by the CRD for James J. Kennedy, Jr. Any "Yes" answers should be changed to "No," as applicable.

The Arbitrator recommends expungement based on the defamatory nature of the information. The above recommendations are made with the understanding that the registration records are not automatically amended. James J. Kennedy, Jr. must forward a copy of this Award to FINRA's Credentialing, Registration, Education and Disclosure Department for review.

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 =\$ 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 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 =\$ 150.00

Late Pre-Hearing Cancellation Fees

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

September 22, 2021, cancellation requested the parties. =\$ 100.00

Total Late Pre-Hearing Cancellation Fees =\$ 100.00

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fees to Claimant.

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fees to Respondent.

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: May 26, 2021 1 session

Three (3) hearing sessions @ \$50.00/session =\$ 150.00
Hearings: November 9, 2021 1 session
November 11, 2021 2 sessions

Total Hearing Session Fees =\$ 200.00

The Arbitrator has assessed \$62.50 of the hearing session fees to Claimant.

The Arbitrator has assessed \$137.50 of the hearing session fees to Respondent.

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

ARBITRATOR

Peter A. Goldman

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

Peter A. Goldman

Peter A. Goldman
Sole Public Arbitrator

11/23/2021

Signature Date

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November 24, 2021

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