

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Joseph Carlyle Frank

Case Number: 21-01195

vs.

Respondent
Wells Fargo Investments, LLC

Hearing Site: San Francisco, California

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 Joseph Carlyle Frank (“Claimant”): Harris Freedman, Esq., HLBS Law, Westminster, Colorado.

For Respondent Wells Fargo Investments, LLC (“Respondent”): Geoffrey S. Beckham, Esq., Wells Fargo Legal Department, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: May 7, 2021.

Claimant signed the Submission Agreement: May 7, 2021.

Statement of Answer filed by Respondent on or about: June 28, 2021.

Respondent signed the Submission Agreement: June 28, 2021.

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 expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Numbers 999904, 1027502, and 1232262 from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;
2. Expungement of Occurrence Numbers 999904, 1027502, and 1232262 from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Deletion of all Disclosure Reporting Pages accompanying Occurrence Numbers 999904, 1027502, and 1232262; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. Any request for damages be denied; and
2. All costs and fees be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On June 1, 2021, the parties agreed to proceed with a single arbitrator for this matter.

On October 20, 2021, Claimant filed a death record from Lexis Nexis database reflecting that the customer in Occurrence Number 999904 ("Ms. S") is deceased. On that same day, Claimant also filed obituaries and death records from Lexis Nexis database reflecting that the customers in Occurrence Numbers 1027502 ("Ms. I") and 1232262 ("Ms. B") are deceased. Therefore, Claimant was unable to serve the Statement of Claim and notice of the date and time of the expungement hearing.

Hereinafter, Ms. S, Ms. I, and Ms. B are collectively referred to as the "Customers".

The Arbitrator conducted a recorded, telephonic hearing on November 30, 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 oppose the request for expungement.

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 noted that the disputes related to Occurrence Numbers 999904 and 1027502 were not settled and, therefore, there were no settlement documents to review.

The Arbitrator was unable to review the settlement documentation related to Occurrence Number 1232262. By letter dated November 22, 2021, Claimant advised that, despite diligent search, the settlement documents were not available due to the age of the complaint. The Arbitrator reviewed the broker statement from Claimant's BrokerCheck® Report and considered

the settlement amount. Having reviewed Claimant's BrokerCheck® Report and heard Claimant's testimony, the Arbitrator noted that Claimant did not contribute to the settlement amount. The Arbitrator also noted that the date of the settlement preceded the effective date of the rule against conditioned settlements.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings; exhibits; Claimant's BrokerCheck® Report; and testimony.

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:

1. The Arbitrator recommends the expungement of all references to Occurrence Numbers 999904, 1027502, and 1232262 from registration records maintained by the CRD for Claimant Joseph Carlyle Frank (CRD Number 2339650) with the understanding that, pursuant to Notice to Members 04-16, Claimant Joseph Carlyle Frank 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 finding of fact:

The claim, allegation, or information is false.

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

Occurrence Number 999904

The variable annuity investment at issue was consistent with Ms. S' investment objectives of moderate growth and income with a moderate risk tolerance with a long-term investment horizon of at least seven years. Claimant performed a thorough review of Ms. S' needs, consistent with her goals and objectives, market experience, and fully discussed the risks. The investment contained variable sub-accounts invested in mutual funds for growth and income, as well as a 50% fixed bundle component to mitigate downside market risks. The investment also paid out a death benefit. Ms. S also did not have any liquidity needs from her assets with Claimant, hoping to leave the investment to her daughter. Ms. S sold the investment at her daughter's urging after holding the investment approximately five (5) months, during a severe market downturn during 2001, that impacted the entire market. Claimant recommended that Ms. S hold until the market recovered and for a term consistent with her investment objectives. The daughter subsequently filed a complaint with Respondent. Respondent investigated and found the complaint to have no merit and was denied. Ms. S did not pursue the claim with FINRA arbitration or in court. Suitability is determined at the time of investment. The Arbitrator

finds that the investment was suitable considering Ms. S' investment goals and objectives and risk tolerance and finds that Ms. S' allegation of unsuitability of the variable annuity is false.

Occurrence Number 1027502

The variable annuity investment at issue was consistent with Ms. I's investment objectives of moderate growth and income with a moderate risk tolerance with a moderate-term investment horizon. Claimant performed a thorough review of Ms. I's needs consistent with her goals and objectives, market experience, and fully discussed the risks. The investment contained variable sub-accounts invested in mutual funds for growth and income. Additionally, Ms. I did not have any liquidity needs from her assets with Claimant. Claimant followed all of Ms. I's instructions, and Ms. I completed all disclosures and authorizations. After a severe market downturn during 2001 that impacted the entire market, Ms. I sold the investment after holding the investment for around eight (8) months, against Claimant's recommendation to hold it until the market recovered and for a term consistent with her investment objectives and time horizon. Ms. I subsequently filed a complaint with Respondent. Respondent investigated and found the complaint to have no merit and denied. Ms. I did not pursue the claim with FINRA arbitration or in court. Suitability is determined at the time of investment. The Arbitrator finds that the investment was suitable considering Ms. I's investment goals and objectives and risk tolerance, and that Claimant followed her instructions. The Arbitrator finds that Ms. I's allegations of unsuitability of the variable annuity and failure to follow instructions are false.

Occurrence Number 1232262

The corporate bond investment at issue was consistent with Ms. B's investment objectives of moderate growth and income with a moderate/conservative risk tolerance, with a moderate to long-term investment horizon. Claimant performed a thorough review of Ms. B's needs, consistent with her goals and objectives, market experience, and fully discussed the risks. Ms. B approved the transaction when she opened the account, filed an ACH agreement to link her bank account, and received trade confirmations and regular statements regarding her account. Additionally, Ms. B did not have any liquidity needs from her assets with Claimant. Claimant followed all of Ms. B's instructions and Ms. B completed all disclosures and authorizations. After a severe market downturn during 2001 that impacted the entire market, Ms. B sold the investment after holding the investment for six (6) to eight (8) months, against Claimant's recommendation to hold it until the market recovered and for a term consistent with Ms. B's investment horizon. Ms. B subsequently filed a civil court action against Respondent seeking damages and alleging breach of contract, negligence, and failure to follow instructions. The case ultimately settled in 2003, for a nominal amount compared to the cost of litigation. Claimant was not involved in the settlement and did not contribute to the settlement. The Arbitrator finds that there was no evidence of breach of contract, or negligence, and that Claimant followed Ms. B's instructions. Therefore, the Arbitrator finds that Ms. B's allegations of breach of contract, negligence, and failure to follow instructions are false.

In addition, in more than 28 years in the business, these were the only complaints Claimant received, and all were related to the severe downturn in the markets in 2001.

The fact that Claimant has no further complaints was considered by the Arbitrator in assessing the evidence.

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	= \$	1,600.00
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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	= \$	2,000.00
Member Process Fee	= \$	3,850.00

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:

One (1) pre-hearing session with a single Arbitrator @ \$1,150.00/session	= \$	1,150.00
Pre-Hearing Conference: August 13, 2021	1 session	

One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: November 30, 2021	1 session	

Total Hearing Session Fees	= \$	2,300.00
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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

Arocles Aguilar

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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

Arocles Aguilar

Arocles Aguilar
Sole Public Arbitrator

12/15/2021

Signature Date

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December 17, 2021

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