

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

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In the Matter of the Arbitration Between:

Claimant  
John Darrick Hutchens

Case Number: 21-01437

vs.

Respondents  
Chase Investment Services Corp.,  
Fifth Third Securities, Inc., and  
Wells Fargo Advisors Financial Network, LLC

Hearing Site: Indianapolis, Indiana

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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. Members

**REPRESENTATION OF PARTIES**

For Claimant John Darrick Hutchens (“Claimant”): Samantha Pastor, Esq. and Docthor Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Chase Investment Services Corp. (“Chase”): Jeffrey S. Dunlap, Esq. and McClellon D. Cox, Esq., Ulmer & Berne LLP, Cleveland, Ohio.

For Respondent Fifth Third Securities, Inc. (“Fifth Third”): R. Samuel Gilley, Esq. Dinsmore and Shohl LLP, Cincinnati, Ohio.

For Respondent Wells Fargo Advisors Financial Network (“Wells Fargo”): Nuviah Shirazi, Esq., Wells Fargo Legal Department, St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: June 4, 2021.  
Claimant signed the Submission Agreement: June 3, 2021.

Statement of Answer filed by Chase on or about: July 19, 2021.  
Chase signed the Submission Agreement: July 16, 2021.

Statement of Answer filed by Fifth Third on or about: July 26, 2021.  
Fifth Third did not sign the Submission Agreement.

Statement of Answer filed by Wells Fargo on or about: July 26, 2021.

Wells Fargo signed the Submission Agreement: February 18, 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, Chase denied the allegations made in the Statement of Claim.

In the Statement of Answer, Fifth Third neither opposed nor supported Claimant’s expungement request and denied any and all liability to Claimant.

Unless admitted in Statement of Answer, Wells Fargo denied the allegations made in the Statement of Claim but took no position on Claimant’s request for expungement.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1417970, 1651298, and 1882010 and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Chase did not state a request for relief.

In the Statement of Answer, Fifth Third did not state a request for relief.

In the Statement of Answer, Wells Fargo did not state a request for relief.

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

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

Fifth Third did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and, having answered the claim, is bound by the determination of the Arbitrator on all issues submitted.

On August 4, 2021, the parties stipulated to the appointment of a single arbitrator pursuant to Rule 13401(c) of the Code.

On July 20, 2021, Chase filed a Motion to Dismiss Pursuant to FINRA Rule 13206 of the Code (“Motion to Dismiss”), regarding Occurrence Number 1417970. On August 12, 2021, Claimant filed a Response to the Motion to Dismiss. On August 17, 2021, Chase filed a Reply in Support of the Motion to Dismiss. On August 30, 2021, the Arbitrator heard oral arguments on the Motion to Dismiss. In an Order dated September 2, 2021, the Arbitrator granted the Motion to Dismiss. The Motion to Dismiss was granted on the following grounds:

Rule 13206 has a six-year event/occurrence eligibility limitation. The customer complaint involving Chase and Claimant was posted in 2008. Ease of public access to the BrokerCheck® information became internet accessible beginning in 2010, which is more than 6 years from the date of the Statement of Claim. The 2016 rule amendment for links

to a CRD from Firm web pages is not solely determinative for purposes of measuring eligibility.

Therefore, the Arbitrator did not consider Claimant's request for expungement of Occurrence Number 1417970.

Chase'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.

On January 13, 2022, Claimant advised that the customers in Occurrence Numbers 1651298 and 1882010 ("Customers") were served with the Statement of Claim, and notice of the date and time of the expungement hearing ("Notices"). On January 18, 2022, Claimant filed an Affidavit confirming that the Customers were served with the Notices. Claimant also filed FedEx tracking information available online for the Notices.

The Arbitrator conducted a recorded, telephonic hearing on February 14, 2022, so the parties could present oral argument and evidence on Claimant's request for expungement.

Wells Fargo participated in the expungement hearing and, as stated in the Statement of Answer, took no position on the request for expungement.

Fifth Third did not participate in the expungement hearing.

The Customers also 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 1882010, 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 Number 1651298 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: pleadings, exhibits, and Claimant's 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 1651298 and 1882010 from registration records maintained by the CRD for Claimant John Darrick Hutchens (CRD Number 4497161) with the understanding that, pursuant to Notice to Members 04-16, Claimant John Darrick Hutchens 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, 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 1651298 (Respondent Fifth Third)**

It was the customer who selected the investments about which the customer later complained. The sophisticated, wealthy customer did not follow Claimant's recommendation to invest in broader, more diversified products and instead cherry-picked two unit investment trusts which later fell in value.

Fifth Third denied the customer's claim. Claimant had frequent interactions with the customer both prior to investing and while invested. The customer acted contrary to Claimant's investment advice. The customer had many other accounts and assets invested elsewhere. The customer limited his own choices by specific design. The customer completed all necessary paperwork to open the account and to purchase the investments including customary disclosure documents and acknowledgments. Notwithstanding Claimant's advice, the customer purchased two specific investments of his own volition.

**Occurrence Number 1882010 (Respondent Wells Fargo)**

The account was liquidated at the customer's unsolicited request and against the advice of Claimant. The customer did not incur losses as claimed and investments were selected specifically to meet the customer's request for tax advantaged products and after adequate disclosures for investment decision making by the sophisticated customer.

Claimant submitted voluminous exhibits regarding this customer and his relationship with Claimant, including an unsolicited email from the customer directing Claimant to fully liquidate the account. Liquidation at that time was contrary to Claimant's advice but Claimant had no alternative but to follow the customer's request. The customer was in weekly contact with Claimant, was a sophisticated investor and a high maintenance customer. The parties had a long-term relationship, following Claimant to two firms. The customer was an active trader and did not always follow Claimant's advice, including directing the liquidation of some investments against Claimant's advice. Wells Fargo fully investigated the customer complaint, defended it in arbitration and to avoid litigation risk, paid the customer a nominal sum in comparison to customer's wealth and assets under management.

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 parties, Chase, Fifth Third, and Wells Fargo are each 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:

Two (2) pre-hearing sessions @ \$1,150.00/session	=\$ 2,300.00
Pre-Hearing Conferences: August 30, 2021	1 session
September 23, 2021	1 session
One (1) hearing session on expungement request @ \$1,150.00/session	=\$ 1,150.00
Hearing: February 14, 2022	1 session
<hr/> Total Hearing Session Fees	<hr/> =\$ 3,450.00

The Arbitrator has assessed \$2,300.00 of the hearing session fees to Claimant.  
The Arbitrator has assessed the total hearing session fees to Claimant.

The Arbitrator has assessed \$1,150.00 of the hearing session fees to Chase.

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

**ARBITRATOR**

Tracy L. Allen

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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**

***Tracy L. Allen***

Tracy L. Allen  
Sole Public Arbitrator

**02/19/2022**

Signature Date

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February 22, 2022

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