

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Wells Fargo Clearing Services, LLC

Hearing Site: Milwaukee, Wisconsin

**Consolidated with:**

Claimant

████████████████████

Case Number: ██████████

Vs.

Respondent

A.G. Edwards & Sons, Inc.

Hearing Site: Milwaukee, Wisconsin

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Dochter Kennedy, Esq. and Christopher Cummins, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Wells Fargo Clearing Services, LLC (“Wells Fargo” or “Respondent”) and A.G. Edwards & Sons, Inc. (“A.G. Edwards”): Deirde C. Wolff, Esq., Wells Fargo Law Department, St. Louis, Missouri.

**CASE INFORMATION**

Case No. ██████████

Statement of Claim filed on or about: January 22, 2018.  
Claimant signed the Submission Agreement: January 22, 2018.

Statement of Answer filed by Respondent on or about: March 14, 2018.  
Wells Fargo signed the Submission Agreement: March 14, 2018.

Case No. ██████████

Statement of Claim filed on or about: January 18, 2018.  
Claimant signed the Submission Agreement: January 18, 2018.

Statement of Answer filed by Respondent on or about: March 14, 2018.  
A.G. Edwards signed the Submission Agreement: March 14, 2018.

### **CASE SUMMARY**

Case No. [REDACTED]

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer complaints, Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED], from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer, Wells Fargo did not oppose the request for expungement.

Case No. [REDACTED]

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer complaints, Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED], from his registration records maintained by the CRD.

In the Statement of Answer, A.G. Edwards did not oppose the request for expungement.

### **RELIEF REQUESTED**

Case No. [REDACTED]

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED] from his CRD, \$1.00 in compensatory damages, and any and all other relief that the Arbitrator deems just and proper under the circumstances.

In the Statement of Answer, Wells Fargo requested that the Arbitrator dismiss the portion of Claimant's claims that were beyond the eligibility period for FINRA Arbitration pursuant to FINRA Rule 12206, dismiss Claimant's claim for \$1.00 in compensatory damages, and award no other relief against it.

Case No. [REDACTED]

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED] from his CRD, \$1.00 in compensatory damages, and any and all other relief that the Arbitrator deems just and proper under the circumstances.

In the Statement of Answer, A.G. Edwards requested that the Arbitrator dismiss Claimant's claims in their entirety because each claim is beyond the eligibility period for FINRA Arbitration pursuant to FINRA Rule 12206, dismiss Claimant's claim for \$1.00 in compensatory damages, and award no other relief against it.

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

The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

Case No. [REDACTED] and Case No. [REDACTED]

Although a motion was not filed by Wells Fargo or A.G. Edwards, on or about June 18, 2018, Claimant filed a Non-Opposition to Respondent's Request to Consolidate (the "Request to Consolidate") in each case, advising that the parties had conferred and agreed to consolidate Case No. [REDACTED] and Case No. [REDACTED] on the condition that Case No. [REDACTED] was designated as the master case, because A.G. Edwards & Sons, Inc. is now known as Wells Fargo Clearing Services, LLC.

Case No. [REDACTED]

On or about June 25, 2018, Claimant filed a copy of the letters sent to the customers for Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED] providing each customer with the Statement of Claim, notice of the expungement hearing date and time, and the option to participate in the expungement hearing.

Case No. [REDACTED] and Case No. [REDACTED]

On or about June 26, 2018, Respondent confirmed to FINRA that the parties had agreed to consolidate Case No. [REDACTED] and Case No. [REDACTED], as stated in Claimant's filing. On or about July 3, 2018, the Arbitrator in Case No. [REDACTED] granted the Request to Consolidate. Thereafter, the two cases proceeded under Case No. [REDACTED]

Case No. [REDACTED]

On or about September 6, 2018, Claimant filed a copy of the letters sent to the customers for Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED], providing each customer with the Statement of Claim, notice of the expungement hearing date and time, and the option to participate in the expungement hearing

On or about September 7, 2018, Claimant filed a copy of the follow-up letters sent to the customers related to Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED], informing each customer of the new hearing date and time, since Case Nos. [REDACTED] and [REDACTED] were consolidated.

On or about September 20, 2018, Claimant filed Affidavits of Service for the letters and follow-up letters sent to the customers.

The Arbitrator conducted a recorded, telephonic hearing on October 9, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent participated in the expungement hearing but did not contest the request for expungement. None of the customers participated in the expungement hearing.

On record at the hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and found that there were no settlements for Occurrence Numbers [REDACTED], [REDACTED], [REDACTED], and [REDACTED]

The Arbitrator reviewed the settlement documents for Occurrence Numbers [REDACTED] and [REDACTED], considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that Claimant was required by his employer to contribute to the settlement for Occurrence Number [REDACTED], although he was not at fault, and that Claimant did not contribute to the settlement for Occurrence Number [REDACTED]. The Arbitrator also noted that the settlements were not conditioned on the customers not opposing the request for expungement.

The Arbitrator found that Claimant did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony and the documents provided in the case, particularly the letters from the customers for Occurrence Numbers [REDACTED] and [REDACTED], withdrawing their complaints, and the settlement agreements.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, 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 Number [REDACTED] from the registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] 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 (the "Code"), the Arbitrator has made the following Rule 2080 affirmative finding of fact:

- The claim, allegation, or information is factually impossible or clearly erroneous.

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

The customers, a husband and wife, had been customers of [REDACTED] for a period of time when they learned that the husband had a terminal medical condition. [REDACTED] recommended a trust be established to provide for the wife after the husband's death. An attorney was hired and a trust was created. The estate was supposed to pass to the wife without taxes upon the husband's death. However, because of errors, which were later determined to have been made by the attorney, the estate incurred taxes upon the husband's death. The wife complained about [REDACTED] and the attorney. An investigation was made and it was determined that [REDACTED] was not responsible. Although, both the attorney and Wells Fargo made substantial payments to the customer, [REDACTED] did not. The error was a legal error, not an investing error. The complaint was clearly erroneous.

2. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from the registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] 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 factually impossible or clearly erroneous.

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

The customer became a customer of [REDACTED] in 2008. She purchased an annuity through [REDACTED]. This was the only purchase she made with [REDACTED]. Thereafter, she began taking premature monthly payments. The customer also withdrew approximately 60% of the balance from the annuity, which was a substantial amount. [REDACTED] counseled against this, but the customer insisted. She explained that she needed the money. Between the fees and the withdrawals, the customer had very little left in the annuity. Though [REDACTED] was not at fault, the customer blamed him and made a complaint. Wells Fargo investigated the complaint and found that [REDACTED] was not responsible. Neither Wells Fargo or [REDACTED] paid any money to the customer. The customer was clearly mistaken about the actions and fault of [REDACTED]. The complaint is erroneous.

3. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from the registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to

Notice to Members 04-16, Claimant [REDACTED] 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:

The customers made a complaint against [REDACTED]. They became customers in 2008 and wanted to invest conservatively. With their consent and after some discussions, [REDACTED] arranged for the purchase of a bond fund for the customers. The fund purchase was based on the customers' stated investment horizon of 5-7 years. They claimed they had no need for the money before that time. However, they sold the investment prematurely and incurred fees and expenses. [REDACTED] counseled against the early sale but they insisted. After incurring the fees and expenses, they made a complaint against [REDACTED]. Wells Fargo investigated the complaint but did not find [REDACTED] at fault. No settlement was paid and the complaint was denied. The complaint was clearly false.

4. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from the registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] 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:

The customers complained about [REDACTED]. They wanted profits and growth in excess of 100% per year and invested heavily in tech stocks to achieve this. They complained after the market crashed in 2000, because they lost a lot of the

profits of their investments. [REDACTED] had suggested stops be placed, but they refused. A written complaint was made in their case. Nevertheless, [REDACTED] employer at the time investigated the complaint and found that he did nothing wrong. Consequently, no payment was ever made to the customers. The customers' complaint was clearly false.

5. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from the registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] 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 factually impossible or clearly erroneous.

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

The customer had been a friend of [REDACTED] for many years. In 2002, he became a customer as well. [REDACTED] helped the customer purchase tax-free municipal bonds. When the value of the bonds decreased, the customer wanted to know if the bonds were insured. [REDACTED] directed the customer to the trader for this information, and the trader told him the bonds were insured. However, in reality, they were not insured. As a result, the customer wanted his loss to be compensated. [REDACTED] was not responsible for this, and in fact, the customer later requested on his own that the complaint be expunged. [REDACTED] employer investigated and paid the customer an amount for his loss. [REDACTED] was required to contribute \$12,000.00 to the settlement, even though he was not the one who misinformed the customer. The balance was paid by A.G. Edwards. [REDACTED] employer at the time. Even the customer realized the complaint against [REDACTED] was erroneous.

6. The Arbitrator recommends the expungement of all references to Occurrence Numbers [REDACTED] from the registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] 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 factually impossible or clearly erroneous.

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

The customer requested that his annuity be transferred to the control of [REDACTED]. [REDACTED] agreed but insisted the customer check if there would be fees associated with the transfer. Another financial advisor incorrectly informed the customer there would be no fees. When the transaction was completed, the customer incurred fees. Hence, the customer complained. An investigation by [REDACTED] employer at the time determined that [REDACTED] did nothing wrong, and no payment was made to the customer. Later, the customer saw that the incorrect advice was not the fault of [REDACTED] and he requested, on his own, that the complaint be expunged. The customer continued to work with [REDACTED] after this incident. Even the customer realized the complaint against [REDACTED] was erroneous.

7. 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 Office of Dispute Resolution 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 events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

|                  |             |
|------------------|-------------|
| Member Surcharge | = \$ 150.00 |
|------------------|-------------|

#### **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(s), including a pre-hearing conference with the arbitrator(s), that 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:      July 20, 2018      1 session

One (1) hearing session on expungement request @ \$50.00/session      =\$ 50.00  
Hearing Date:      October 9, 2018      1 session

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Total Hearing Session Fees      =\$ 100.00

The Arbitrator has assessed \$100.00 of the hearing session fees to Claimant.

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

**ARBITRATOR**

Michael S. Matek

- 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**



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Michael S. Matek  
Sole Public Arbitrator



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Signature Date

November 16, 2018

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Date of Service (For FINRA Office of Dispute Resolution office use only)