

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

Bruce Howard Tuchman  
Michelle H. Tuchman

Case Number: 13-02939

vs.

Respondents

Frank Kirk Dyer  
Wells Fargo Advisors, LLC

Hearing Site: New York, New York

Consolidated with

Case Number: 13-02581

Claimant

Wells Fargo Advisors, LLC

vs.

Respondent

Bruce Tuchman

Hearing Site: New York, New York

vs.

Third-Party Respondent

Frank Dyer

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Nature of the Dispute:

13-02939 Associated Person and Customer vs. Associated Person and Member

13-02581 Member vs. Associated Person vs. Associated Person

**REPRESENTATION OF PARTIES**

13-02939

For Claimants Bruce Howard Tuchman ("B. Tuchman") and Michelle H. Tuchman ("M. Tuchman"): Eric J. Shames, Esq., Law Office of Eric J. Shames, Esq., P.C., New York, New York.

For Respondents Frank Kirk Dyer ("Dyer"), and Wells Fargo Advisors, LLC ("Wells Fargo"): David E. Strand, Esq. and Jason A. Storipan, Esq., Fisher & Phillips LLP, Murray Hill, New Jersey.

13-02581

For Claimant Wells Fargo Advisors, LLC ("Wells Fargo"): David E. Strand, Esq., Fisher & Phillips LLP, Murray Hill, New Jersey.

For Respondent Bruce Tuchman ("B. Tuchman") : Eric J. Shames, Esq., Law Office of Eric J. Shames, Esq., P.C., New York, New York.

For Third Party Respondent Frank Kirk Dyer ("Dyer"): David E. Strand, Esq., Fisher & Phillips LLP, Murray Hill, New Jersey.

**CASE INFORMATION**

13-02939

Statement of Claim filed on or about: October 7, 2013.

Addendum to the Statement of Claim filed on or about: November 12, 2013.

Bruce Howard Tuchman signed the Submission Agreement: August 14, 2013.

Michelle H. Tuchman signed the Submission Agreement: August 14, 2013.

Joint Statement of Answer filed by Respondents on or about: December 13, 2013.

Frank Kirk Dyer signed the Submission Agreement: December 4, 2013.

Wells Fargo Advisors, LLC signed the Submission Agreement: December 2, 2013.

13-02581

Statement of Claim filed on or about: September 3, 2013.

Joint Statement of Answer filed by Claimant and Third-Party Respondent on or about: December 9, 2013.

Wells Fargo Advisors, LLC signed the Submission Agreement: August 30, 2013.

Frank Kirk Dyer signed the Submission Agreement: December 17, 2013.

Statement of Answer, Counterclaim, and Third-Party Claim filed by Respondent on or about: November 21, 2013.

Addendum to the Statement of Answer, Counterclaim, and Third-Party Claim filed by Respondent on or about: November 21, 2013.

Bruce Howard Tuchman signed the Submission Agreement: October 28, 2013.

**CASE SUMMARY**

13-02939

Claimants asserted the following causes of action: wrongful termination; retaliation; defamation; conversion; breach of contract; breach of the implied covenant of good faith and fair dealing; intentional interference with contractual relations and prospective economic advantage; unlawful and deceptive business practices; and severe emotional distress.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

13-02581

Claimant asserted the following causes of action: breach of promissory note; conversion, and unjust enrichment.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In his Counterclaim and Third-Party Claim, Respondent asserted the following causes of action: wrongful termination; retaliation; defamation; conversion; breach of contract; breach of the implied covenant of good faith and fair dealing; intentional interference with contractual relations and prospective economic advantage; unlawful and deceptive business practices; and severe emotional distress.

Unless specifically admitted in their Answer, Claimant and Third-Party Respondent denied the allegations made in the Counterclaim and Third-Party Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

13-02939

In the Statement of Claim, Claimants requested compensatory damages in the amount of \$416,445.59 for B. Tuchman, or alternatively the complete forgiveness of any remaining money due Wells Fargo on B. Tuchman's promissory note; the return of \$128,241.25 illegally converted from B. Tuchman's Wells Fargo brokerage account; the return to M. Tuchman of \$81,131.63 illegally converted from her Wells Fargo brokerage account; the payment of \$2,850,000.00, the 10 year sum of compensation B. Tuchman would have earned at Wells Fargo in commissions, commission bonuses and other compensation and benefits; \$8,550,000.00 for pointless and reckless damage and injury to B. Tuchman and M. Tuchman's reputation, for emotional distress, for the unnecessary humiliation and embarrassment they experienced, for pain and suffering, and emotional anguish; punitive damages in the amount of \$4,275,000.00, expungement of B. Tuchman's CRD record, attorneys' fees, costs, expenses, and all FINRA charges associated with the arbitration.

At the conclusion of the hearing, Claimants requested compensatory damages in the amount of \$2,987,470.00; punitive damages of \$17,918,820.00; recruitment bonus reimbursement of \$128,241.25 and \$81,131.63, respectively; cancellation of the remaining balance of the promissory note of \$204,834.43; \$1,000,000.00 for defamation; \$4,479,705.00 for emotional distress; \$250,000.00 for conversion; \$44,040.00 for the loss of the Wachovia Securities Performance Award Plan; discovery sanctions of \$100,000.00; legal fees of \$619,502.00; expert fees of \$56,233.00; FINRA costs and fees; statutory interest; and expungement of B. Tuchman's Form U5.

Respondents requested dismissal of the Statement of Claim in its entirety and with prejudice; attorneys' fees; costs; and any further relief deemed appropriate by the Panel.

At the conclusion of the hearing, Respondents requested the dismissal of all of Claimants' claims, that B. Tuchman be ordered to repay \$231,570.27 in principal and interest on the promissory note, along with appropriate, unspecified punitive damages; and that he also be ordered to pay Wells Fargo's attorneys' fees in the amount of \$494,477.89.

13-02581

Claimant requested compensatory damages in the amount of \$204,834.43; interest at the rate of 5.06 % per annum from June 21, 2013 until paid; costs of collection, expenses, and reasonable attorneys' fees; post-judgment interest; and any and all further relief that the Panel deems just and proper.

Respondent requested dismissal of the Statement of Claim in its entirety; costs; expenses; forum fees; and such other and further relief as the Panel may deem proper.

In his Counterclaim and Third-Party Claim, Respondent requested compensatory damages in the amount of \$416,445.59, or alternatively the complete forgiveness of any remaining money due to Claimant on his promissory note; the return of \$128,241.25 illegally converted from his Wells Fargo brokerage account; the return to Mrs. Tuchman of \$81,131.63 illegally converted from her Wells Fargo brokerage account; the payment of \$2,850,000.00, which represents the 10 year sum of compensation Respondent would have earned at Wells Fargo in commissions, commission bonuses and other compensation and benefits; \$8,550,000.00 for pointless and reckless damage and injury to B. Tuchman's and Mrs. Tuchman's reputation, for emotional distress, for the unnecessary humiliation and embarrassment they experienced, for pain and suffering, and emotional anguish; punitive damages in the amount of \$4,275,000.00, expungement of Respondent's CRD records, attorneys' fees, costs, expenses, and all FINRA charges associated with the arbitration.

Claimant and Third-Party Respondent requested dismissal of the Counterclaim and Third-Party Claim in their entirety and with prejudice; attorneys' fees; costs; and any further relief deemed appropriate by the Panel.

**OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

By correspondence dated January 23, 2014, Wells Fargo filed a Motion to Consolidate case number 13-02939 with 13-02581. By correspondence dated February 4, 2014, B. Tuchman and M. Tuchman filed a Motion to Consolidate case number 13-02581 with case number 13-02939. After due deliberation and by Order dated April 7, 2014, the Panel in case number 13-02939 granted the Motions to Consolidate.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

## **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Wells Fargo is liable for and shall pay to M. Tuchman compensatory damages in the amount of \$81,131.63.
2. Wells Fargo is liable for and shall pay to B. Tuchman compensatory damages in the amount of \$128,241.25.
3. Wells Fargo is liable for and shall pay to B. Tuchman compensatory damages in the amount of \$1,157,302.00, which represents the amount of compensation B. Tuchman would have earned in commissions, commission bonuses, and other compensation and benefits, between his termination date and the date that he likely would have actually retired, but for the termination at issue.
4. Wells Fargo is liable for and shall pay to M. Tuchman interest on #1 of the award above at the rate of 5% per annum from June 21, 2013 until payment in full.
5. Wells Fargo is liable for and shall pay to B. Tuchman interest on # 2 and # 3 of the award above at the rate of 5% per annum from June 21, 2013 until payment in full.
6. Wells Fargo is liable for and shall pay to B. Tuchman and M. Tuchman attorneys' fees in the amount of \$522,903.20. All parties requested attorneys' fees.
7. The Panel recommends the expungement of the Reason for Termination in Section 3 of Bruce Howard Tuchman's (CRD # 731345) Form U5 filed by Wells Fargo Advisors, LLC on July 12, 2013 and maintained by the Central Registration Depository ("CRD") The Reason for Termination shall be changed to "Other".

In addition, the Panel recommends that the Termination Explanation be expunged and changed to "terminated without cause." The above recommendations also apply to sections 2 and 4 of the Disclosure Reporting Page of the foregoing Form U5. These recommendations shall apply to all subsequent disclosures concerning the same events.

The above recommendations are based on the defamatory nature of the information.

The Form U5 is not automatically amended to include the changes indicated above. Bruce Howard Tuchman must forward a copy of this Award to FINRA's Registration and Disclosure Department for the amendments to be incorporated into the Form U5.

8. Wells Fargo's claims are denied in their entirety.
9. B. Tuchman and M. Tuchman's claims against Dyer are denied in their entirety.

10. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

##### 13-02939

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee = \$ 1,800.00

*\*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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Wells Fargo Advisors, LLC is assessed the following:

##### 13-02939

Member Surcharge	= \$ 3,750.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 5,500.00

#### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

September 15-16, 2015, adjournment by B. Tuchman and M. Tuchman      Waived

#### Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

Three (3) Decisions on discovery-related motions on the papers  
with (3) three arbitrators @ \$600.00 = \$ 1,800.00

B. Tuchman and M. Tuchman submitted two (2) discovery-related motions

Wells Fargo submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees = \$ 1,800.00

1. The Panel has assessed \$900.00 of the discovery-related motion fees jointly and severally to B. Tuchman and M. Tuchman.
2. The Panel has assessed \$900.00 of the discovery-related motion fees to Wells Fargo.

**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @1,200.00		= \$ 2,400.00
Pre-hearing conferences:		
May 6, 2014	1 session	
February 20, 2015	1 session	
Twenty-seven (27) Hearing sessions @ \$1,200.00		= \$32,400.00
Hearing Dates:		
September 17, 2015	2 sessions	
September 18f, 2015	2 sessions	
September 29, 2015	3 sessions	
September 30, 2015	3 sessions	
October 1, 2015	3 sessions	
October 2, 2015	3 sessions	
October 8, 2015	3 sessions	
October 9, 2015	2 sessions	
November 3, 2015	3 sessions	
November 7, 2015	2 sessions	
November 11, 2015	1 session	
<b>Total Hearing Session Fees</b>		<b>= \$34,800.00</b>

1. The Panel has assessed \$17,400.00 of the hearing session fees jointly and severally to B. Tuchman and M. Tuchman.
2. The Panel has assessed \$17,400.00 of the hearing session fees to Wells Fargo.

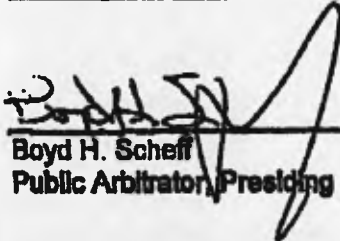
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Boyd H. Scheff	-	Public Arbitrator, Presiding Chairperson
Emily Diamond	-	Public Arbitrator
Michael E. Olney	-	Non-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.

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Boyd H. Scheff  
Public Arbitrator, Presiding Chairperson

February 24, 2016  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Emily Diamond  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Michael E. Olney  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

March 3, 2016  
\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution office use only)



**ARBITRATION PANEL**

Boyd H. Scheff	-	Public Arbitrator, Presiding Chairperson
Emily Diamond	-	Public Arbitrator
Michael E. Olney	-	Non-Public Arbitrator

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Boyd H. Scheff  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

*Emily Diamond*  
\_\_\_\_\_  
Emily Diamond  
Public Arbitrator

*2/19/2016*  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Michael E. Olney  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

**March 3, 2016**  
\_\_\_\_\_  
**Date of Service (For FINRA Dispute Resolution office use only)**

**ARBITRATION PANEL**

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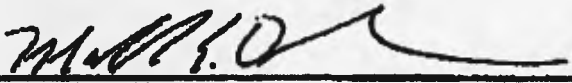
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\_\_\_\_\_  
Boyd H. Scheff  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Emily Diamond  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Michael E. Olney  
Non-Public Arbitrator

  
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Signature Date

March 3, 2016

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