

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

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In the Matter of the Arbitration Between:

Claimant  
Estate of Daniel Drummond

Case Number: 15-00235

vs.

Respondents  
Wells Fargo Advisors, LLC  
Charles Burgess James, III

Hearing Site: Columbia, South Carolina

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Nature of the Dispute: Customer vs. Member and Associated Person

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Estate of Daniel Drummond: Andrew D. Gowdown, Esq., Rosen, Rosen & Hagood, LLC, Charleston, South Carolina.

For Respondents Wells Fargo Advisors, LLC (“Wells Fargo”) and Charles Burgess James, III (“James”): Stephen M. Cox, Esq., Robinson, Bradshaw & Hinson, P.A., Rock Hill, South Carolina.

**CASE INFORMATION**

Statement of Claim filed on or about: January 30, 2015.  
Claimant signed the Submission Agreement: January 30, 2015.

Joint Statement of Answer filed by Respondents on or about: March 27, 2015.  
Wells Fargo signed the Submission Agreement: March 26, 2015.  
James signed the Submission Agreement: March 25, 2015.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability, failure to supervise, fraud, negligent misrepresentation, breach of fiduciary duty, negligence, breach of contract, constructive fraud, and violations of the South Carolina Uniform Securities Act, Missouri Securities Act, and FINRA rules. The causes of action relate to Coca-Cola and Verizon Communications stock.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested unspecified compensatory damages, punitive damages, attorneys' fees, costs, interest, and a disciplinary referral.

In the Statement of Answer, Respondents requested that the Statement of Claim be dismissed with prejudice, expungement of this matter from Respondent James' CRD records, costs, and such other and further relief as is just and proper.

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

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

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, a majority of the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Wells Fargo is liable for and shall pay to Claimant \$5,987.75 which represents a disgorgement of fees charged. Respondent Wells Fargo is liable by reason of its failure to provide adequate supervision of the customer's account.
2. Respondent Wells Fargo is liable for and shall pay to Claimant interest on the above-stated sum at the rate of 7.5% per annum from January 30, 2015 through and including the date of the award.
3. Respondent James' request for expungement of his CRD records is denied.
4. Any and all claims for relief not specifically addressed herein, including punitive damages and attorneys' fees, are denied.

#### **Arbitrator Dana Tait Sandlin's Dissenting Opinion, which does not reflect the views of the other arbitrators:**

Charles James, III is a lifelong resident of the rural town of Sumter, SC, population 41,000, and home to a large military retirement population. He acted within his knowledge and regional culture to the best of his ability to meet the needs of his clients. He was following his training from Series 7 training, when he chose to allow continual and substantial unsolicited account withdrawals by Mr. and Mrs. Daniel Drummond in the final 2.5 years of Mr. Drummond's life. This training instructs brokers to refuse to allow investors to make investments of cash, if they are detected to have a mental deficit. It does not allow brokers to deny access to an investor's cash/IRA reserves, by an investor or long-term wife, during the final years of their

lives. Mr. James testimony is that he was unaware of Mr. Drummond's dementia/Alzheimer's diagnosis in the final years of his life.

However, there was not one piece of evidence of supervision of the case files of Mr. James, III, by any supervisor of Wells Fargo. There was no testimony re: management supervision; no supervisor appeared at the hearing; and no supervisory notes were presented for over a 10 year case file history. This is a serious concern. While FINRA Regulatory Notice 15-37, Financial Exploitation of Seniors and Other Vulnerable Adults, went into effect after its comment period in November 2015, and was not in effect during Mr. Drummond's lifetime, there is still a strong presumption that cases involving older adults (and, indeed, all investors, regardless of age and medical history) need stockbroker management supervision. Management supervision has long been in effect and an internal mechanism in all brokerage houses. It is the way in which errors are caught and contained early in a file's history. No such supervision appears to be present in this case from the testimony and evidence presented.

I believe that had such supervision been in place and working properly, with supervisory comments in the case file on a regular basis, that Mr. Drummond's medical deficits might have been detected. It is a concern (although no law was broken) that no one in the firm laid eyes on Mr. Drummond in person for a 2 1/2 year period. I would suggest that all brokers would be prudent (and perhaps should be required by a new rule) to have a once a year meeting with all of their clients in person (or at least via Skype if living in different cities) especially with seniors, who might very well be exploited by any close family member. This could help in detecting health issues that are declining in nature and could require closer scrutiny through the supervisory process. It is a concern that Mr. James, III stated that he has another 324 clients and that many of those cases are retired military veterans, in their senior years. Others may have medical issues that may affect their financial judgements that are going undetected.

Investors hire Wells Fargo to help 'manage' their accounts, and they pay fees for that 'management'. If they did not want some management help, they could open an account with an online broker and make their own trades. Part of that management help includes face-to-face meetings and supervision of case files. Wells Fargo was negligent in its duty on this account.

As for the missing \$525,000.00 (approximate) from the Drummond IRA accounts and Coca Cola Stock sales: this money was placed into the sole bank account of Daniel Drummond. The Bank account was under the entity of Wells Fargo Bank and they are not a party to this proceeding. Mrs. Drummond was a 20 year spouse of Mr. Drummond. She was the sole beneficiary on the IRA. She was a joint account holder on the account used to sell the stock. She cared for Mr. Drummond in the final years of his life and she took on all of the expenses for such care. No one from the family appeared on a regular daily, weekly, or monthly basis to provide familial support and care to Mr. Drummond, even though everyone knew his medical condition and knew that he was dying. While family dysfunction may be to blame for this in part, it is still a duty of a son to appear for his father in the final moments (if not months or years) of his life. Mrs. Drummond used the funds for Mr. Drummond's needs and, quite

possibly, her own needs. Absent finding Mrs. Drummond (she did not appear before this panel) and finding what else, if anything she used the proceeds for, I cannot attach a finding of legal fraud, nor award damages in this matter.

### **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	= \$ 1,575.00
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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 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:

Member Surcharge	= \$ 1,900.00
Member Process Fee	= \$ 3,750.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

March 15 – 18, 2016 adjournment by Claimant	WAIVED
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#### **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:

One (1) pre-hearing session with the Panel @ \$ 1,125.00/session	= \$ 1,125.00
Pre-hearing conference: July 7, 2015	1 session

Seven (7) hearing sessions @ \$ 1,125.00/session	= \$ 7,875.00
Hearing Dates:	
September 27, 2016	2 sessions
September 28, 2016	2 sessions
September 29, 2016	2 sessions
September 30, 2016	1 session

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Total Hearing Session Fees	= \$ 9,000.00
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1. The Panel has assessed \$4,500.00 of the hearing session fees to Claimant.
2. The Panel has assessed \$4,500.00 of the hearing session fees to Respondent Wells Fargo.

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

**ARBITRATION PANEL**

Robert A. Dean - Public Arbitrator, Presiding Chairperson  
Dana Tait Sandlin - Public Arbitrator  
Richard James Igou - 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.

**Concurring Arbitrators' Signatures**

**RA Dean**

Digitally signed by RA Dean  
DN: cn=RA Dean, o=Office of  
Robert A. Dean, ou,  
email=rad@tdlrfpc.com, c=US  
Date: 2016.10.20 14:06:43 -04'00'

10/20/2016

Robert A. Dean  
Public Arbitrator, Presiding Chairperson

Signature Date

Richard James Igou  
Public Arbitrator

Signature Date

**Dissenting Arbitrator's Signature**

*Dana Tait Sandlin*

Dana Tait Sandlin  
Public Arbitrator

10/21/2016  
Signature Date

October 24, 2016

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

**ARBITRATION PANEL**

Robert A. Dean	-	Public Arbitrator, Presiding Chairperson
Dana Tait Sandlin	-	Public Arbitrator
Richard James Igou	-	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.

**Concurring Arbitrators' Signatures**

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Robert A. Dean  
Public Arbitrator, Presiding Chairperson



\_\_\_\_\_  
Richard James Igou  
Public Arbitrator

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

October 20, 2016

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

**Dissenting Arbitrator's Signature**

\_\_\_\_\_  
Dana Tait Sandlin  
Public Arbitrator

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

October 24, 2016

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