

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

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In the Matter of the Arbitration Between:

Claimants

Agatha Dancy, individually and on behalf of her husband John Dancy

Case Number: 16-00847

vs.

Respondents

Wedbush Securities Inc.  
Mark Fred Augusta

Hearing Site: Los Angeles, California

Cross-Claimant

Mark Fred Augusta

vs.

Cross-Respondent

Wedbush Securities Inc.

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

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Agatha Dancy, individually and on behalf of her husband John Dancy, hereinafter collectively referred to as "Claimants": Robert J. Girard, II, Esq., Girard Bengali, APC, Los Angeles, California.

For Respondent/Cross-Respondent Wedbush Securities Inc. ("Wedbush"): Charles LaChaussee, Esq., Wedbush Securities Inc., Los Angeles, California.

For Respondent/Cross-Claimant Mark Fred Augusta, ("Augusta"): David S. Harrison, Esq., Law Offices of David Harrison, Beverly Hills, California.

**CASE INFORMATION**

Statement of Claim filed on or about: March 22, 2016.

Claimants signed the Submission Agreement: March 18, 2016.

Statement of Answer filed by Wedbush on or about: June 16, 2016.

Statement of Answer to Cross-Claim filed by Wedbush on or about: June 27, 2016.

Wedbush signed the Submission Agreement: June 16, 2016.

Statement of Answer and Cross-Claim filed by Augusta on or about: June 17, 2016.  
Augusta signed the Submission Agreement: June 6, 2016.

### **CASE SUMMARY**

Claimants asserted the following causes of action: violations of state and federal securities laws and FINRA/SEC Rules; breach of fiduciary duty; unsuitable recommendations; failure to supervise; constructive fraud, common law fraud and fraud by material misrepresentations/omissions; unjust enrichment; and elder financial abuse. In the Amended Statement of Claim, Claimants added a cause of action for unauthorized trading.

The causes of action relate to Claimants' investment in long-term municipal bonds and structured certificate of deposits, including Citigroup FDG Medium Term due 5/30/2033, Lloyds TSB Bank Steepner Note due 2/22/2033, SG Structured Prods Medium Term due 11/30/2032, Citibank NA Prin Prot MLCD Quarterly due 3/27/2033, JP Morgan Chase Bank NA Columbus Oh CD due 1/18/2028, JP Morgan Chase Bank NA Columbus Oh CD due 11/20/2028, JP Morgan Chase Bank NA 30 YR US Dollar due 3/24/2029, JP Morgan Chase Bank NA Columbus Oh CD due 1/23/2029, United CMNTY Bank Blairsville Ga CD due 6/28/2033, and United CMNTY Blairsville GA CD due 8/23/2033.

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

In the Cross-Claim, Augusta asserted claims for indemnity and contribution.

Unless specifically admitted in the Statement of Answer to the Cross-Claim, Wedbush denied the allegations made in the Cross-Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested:

1. General and compensatory damages according to proof, in the amount of \$247,000.00;
2. Lost opportunity costs in an amount according to proof;
3. Disgorgement of all commissions and fees paid to Wedbush and Augusta for the life of the accounts;
4. Costs of proceedings;
5. Punitive damages;
6. Interest at the legal rate on all sums recovered;
7. Reimbursement of all attorneys' fees and costs; and
8. Such other and further relief as this Panel deems just and appropriate.

In the Statement of Answer, Wedbush requested:

1. Dismissal of Claimants' claims in their entirety; and

2. An award of costs in its favor for having to defend against this claim.

In the Statement of Answer and Cross-Claim, Augusta requested:

1. Claimants take nothing by reason of their Statement of Claim;
2. Wedbush be ordered to indemnify Augusta for all legal fees and costs incurred with this matter;
3. In the event liability is attributed to Augusta, Wedbush be ordered to indemnify him for any award paid to Claimants; and
4. Such further relief as the Panel deems appropriate.

In the Statement of Answer to the Cross-Claim, Wedbush requested denial of Augusta's claims in their entirety.

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

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

During the evidentiary hearing, Claimants moved to amend the Statement of Claim to add a cause of action for "unauthorized trading." Wedbush and Augusta opposed the motion. The Panel granted the motion.

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 the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel finds that Wedbush and Augusta both engaged in improper conduct. The Panel also grants Augusta's Cross-Claim for indemnification. Accordingly, Wedbush is solely liable for and shall pay to Claimants the following amounts:
  - a. \$250,000.00 in compensatory damages;
  - b. \$110,000.00 in commission disgorgement;
  - c. Interest in the amounts of \$35,069.00 for compensatory damages and \$15,430.00 for commission disgorgement. The Panel calculated interest at a rate of 10% per annum from December 31, 2015 through and including May 26, 2017;
  - d. \$1,080,000.00 in punitive damages pursuant to CA Elder Abuse and Adult Civil Protective Act, Welfare and Institutions Code Section 15600 et seq.;
  - e. \$277,691.00 in attorneys' fees pursuant to CA Welfare & Institutions Code Section 15657.1; and
  - f. \$28,864.00 in costs.
2. The Panel awards Augusta the sum of \$110,000.00 in attorneys' fees and costs. However, as a result of Augusta's improper conduct, the Panel subtracts the

commissions that he received, plus interest, in the amount of \$50,172.00. Therefore, Wedbush is liable for and shall pay Augusta the net sum of \$59,828.00 in attorneys' fees and costs pursuant to Lab. Code Section 2802.

3. The Panel finds that Wedbush and Augusta subjected Claimants to elder abuse and that they permitted unauthorized trading in the Claimants' account.
4. Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim Filing Fee	= \$ 1,425.00
Cross-Claim Filing Fee	= \$ 1,425.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4th 83 (2000), Augusta is assessed a \$200.00 cross-claim filing fee. The balance of the nonrefundable portion of the cross-claim filing fee, in the amount of \$100.00, is assessed to Wedbush.

#### **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, Wedbush is assessed the following:

Member Surcharge	= \$ 1,700.00
Member Process Fee	= \$ 3,250.00

#### **Discovery-Related Motion Fee**

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

One (1) decision on a discovery-related motion on the papers with one (1) arbitrator @ \$200.00/decision = \$ 200.00

Augusta submitted (1) discovery-related motion

One (1) decision on a discovery-related motions on the papers with three (3) arbitrators @ \$600.00/decision = \$ 600.00

Claimants submitted (1) discovery-related motion

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Total Discovery-Related Motion Fees = \$ 800.00

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4th 83 (2000), the Panel has assessed \$800.00 of the discovery-related motion fees to Wedbush.

**Contested Motion for Issuance of Subpoena Fee**

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) decision on a contested motion for the issuance of a subpoena  
with one arbitrator @ \$250.00 = \$ 250.00

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Total Contested Motion for Issuance of Subpoena Fee = \$ 250.00

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4th 83 (2000), the Panel has assessed \$250.00 of the contested motion for issuance of subpoenas fees to Wedbush.

**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 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 the Panel @ \$1,125.00/session = \$ 1,125.00  
Pre-hearing conference: August 15, 2016 1 session

Fourteen (14) hearing sessions @ \$1,125.00/session = \$15,750.00  
Hearing Dates: March 14, 2017 2 sessions  
March 15, 2017 2 sessions  
March 16, 2017 2 sessions  
May 23, 2017 2 sessions  
May 24, 2017 2 sessions  
May 25, 2017 2 sessions  
May 26, 2017 2 sessions

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Total Hearing Session Fees = \$16,875.00

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4th 83 (2000), the Panel has assessed \$16,875.00 of the hearing session fees to Wedbush.

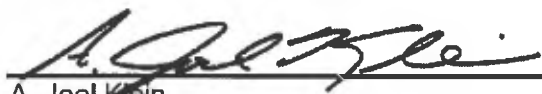
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

A. Joel Klein	-	Public Arbitrator, Presiding Chairperson
Owen J. Thomsen	-	Public Arbitrator
Carolyn Renee Payne	-	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**

  
\_\_\_\_\_  
A. Joel Klein  
Public Arbitrator, Presiding Chairperson

7/11/17  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Owen J. Thomsen  
Public Arbitrator

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

\_\_\_\_\_  
Carolyn Renee Payne  
Public Arbitrator

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

July 13, 2017  
Date of Service (For FINRA Office of Dispute Resolution office use only)

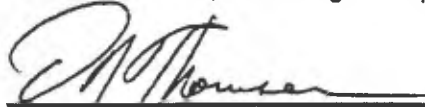
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Public Arbitrator

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

*Carolyn Renee Payne*  
\_\_\_\_\_  
Carolyn Renee Payne  
Public Arbitrator

*July 12, 2017*  
\_\_\_\_\_  
Signature Date

July 13, 2017  
Date of Service (For FINRA Office of Dispute Resolution office use only)

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