

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Leah Galles Fromer, (Claimants) v. Wells Fargo Brokerage Services, LLC and Ethan J. Wiggins, (Respondents)

Case Number: 00-03834

Hearing Site: Albuquerque, New Mexico

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**REPRESENTATION OF PARTIES**

Claimant Leah Galles Fromer ("Fromer"): Thomas J. Schuchert, Esq., The Bregman Law Firm, P.C., Albuquerque, New Mexico.

Respondent Wells Fargo Brokerage Services, LLC ("Wells Fargo") and Respondent Ethan J. Wiggins ("Wiggins"): Curt Roy Hineline, Esq., Dorsey & Whitney, LLP, Seattle, Washington.

**CASE INFORMATION**

Statement of Claim filed on or about: September 01, 2000

Amended Statement of Claim filed on or about: March 27, 2001

Claimant Fromer signed the Uniform Submission Agreement: August 21, 2000

Statement of Answer filed by Respondent Wells Fargo on or about: January 26, 2001

Supplemental Responses to Claimant's Statement of Claims filed by Respondent Wells Fargo and Wiggins on or about: May 04, 2001

Arbitration Brief filed by Respondents on or about: September 7, 2001

**CASE SUMMARY**

Claimant Leah Galles Fromer asserted the following causes of action: Breach of Contract, Negligence, Failure to Supervise, Breach of Fiduciary Duty, Unsuitability, Common Law Fraud, Violation of the New Mexico Unfair Trade Practices Act.

The causes of action relate to the order execution of the Ballard Power Systems, Inc. stock.

Unless specifically admitted in its Answer, Respondents Wells Fargo Brokerage Services, LLC and Ethan J. Wiggins denied the allegations made in the Statement of Claim and

asserted the following defenses: Failure to State a Claim Upon Which Relief May be Granted, Respondent Exercised Reasonable Care, Waiver, Estoppel, Ratification, Assumption of Risk, Laches, Comparative Fault, Failure to Mitigate, and Statute of Fraud Bars Breach of Contract Claim.

### **RELIEF REQUESTED**

Claimant Leah Galles Fromer requested:

Compensatory Damages	\$137,289.61
Treble Damages	\$411,868.83
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	unspecified

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

Respondents Wells Fargo Brokerage Services and Ethan J. Wiggins did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

### **AWARD**

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

1. Respondent Wells Fargo Brokerage Services, LLC is solely liable to Claimant Leah Galles Fromer in the amount of \$70,000.00 as compensatory damages.
2. Any and all claims asserted by Claimant Leah Galles Fromer against Ethan J. Wiggins are denied.
3. Parties shall bear their own costs, including attorney's fees.
4. Any and all relief not specifically addressed herein, including punitive treble damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$375.00
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### 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. In this matter, the member firm is a party.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	= \$3,500.00
Total Member Fees	= \$6,100.00

### Forum Fees and Assessments

The panel has the authority to assess forum fees for each hearing session conducted. A hearing 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 Panel x \$1,200.00		= \$1,200.00
Pre-hearing conference: February 05, 2001	1 session	
Four (4) Hearing sessions x \$1,200.00		= \$4,800.00
Hearing Dates: September 11, 2001	2 sessions	
September 12, 2001	2 sessions	
Total Forum Fees		= \$6,000.00

1. The panel has assessed \$3,000.00 of the forum fees to Claimant Leah Galles Fromer
2. The panel has assessed \$3,000.00 of the forum fees to Respondent Wells Fargo Brokerage Services, LLC.

### Fee Summary

1. Claimant Leah Galles Fromer solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$3,000.00
Total Fees	= \$3,375.00
<u>Less payments</u>	= \$1,575.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,800.00
2. Respondent Wells Fargo Brokerage Services, LLC is solely liable for:

Member Fees	= \$6,100.00
Forum Fees	= \$3,000.00
Total Fees	= \$9,100.00
<u>Less payments</u>	= \$6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,000.00

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Carl E. Gutman	-	Public Arbitrator, Presiding Chair
Jean F. Gibson	-	Public Arbitrator
Kenneth R. Johnston	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Carl E. Gutman

10/06/01

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Carl E. Gutman  
Public Arbitrator, Presiding Chair

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Signature Date

/s/ Jean F. Gibson

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Jean F. Gibson  
Public Arbitrator

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Signature Date

/s/ Kenneth R. Johnston

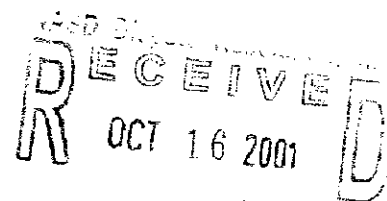
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Kenneth R. Johnston  
Non-Public Arbitrator

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Signature Date

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Date of Service (For NASD-Dispute Resolution office use only)

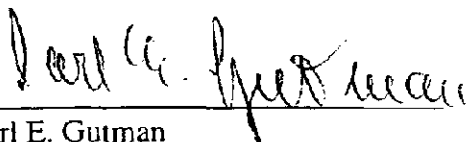


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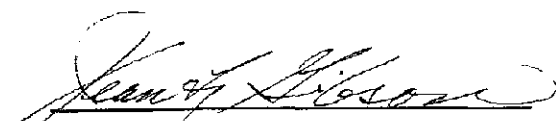
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Jean F. Gibson  
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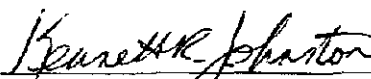
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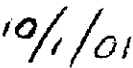
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