

**AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Richard S. Phelps

and

Case Number: 02-07275  
Hearing Site: Houston, Texas

Names of Respondents

Wells Fargo Investments, Inc.  
David Whitworth

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**NATURE OF DISPUTE**

Customer v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Richard S. Phelps ("Claimant") of College Station, Texas, represented himself.

Wells Fargo Investments, Inc. ("**Wells Fargo**") and David Whitworth ("**Whitworth**"), hereinafter referred to as "Respondents," were represented by Will S. Montgomery, Esq., of Jenkins & Gilchrist, of Dallas, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 10, 2003.

The Submission Agreement of Claimant Richard S. Phelps was signed on or about December 12, 2002.

The Joint Statement of Answer was filed by Respondents Wells Fargo Investments, Inc. and David Whitworth on or about March 4, 2003.

The Submission Agreement of Respondent Wells Fargo Investments, Inc. was signed on or about June 9, 2003.

The Submission Agreement of Respondent David Whitworth was signed on or about June 9, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, errors/charges, negligence, failure to supervise, breach of fiduciary duty. Causes of action related to the order and sale of BEA System stock.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: waiver, estoppel, ratification, assumption of risk, comparative negligence and Claimant's own failure to mitigate his alleged damages.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$100,000
Punitive/Exemplary Damages	\$200,000
Interest	Unspecified
Attorney's Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

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

- 1.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice in their entirety;

- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$300.00

#### **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 Wells Fargo Investments, Inc..

Member surcharge	= \$1700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2750.00

#### **Forum Fees and Assessments**

The Arbitration Panel assesses 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 \$1125.00	= \$1125.00
Pre-hearing conference: July 11, 2003	1 session
Two (2) Hearing sessions x \$1125.00	= \$2250.00
Hearing Dates: November 3, 2003	2 sessions
Total Forum Fees	= \$3375.00

The Arbitration Panel has assessed \$1687.50 of the forum fees to Richard S. Phelps.  
The Arbitration Panel has assessed \$1687.50 of the forum fees jointly and severally to Wells Fargo Investments, Inc. and David Whitworth.

**FEE SUMMARY**

Claimant, Richard S. Phelps, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1687.50
Total Fees	= \$1987.50
Less payments	= \$1425.00
Balance Due NASD Dispute Resolution	= \$ 562.50

Respondent, Wells Fargo Investments, Inc., is liable for:

Member Fees	= \$5200.00
Total Fees	= \$5200.00
Less payments	= \$5200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Wells Fargo Investments, Inc. David Whitworth, are jointly and severally liable for:

Forum Fees	= \$1687.50
Total Fees	= \$1687.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1687.50

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

**Irwin S. Sugerman - Public Arbitrator, Presiding Chair**

**Charles B. Chester - Public Arbitrator**

**Dale A. Heam • Non-Public Arbitrator**

### Concurring Arbitrators:

**Irwin S. Sugarman**

Public Arbitrator, Presiding Chair

12.30.25

**Signature Date**

**Charles S. Chester**

## Public Arbitrator

**Signature Date**

Dale A. Hearn

### Non-Public Arbitrator

**Signature Date**

Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Irwin S. Sugerman - Public Arbitrator, Presiding Chair  
Charles S. Chester - Public Arbitrator  
Dale A. Hearn - Non-Public Arbitrator

**Concurring Arbitrators:**

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Irwin S. Sugerman  
Public Arbitrator, Presiding Chair

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

Charles S. Chester  
Charles S. Chester  
Public Arbitrator

12/31/03  
Signature Date

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Dale A. Hearn  
Non-Public Arbitrator

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

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Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Irwin S. Sugerman - Public Arbitrator, Presiding Chair  
Charles S. Chester - Public Arbitrator  
Dale A. Hearn - Non-Public Arbitrator

**Concurring Arbitrators:**

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Irwin S. Sugerman  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Charles S. Chester  
Public Arbitrator

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

Dale A. Hearn  
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Dale A. Hearn  
Non-Public Arbitrator

12-30-05  
\_\_\_\_\_  
Signature Date

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Date of Service (For NASD office use only)