
**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
Patrick H. McDonald

Case Number: 02-07513

Name of the Respondent
Wells Fargo Investments, LLC

Hearing Site: Indianapolis, Indiana

Nature of the Dispute: Associated Person vs. Member Firm

REPRESENTATION OF PARTIES

Claimant, Patrick H. McDonald, appeared *pro se* in this proceeding.

Respondent, Wells Fargo Investments, LLC ("Wells Fargo"), hereinafter referred to as "Respondent": Karoline Jackson, Esq. of the law firm Barnes & Thornburg, located in Indianapolis, Indiana.

CASE INFORMATION

Statement of Claim filed on or about December 10, 2002.

An Amended Statement of Claim filed on July 7, 2003.

Claimant signed the Uniform Submission Agreement on November 28, 2002.

Statement of Answer filed by Respondent Wells Fargo on March 5, 2003.

Respondent Wells Fargo signed the Uniform Submission Agreement on February 13, 2003.

Respondent filed a request to enforce settlement and Motion to Enter Arbitration Award on December 22, 2003. Claimant filed a response on January 8, 2004 and Motion to continue arbitration. On January 26, 2004, Wells Fargo further submitted a proposed Award to be reviewed by the Panel. McDonald filed a response on February 9, 2004 objecting to the language proposed by Wells Fargo.

On June 11, 2004, Respondent filed a Motion to Enforce Settlement Agreement and to dismiss the arbitration with prejudice. Claimant filed a response on June 25, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: slander on U-5 resulting in a loss of employment and financial hardship.

Unless specifically admitted in its Answer, Wells Fargo denied the allegations made in the Statement of Claim and asserted the following defenses:

1. McDonald has waived and released any claims asserted in the Statement of Claim

- and is estopped from asserting those claims.
2. Wells Fargo at all times acted in good faith and with reasonable care and diligence with regard to McDonald's registration and termination of registration with the NASD.
 3. Wells Fargo had a privilege to disclose information in the Form U-5 to the NASD or any prospective employer.
 4. McDonald failed to mitigate his damages.

RELIEF REQUESTED

Claimant requested \$105,000.00 in compensatory damages; expungement of his Form U-5, repayment of all unpaid commissions and unspecified punitive damages.

Respondent, Wells Fargo, requested denial and dismissal of Claimant's Statement of Claim in their entirety and costs in defending this arbitration.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing on November 18, 2003, the parties notified the Panel that they have agreed to a settlement, which would amend the language contained in Claimant's Form U-5. The parties were to submit to the Arbitration Panel, for review and approval, proposed language mutually agreed upon by the parties. A Stipulated Award would be issued for the expungement of Claimant's Form U-5.

Pursuant to Respondent's December 22, 2003 Motion to Enter Arbitration Award and Claimant's January 8, 2004 response, the Panel was notified that parties were not in agreement with the language of the settlement agreement, and therefore, had not yet executed an agreement. The Panel reviewed the parties' submissions and entered the following Order dated January 22, 2004:

The Arbitration Panel has reviewed the Motion to Enter Arbitration Award submitted by the Respondent and the Claimant's Response to the Motion and his Motion to Continue. After discussion about the aforementioned, the Panel unanimously has determined that the Claimant's response and Motion to Continue is without merit. The Claimant agreed at the hearing, on the record, to the provisions contained in the Award. To allow the Claimant to now renege on the agreement made at hearing would be inappropriate.

On May 14, 2004, Claimant filed against Wells Fargo in the United States District Court, Northern District of Indiana, Fort Wayne Division, a Motion for Hearing and for a change of Arbitration Panel. In an Order dated August 2, 2004, The Honorable William C. Lee for the United States District Court of the Northern District of Indiana, Fort Wayne Division, denied Claimant's motion.

On August 16, 2004, the Panel granted Respondent's Motion to Enforce Settlement Agreement and to dismiss the arbitration with prejudice. The Panel also determined that Claimant is to pay for Respondent's attorney's fees as of December 1, 2003 in the amount of \$9,274.71. Subsequent to this Order, the parties continued to work on finalizing their settlement.

On April 26, 2005, after the parties' failure to finalize and execute a settlement agreement, McDonald requested the Panel's intervention. A pre-hearing conference was held on May 23, 2005 to discuss the parties' dispute regarding their settlement terms and language of agreement. The Panel requested McDonald to resubmit his proposed terms of a final Agreement. McDonald filed his proposed terms of a final Agreement on June 13, 2005 and Wells Fargo filed a response on June 24, 2005.

The Panel then entered the final Order dated July 5, 2005:

After reading the Claimant's Resubmission of Terms of Final Agreement and Respondent's Response to the Resubmission, the Arbitration Panel orders that:

- a) The previous Order enforcing the settlement agreement made between the parties, as reflected in the Award, is upheld;
- b) The arbitration matter is concluded with prejudice; and
- c) The Arbitration Panel orders the Claimant to pay Respondent attorney's fees in the amount of \$2,352.00.

Having been notified on May 23, 2005 that Arbitrator Judith Stiltz Ogden is no longer serving as an arbitrator in the Midwest Region, the parties agreed to proceed with two arbitrators.

The parties 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. Any and all claims asserted by Claimant, Patrick H. McDonald, against Wells Fargo Investments, LLC, are hereby dismissed with prejudice.
2. The terms of the parties' settlement agreement as agreed to by the parties on November 18, 2003 are hereby enforced.
3. Claimant, Patrick H. McDonald, is solely liable for and shall pay to Wells Fargo Investments, LLC, the sum of \$9,274.71 for attorney's fees from December 1, 2003 to August 16, 2004, and \$2,352.00 from the date of August 16, 2004 to the present, for a total sum of \$11,626.71 in attorney's fees. In deciding to award attorney's fees, the Panel considered the pleadings filed by the parties, as well as the arguments presented, and determined that authority existed for an award of attorney's fees to Respondent, Wells Fargo Investments, LLC.
4. The Panel orders that the current language contained in Claimant Patrick H. McDonald's Form U-5 Section 3 relating to termination be amended to read, "Bank Policy".
5. The Panel recommends the expungement of all reference to the above captioned arbitration from Claimant Patrick H. McDonald's registration records maintained by the NASD Central Registration Depository ("CRD"),

with the understanding that pursuant to NASD Notices to Members 99-90 and 99-54, Claimant, Patrick H. McDonald must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

6. Except as otherwise specified herein, parties shall bear their own costs, including all other attorneys' fees.
7. 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

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

Initial claim filing fee	= \$ 300.00
	(waived by NASD)

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, Wells Fargo Investments, LLC is a party and is assessed the following fees:

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Forum Fees and Assessments

The Panel has assessed forum 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 @ \$1,125.00	= \$2,250.00
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Pre-hearing conference:	August 1, 2003	1 session
	May 23, 2005	1 session

Two (2) Hearing sessions @ \$1,125.00	= \$2,250.00
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Hearing Date:	November 18, 2003	2 sessions
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Total Forum Fees	= \$4,500.00
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1. The Panel assessed \$2,812.50 of the forum fees solely to Claimant, Patrick H. McDonald.
2. The Panel assessed \$1,687.50 of the forum fees solely to Respondent, Wells Fargo Investments, LLC.

EEE SUMMARY

1. Claimant, Patrick H. McDonald, is solely liable for:

Forum Fees	= \$2,812.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,812.50

2. Respondent, Wells Fargo Investments, LLC, is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$1,687.50
Total Fees	= \$6,887.50
Less payments	= \$6,887.50
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Paul Lansing, Esq.	-	Public Arbitrator, Presiding Chairperson
G. Donald Steel	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Paul Lansing, Esq.
Paul Lansing, Esq.
Public Arbitrator, Presiding Chairperson

7/26/05
Signature Date

/s/ G. Donald Steel
G. Donald Steel
Public Arbitrator

7/27/05
Signature Date

7/27/05
Date of Service (For NASD Dispute Resolution office use only)

Member Fees	= \$5,200.00
Exam Fees	= \$1,687.50
Total Fees	= \$6,887.50
Less payments	= \$6,887.50
Balance Due NASD Dispute Resolution	= \$ 0.00

ARBITRATION PANEL

- Public Arbitrator, Presiding Chairperson
- Non-Public Arbitrator

Paul Lansing
Paul Lansing, Esq.
Public Arbitrator, Presiding Chairperson

July 26, 2005
Signature Date

Signature Date

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

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2. Respondent, Wells Fargo Investments, LLC, is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$1,687.50
Total Fees	= \$6,887.50
Less payments	= \$6,887.50
Balance Due NASD Dispute Resolution	= \$ 0.00

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

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G. Donald Steel

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Signature Date



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