

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Wells Fargo Investments, LLC, Claimant v. Neil D. Berlant, Respondent

Neil D. Berlant, Counter-Claimant v. Wells Fargo Investments, LLC, Counter-Respondent

Case Number: 03-03437

Hearing Site: San Francisco, California

Nature of the Dispute: Member vs. Associated Person
Associated Person v. Member

REPRESENTATION OF PARTIES

For Claimant and Counter-Respondent:

Ronald S. Kravitz
Liner Yankelevitz Sunshine
& Regenstreif LLP
San Francisco, California

For Respondent and Counter-Claimant:

William M. Turner
Jones, Bell, Abbott, Fleming
& Fitzgerald L.L.P.
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: May 8, 2003

Answer to Counterclaim of Neil D. Berlant filed by Wells Fargo Bank, N.A.: September 19, 2003

Answer to First Amended Counterclaim of Neil D. Berlant filed by Wells Fargo Bank, N.A.: October 7, 2004

Arbitration Brief filed by Wells Fargo Bank, N.A. and Wells Fargo Investments, LLC: March 30, 2006

Wells Fargo Bank, N.A.'s Uniform Submission Agreement signed: January 23, 2003

Wells Fargo Investments, LLC's Uniform Submission Agreement signed: March 31, 2006

Statement of Answer and Counterclaim filed by Neil D. Berlant: August 11, 2003

First Amended Answer and Counterclaim filed by Neil D. Berlant: September 15, 2004

Arbitration Brief filed by Neil D. Berlant: March 30, 2006

CASE SUMMARY

Wells Fargo Investments, LLC alleged that Neil D. Berlant breached the terms of his promissory note of March 5, 1999. Wells Fargo Investments, LLC also alleged the following claims: 1) Breach of Contract; and 2) Money Lent.

Neil D. Berlant denied Wells Fargo Investments, LLC's allegations of wrongdoing and denied any liability to Wells Fargo Investments, LLC. Mr. Berlant also asserted affirmative defenses.

Neil D. Berlant alleged the following counterclaims: 1) Breach of Contract; and 2) Breach of the Covenant of Good Faith and Fair Dealing.

Wells Fargo Investments, LLC denied Neil D. Berlant's allegations of wrongdoing and denied any liability to Mr. Berlant. Wells Fargo Investments, LLC also asserted various defenses.

RELIEF REQUESTED

Wells Fargo Investments, LLC requested:

1. Compensatory damages of \$46,967.30 or according to proof;
2. Pre-award interest at the rate of 10% per annum and post-award interest at the legal rate;
3. Costs and forum fees;
4. Attorney fees pursuant to contract; and
5. Such other and further relief in favor of Wells Fargo Investments, LLC as the Panel deems just and proper.

In the Statement of Answer and Counterclaim and First Amended Answer and Counterclaim, Neil D. Berlant requested:

1. That Wells Fargo Investments, LLC take nothing by reason of its Statement of Claim;
2. An award be entered in favor of Neil D. Berlant in an amount of at least \$300,000.00, plus interest at the maximum rate allowed by law;
3. That Wells Fargo Investments, LLC be required to pay all costs and attorneys' fees incurred by Neil D. Berlant; and
4. Such other and further relief as the Panel deems appropriate.

Wells Fargo Investments, LLC requested that Neil D. Berlant take nothing by way of his counterclaims and that Wells Fargo Investments, LLC be awarded its attorney fees, forum fees and such other damages as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Neil D. Berlant did not file with NASD Dispute Resolution (NASD-DR) a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimant's Claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

The Panel noted that on or about March 28, 2006, Wells Fargo Bank, N.A. and Neil D. Berlant agreed to substitute Wells Fargo Investments, LLC for Wells Fargo Bank, N.A., as the Claimant and Counter-Respondent, and all claims, affirmative defenses, and defenses raised by Wells Fargo Bank, N.A. were deemed to have been made by Wells Fargo Investments, LLC; and all claims by Neil D. Berlant against Wells Fargo Bank, N.A. were deemed to have been made against Wells Fargo Investments, LLC, and all answers, affirmative defenses, and defenses raised by Neil D. Berlant in response to the claims of Wells Fargo Bank, N.A. were deemed to be answers and defenses to the claims of Wells Fargo Investments, LLC. Wells Fargo Bank, N.A. and Neil D. Berlant also stipulated that the First Security Van Kasper Promissory Note executed by Neil D. Berlant on March 5, 1999 ("the Note"), was assigned to Wells Fargo Investments, LLC, or its predecessors-in-interest, and Wells Fargo Investments, LLC is the present holder of the Note and the proper party to prosecute the Note claim. The parties also stipulated that on or about October 6, 2002, the date of Neil D. Berlant's resignation from Wells Fargo Investments, LLC, the amount unpaid by Neil D. Berlant under the Note was \$46,967.30 and that since then, Neil D. Berlant has not made any additional payments under the Note.

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

1. All claims by Wells Fargo Investments, LLC are dismissed.
2. All claims by Neil D. Berlant are dismissed.
3. Wells Fargo Investments, LLC is liable for and shall pay to Neil D. Berlant the sum of \$9,500.00 in attorney's fees pursuant to Mr. Berlant's promissory note of March 5, 1999.

4. Wells Fargo Investments, LLC is liable for and shall pay to Neil D. Berlant the sum of \$300.00 as reimbursement for Neil D. Berlant's filing fee.
5. Except as mentioned in paragraphs 3 and 4 above, each party shall bear all other respective costs incurred in this matter.
6. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$1,000.00
Counterclaim filing fee	= \$ 300.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, Wells Fargo Investments, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 875.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$4,375.00

Adjournment Fees

The following adjournment fees are assessed:

The Panel granted Neil D. Berlant's request to postpone the April 5-7, 2006, hearing dates and waived the \$450.00 postponement fee.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

Cancellation of April 5-7, 2006 hearing dates: = \$300.00

The Panel waived the three-day cancellation fee of \$300.00.

Forum Fees and Assessments

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

(1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	=	\$450.00
Pre-hearing conference: January 24, 2006	1 session	
(1) Pre-hearing conference session with the Panel @ \$1,125.00/session	=	\$1,125.00
Pre-hearing conference: August 11, 2005	1 session	
(1) Hearing session @ \$1,125.00/session	=	\$1,125.00
Hearing Date: April 17, 2006	1 session	
<hr/> Total Forum Fees		= \$2,700.00

The Panel assessed the \$2,700.00 in forum fees to Claimant and Counter-Respondent Wells Fargo Investments, LLC.

Fee Summary

1. Claimant and Counter-Respondent Wells Fargo Investments, LLC is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 4,375.00
Forum Fees	= \$ 2,700.00
Total Fees	= \$ 8,075.00
Less Payments	= \$(5,000.00)
Balance Due NASD-DR	= \$ 3,075.00

2. Respondent and Counter-Claimant Neil D. Berlant is charged with the following fees and costs:


Counterclaim Filing Fee	= \$ 300.00
Less Payments	= \$(0.00)
Balance Due NASD-DR	= \$ 300.00

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

ARBITRATION PANEL

Walter P. Hitchcock	-	Public Arbitrator, Presiding Chair
Sheldon Michaels, Esq.	-	Public Arbitrator
Mary Curran, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Walter P. Hitchcock
Chair, Public Arbitrator

5/1/06

Signature Date

Sheldon Michaels, Esq.
Public Arbitrator

Signature Date

Mary Curran, Esq.
Non-Public Arbitrator

Signature Date

5/2/06

Date of Service

ARBITRATION PANEL

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Sheldon Michaels, Esq.	-	Public Arbitrator
Mary Curran, Esq.	-	Non-Public Arbitrator

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Walter P. Hitchcock
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Sheldon Michaels, Esq.
Public Arbitrator

Signature Date


Mary Curran, Esq.
Non-Public Arbitrator

5/2/2006
Signature Date

5/2/06
Date of Service