

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Susan L. Stickney v. Claimant v. Wells Fargo Investments, LLC and Kent J. Calhoon,  
Respondents

Case Number: 03-03826

Hearing Site: Portland, Oregon

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Nature of Dispute: Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

For Claimant:

Steven M. Cyr, Esq.  
Legal Representation, LLC  
Portland, Oregon

For Respondents:

Tanya A. Durkee, Esq.  
Lane Powell Spears Lubersky  
Portland, Oregon

**CASE INFORMATION**

Statement of Claim filed: May 19, 2003

Claimant's Uniform Submission Agreement signed: May 17, 2003

Joint Statement of Answer filed by Respondents: August 6, 2003

Respondent Wells Fargo Investments, LLC's Uniform Submission Agreement signed:  
August 5, 2003

Respondent Kent J. Calhoon's Uniform Submission Agreement: Signed not dated

**CASE SUMMARY**

In her Statement of Claim, Claimant alleged breach of fiduciary duty, failure to supervise and unsuitability regarding investments in unspecified mutual funds.

Respondents denied the allegations of wrongdoing as set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the sum of \$49,000.00.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, costs and attorney's fees.

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

At the hearing, Respondents moved to exclude the testimony of Claimant's expert witness, Dougal T. Williams. The Arbitrator denied the motion.

### **FINDINGS AND CONCLUSIONS**

The Arbitrator found that any negligence or other breach of duty by Respondents Wells Fargo Investments, LLC and Kent J. Calhoon with respect to Claimant's initial investment decision in November 2000, was superseded by the negligence of Claimant and her reliance on the advice she received from Lee Cuningham.

The Arbitrator found also, that by January 31, 2002, given Claimant's background, the unrealistic nature of Claimant's stated goals and expectations, and, the substantial downturn in the equities markets in late 2000 and throughout 2001, Respondents had a duty to initiate follow-up consultation with Claimant about the possibility of changing her investments. The Arbitrator found that Respondents breached their duty to initiate such follow-up consultation with Claimant. Claimant's losses from January 31, 2002 until the account was closed were caused 51 percent by Respondents' breach and 49 percent by Claimant's own negligence.

Claimant's damages, as awarded herein, were computed as follows:

Account value on January 31, 2002	\$ 47,665.82
Less value of account when closed	\$(30,604.74)
Less cash withdrawals after January 31, 2002	<u>\$ ( 5,000.00)</u>
Out-of-pocket investment losses after January 31, 2002	\$ 12,061.08
Out-of-pocket losses caused by Respondents' breach (\$12,061.08 x .51)	\$ 6,151.15
Two years reasonable return for safe investment	<u>\$ 248.85</u>
Compensatory damages awarded	\$ 6,400.00

### **AWARD**

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

- 1) Respondents Wells Fargo Investments, LLC and Kent J. Calhoun are jointly and severally liable and shall pay Claimant compensatory damages in the sum of \$6,400.00
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 175.00
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#### **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, the member firm Well Fargo Investments, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 875.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 1,000.00
<b>Total Member Fees</b>	<b>= \$ 2,625.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

February 12, 2004 adjournment requested by Respondents	Waived
April 8, 2004, adjournment requested by Claimant	= \$ 450.00

The Arbitrator/Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Arbitrator. The following fees are assessed:

<b>(3) Hearing sessions @ \$450.00/session</b>		<b>= \$1,350.00</b>
Hearings:	May 10, 2004	2 sessions
	July 1, 2004	1 session

<b>Total Forum Fees</b>	<b>= \$1,800.00</b>
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1. The Panel assessed \$1,125.00 of the forum fees to Claimant.
2. The Panel assessed \$675.00 of the forum fees jointly and severally to Respondents.

### **Fee Summary**

3. Respondents Wells Fargo Investments, LLC and Kent J. Calhoon are charged jointly and severally with the following fees and costs:
- |  |             |               |
|--|-------------|---------------|
| Forum Fee                                  | = \$        | 675.00        |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$</b> | <b>675.00</b> |

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

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ARBITRATOR

John A. Bogdanski, Esq.

Public Arbitrator, Presiding Chair

Arbitrator's Signature

John A. Bogdanski

John A. Bogdanski, Esq.  
Chair, Public Arbitrator

JULY 14, 2004

Signature Date

7/14/04

Date of Service