

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

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In the Matter of the Arbitration Between:

Amy M. McCleary, Claimant v. Wells Fargo Securities, LLC and Timothy J. Owen, Respondents

Case Number: 03-04710

Hearing Site: Portland, Oregon

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Nature of the Dispute: Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

For Claimant:

Michael Esler, Esq.  
Esler, Stephens & Buckley  
Portland, Oregon

For Respondents:

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

**CASE INFORMATION**

Statement of Claim filed: June 23, 2003

Claimant's Uniform Submission Agreement signed: June 23, 2003

Joint Statement of Answer filed by Respondents: September 23, 2003

Respondent Wells Fargo Securities, LLC's Uniform Submission Agreement signed:  
September 24, 2003

Respondent Timothy J. Owen's Uniform Submission Agreement signed: September 24, 2003

### **CASE SUMMARY**

In her Statement of Claim, Claimant alleged failure to exercise reasonable care, forgery, unauthorized transfers and trades, misrepresentation, negligence, and breach of fiduciary duty. Claimant's allegations involved withdrawal of funds from two brokerage accounts.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested unspecified compensatory damages, unspecified punitive damages, and costs, including attorney's fees.

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

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

The Parties agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **STIPULATION**

It is hereby stipulated by and between Claimant and Respondents, by and through their attorneys of record, that:

1. The Statement of Claim and all claims asserted therein are dismissed with prejudice.
2. Respondent Timothy J. Owen will seek expungement of all reference to the above captioned arbitration from Respondent Timothy J. Owen's registration records maintained by NASD Central Registration Depository ("CRD").

### **AWARD**

After considering the pleadings and the Parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Timothy J. Owen's registration records maintained by NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Timothy J. Owen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. All other relief not expressly granted is denied.
4. Pursuant to the Stipulation, the Parties will bear their respective costs, including attorney's fees.

### **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	=	Waived
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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, which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Wells Fargo Securities, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
<b>Total Member Fees</b>	<b>= \$ 4,450.00</b>

**Adjournment Fees**

The following adjournment fees are assessed:

June 3-4, 2004, adjournment requested by Respondent	=	Waived
July 7-8, 2004, adjournment requested by Parties	=	\$ 1,000.00
The Panel assessed the adjournment fee as follows:		
\$500.00 to Claimant		
\$500.00 jointly and severally to Respondents		

**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 August 19, 2004 hearing dates	=	\$ 300.00
The Panel assessed the three-day cancellation fee as follows:		
\$150.00 to Claimant		
\$150.00 jointly and severally to Respondents		

**Forum Fees and Assessments**

The 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 Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$ 1,000.00/session	=	\$ 1,000.00
Pre-hearing conference: January 5, 2004	1 session	
(2) Hearing sessions @ \$1,000.00/session with the Panel	=	\$ 2,000.00
Hearing: August 18, 2004	2 sessions	
<b>Total Forum Fees</b>		<b>= \$ 3,000.00</b>

1. The Panel assessed \$1,500.00 of the forum fees to Claimant.
2. The Panel assessed \$1,500.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimant Amy M. McCleary is charged with the following fees and costs:

Adjournment Fee	= \$ 500.00
Three Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 1,500.00
<b>Total Fees</b>	<b>= \$ 2,150.00</b>
Less payments	= \$( 0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,150.00</b>

2. Respondent Wells Fargo Securities, LLC is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
Less payments	= \$(6,800.00)
<b>Refund Due to Respondent Wells Fargo Securities, LLC</b>	<b>= \$(2,350.00)</b>

3. Respondents Wells Fargo Securities, LLC and Timothy J. Owen are charged jointly and severally with the following fees and costs:

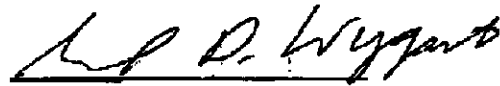
Three Day Cancellation Fee	= \$ 150.00
Adjournment Fee	= \$ 500.00
Forum Fees	= \$ 1,500.00
<b>Total Fees</b>	<b>= \$ 2,150.00</b>
Less Payments made by Wells Fargo Securities, LLC	= \$ 2,150.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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.

**ARBITRATION PANEL**

Gerald D. Wygant, Esq.	-	Public Arbitrator, Presiding Chair
Clyde Fahlman	-	Public Arbitrator
Daniel Dunnington	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Gerald D. Wygant, Esq.  
Chair, Public Arbitrator

1-26-05

Signature Date

Clyde Fahlman  
Public Arbitrator

Signature Date

Daniel Dunnington  
Non-Public Arbitrator

Signature Date

2/1/05  
Date of Service

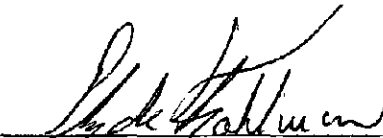
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Gerald D. Wygant, Esq.	-	Public Arbitrator, Presiding Chair
Clyde Fahlman	-	Public Arbitrator
Daniel Dunnington	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Gerald D. Wygant, Esq.  
Chair, Public Arbitrator

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

  
\_\_\_\_\_  
Clyde Fahlman  
Public Arbitrator

1-26-05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Daniel Dunnington  
Non-Public Arbitrator

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

2/1/05  
\_\_\_\_\_  
Date of Service

**ARBITRATION PANEL**

Gerald D. Wygant, Esq. -  
Clyde Fahlman -  
Daniel Dunnington -

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Gerald D. Wygant, Esq.  
Chair, Public Arbitrator

Signature Date

Clyde Fahlman  
Public Arbitrator

Signature Date

Daniel Dunnington  
Daniel Dunnington  
Non-Public Arbitrator

1-26-05  
Signature Date

2/1/05  
Date of Service



**NASD Dispute Resolution**

**Stipulated Award / Order To Expunge CRD Records**

In the Matter of the Arbitration Between:

***Amy McCleary, Claimant, v. Wells Fargo Securities, LLC, and Timothy J. Owen, Respondents.***

Case Number: 03-04710

Hearing Site: Portland, Oregon

**REPRESENTATION OF PARTIES**

For Claimant:

Michael J. Esler, Esq.  
ESLER STEPHENS & BUCKLEY  
888 S.W. Fifth Avenue, Suite 700  
Portland, Oregon 97204-2021

For Respondents:

Pilar C. French, Esq.  
LANE POWELL SPEARS LUBERSKY LLP  
601 S.W. Second Avenue, Suite 2100  
Portland, Oregon 97204-3158

**CASE INFORMATION**

Statement of Claim was filed on or about July 18, 2003.

Respondents' Answer was filed on September 23, 2003.

All parties submitted signed Uniform Submission Agreements.

**CASE SUMMARY**

This case involves claims against Wells Fargo Securities, LLC, and its broker Timothy J. Owen, relating to documents Claimant's ex-husband, Stephen B. Carlson, allegedly forged and provided to Respondents in connection with two brokerage accounts owned by two separate limited liability companies. Claimant contends Respondents knew or should have known that Carlson forged her name on wire funds transfer forms and thereby fraudulently wired funds out of two brokerage accounts owned by two limited liability companies – Sandgate Partners, LLC and Sawbuck, LLC – brokerage accounts. Claimant alleges she was entitled to all right title and interest in the assets held in these two accounts and, therefore, she was damaged when Respondents followed the wire funds transfer orders.

Respondents denied the allegations of wrongdoing and denied that Claimant was damaged by any act of Respondents.

### RELIEF REQUESTED

Claimant requested: An amount not less than \$148,000 for alleged compensatory damages, forum fees, costs, and attorneys' fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, attorney fees, and an award/order expunging any reference to this dispute, complaint, and/or this arbitration from Timothy J. Owen's registration records maintained by the Central Registration Depository ("CRD").

### STIPULATION

Claimant has stipulated to dismiss all claims in the arbitration with prejudice, and has no objection to Respondents' request to expunge this dispute, complaint, and/or this arbitration from Timothy J. Owen's CRD records.

The parties have agreed that this Stipulated Award may be executed in counterparts.

### AWARD/ORDER TO EXPUNGE CRD RECORDS

Pursuant to the stipulation reached by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel confirms that all claims in this case are dismissed with prejudice, and recommends that all reference to the above-captioned arbitration from Respondent Timothy J. Owen's registration records maintained by the NASD Central Registration Depository ("CRD") be expunged, with the understanding that, pursuant to NASD Notice to Members 99-09, Respondent Timothy J. Owen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the directive to expunge.
2. No fees pertaining to entry of this Stipulated Award/Order to Expunge will be charged to Claimant. Otherwise, each party is to bear its own costs and expenses, including attorneys' fees and forum fees (if applicable).
3. All other relief not expressly granted is denied.


### Concurring Party Representative's Signatures

ESLER STEPHENS & BUCKLEY

By: Michael J. Esler  
Michael J. Esler, OSB No. 71056  
Of Attorneys for Claimant Amy M. McCleary

9/14/04  
Date

LANE POWELL SPEARS LUBERSKY LLP

By:   
Pilar C. French, OSB No. 96288

10/28/04  
Date

Of Attorneys for Respondents Wells Fargo Securities, LLC,  
and Timothy J. Owen

**ARBITRATION PANEL**

Gerald Wygant, Esq.	-	Public Arbitrator, Chairperson
Clyde Falham	-	Public Arbitrator, Panelist
Daniel Dunnington	-	Industry Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Gerald Wygant, Esq.  
Chair, Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clyde Falham  
Public Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Daniel Dunnington  
Industry Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date of Service