

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Gary and Joan Gretchen Biggs

and

03-05179  
Phoenix, Arizona

Name of Respondents

Wells Fargo Investments, LLC  
Matthew C. Boyd

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Nature of the Dispute: Customers vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Gary and Joan Gretchen Biggs ("Claimants") were represented by Robert D. Mitchell, Esq., Mitchell Law Offices, P.C., Phoenix, Arizona.

Wells Fargo Investments, LLC ("Respondent Wells Fargo") and Matthew C. Boyd ("Respondent Boyd") (collectively as "Respondents") were represented by Michael J. Lawson, Esq. and Clyde J. Wadsworth, Esq., Steefel, Levitt & Weiss, San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 16, 2003. Submission Agreement of Claimants Gary and Joan Gretchen Biggs was signed on June 30, 2003.

Statement of Answer was filed by Respondents Wells Fargo Investments, LLC and Matthew C. Boyd on or about October 1, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: negligence; suitability violations; unauthorized trading; Arizona securities fraud; Federal securities fraud; breach of fiduciary duty; breach of contract; common law fraud and intentional misrepresentation; negligent misrepresentation; and failure to supervise. The causes of action relate to the investments made in common stock including, Enron, EMC and Exxon/Mobil. Claimants alleged that Respondents placed them into a high proportion of technology stocks and engaged in excessive, speculative, and unauthorized trading in their accounts.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

Both Claimants had investment experience in equity and fixed income securities prior to opening their accounts at Wells Fargo. Claimants were active investors who carefully monitored and analyzed their investments, as well as market trends.

Claimants came to Wells Fargo seeking aggressive management of their assets; they told Respondents that they wanted to recoup in the short term investment losses they had sustained during the prior year. In May, 2001, after thoroughly discussing their investment objective with respondents, Claimants reviewed and signed: (1) Investment Policy Statements for a family trust account (the "Biggs Family Trust") and two individual IRA accounts, reflecting Claimants' overall growth and income objective and their willingness to accept principal volatility and (2) corresponding Client Service Agreements, authorizing Wells Fargo to open three investment management accounts (to be managed by an outside investment manager that Claimants ultimately selected). Respondents performed under the express terms of these agreements at all times.

#### **RELIEF REQUESTED**

Claimants requested an award as follows:

- A. Compensatory damages for the losses in their investment accounts in the approximate amount of \$500,000.
- B. Interest and/or lost opportunity damages as of the date of the arbitration hearing.
- C. Recovery of the commissions, margin interest, and other fee charged by the Respondents on Claimants' investments.
- D. Recovery of Claimants' filing fees and such other costs and expenses as may be incurred in bringing this arbitration.
- E. Attorney's fees pursuant to A.R.S. §§12-341.01 and 44-2001.
- F. Punitive damages in an amount not less than \$250,000.
- G. Such other relief in favor of the Claimants as the Arbitrators deem just and appropriate under the circumstances.

Respondents requested that Claimants' Statement of Claim be dismissed in its entirety and that Claimants be awarded nothing; Respondents be awarded their costs of this proceeding; the Arbitrators include within their Award a recommendation that a court order that all references to this matter in the regulatory records of respondents, and each of them, be expunged; and Respondents be granted such other relief as the Arbitrators deem appropriate.

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

Respondents Wells Fargo Investments, LLC and Matthew C. Boyd did not file with the NASD Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD Dispute Resolution (the "NASD").

This matter having come on for hearing on October 19, 20, 21 and 27, 2004 and the arbitrators having considered all of the testimony, exhibits and arguments render the following decision:

### **TESTIMONY AND EXHIBITS**

There was hearing testimony from Gary Biggs, Joan Gretchen Biggs, Rhonda Rommel of A.G. Edwards & Sons, Inc., Matthew C. Body and two experts, Robert Weinman for the Claimants and Ross Tolman for the Respondents. All Exhibits referenced at the hearing were admitted.

### **PANEL'S FINDINGS OF FACT AND CONCLUSIONS**

1. Claimants Gary Biggs and Joan Gretchen Biggs ("Biggs") sold their company, Biggs Manufacturing, Inc. for approximately \$4 million dollars.
2. Biggs invested the proceeds with two investment firms before investing through Wells Fargo Investors, LLC ("Wells Fargo") through Matthew C. Boyd.
3. In both prior instances Biggs lost money on the principal invested.
4. In November of 2000, Biggs transferred \$150,000.00 in Wells Fargo which was devoted exclusively to stock investments.
5. Prior to investing there were several meetings between representatives of Wells Fargo and Biggs and an Investment Policy Statement was prepared to summarize the account philosophy.
6. In May of 2001, Biggs transferred approximately \$2.7 million dollars from prior investments to Wells Fargo investing in both stock and bond funds.

7. In May of 2002, Biggs withdrew their account from Wells Fargo with a net loss in principal invested and transferred their assets to A.G. Edwards & Sons, Inc.

8. Biggs knew and understood they had alternative strategies to investing in the stock market.

### **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. The panel finds that Biggs has failed to prove a claim, whether in negligence, that the recommended investments were not suitable, that there was any unauthorized trading in their account, that there was any violation of Arizona Securities Laws, breach of fiduciary duty, churning, breach of contract, common law fraud, intentional misrepresentation, or negligent supervision.
2. It is hereby ordered dismissing the claim in its entirety with prejudice.
3. It is further ordered that the forum costs associated with this proceeding be split equally between Biggs and Wells Fargo.

### **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 = \$375.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Wells Fargo Investments, LLC.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00

Hearing process fee	\$	4,000.00
Total Member Fees	\$	7,000.00

**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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

6 Hearing sessions	x	\$1,200.00	\$ 7,200.00
October 19, 2004	2 sessions		
October 20, 2004	2 sessions		
October 21, 2004	1 session		
October 27, 2004	1 session		
	Total Forum Fees	\$	7,200.00

The Arbitration Panel has assessed \$3,600.00 of the forum fees to Gary and Joan Gretchen Biggs.

The Arbitration Panel has assessed \$3,600.00 of the forum fees to Wells Fargo Investments, LLC.

**Fee Summary**

Claimants, Gary and Joan Gretchen Biggs shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	375.00
<u>Forum Fees</u>	= \$	3,600.00
Total Fees	= \$	3,975.00
<u>Less payments</u>	= \$	-1,575.00
Balance Due NASD Dispute Resolution	= \$	2,400.00

Respondent, Wells Fargo Investments, LLC, shall be and hereby is liable for:

Member Fees	= \$	7,000.00
<u>Forum Fees</u>	= \$	3,600.00
Total Fees	= \$	10,600.00
<u>Less payments</u>	= \$	-10,000.00
Balance Due NASD Dispute Resolution	= \$	600.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Charles W. Herf, Esq. – Non-Public Arbitrator, Presiding Chair  
Howard R. Gaines, Esq. - Public Arbitrator  
Allan D. Breyer - Public Arbitrator

Concurring Arbitrators:

/s/ Charles W. Herf  
Charles W. Herf, Esq.  
Non-Public Arbitrator, Presiding Chair

November 2, 2004  
Signature Date

/s/ Howard R. Gaines  
Howard R. Gaines, Esq.  
Public Arbitrator

November 2, 2004  
Signature Date

/s/ Allan D. Breyer  
Allan D. Breyer  
Public Arbitrator

November 3, 2004  
Signature Date

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Date of Service (For NASD office use only)

11/02/2004 11:10 FAX

NASD

→ Regus Phoenix

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## NASD Dispute Resolution

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## **ARBITRATION PANEL**

Charles W. Herz, Esq. - Public Arbitrator, Presiding Chair  
Howard R. Gaines, Esq. - Public Arbitrator  
Allan D. Breyer - Public Arbitrator

**Concurring Arbitrators:**

Charles W. Herf, Esq.

**Non-Public Arbitrator, Presiding Chair**

Howard R. Gaines, Esq.  
Public Arbitrator

**Allan D. Breyer**  
**Public Arbitrator**

11/02/04  
Signature Date

11-2-04  
Signature Date

**Signature Date**

Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 03-05179  
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**ARBITRATION PANEL**

<sup>Non-</sup>  
Charles W. Herf, Esq. - Public Arbitrator, Presiding Chair  
Howard R. Gaines, Esq. - Public Arbitrator  
Allan D. Breyer - Public Arbitrator


Concurring Arbitrators:

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Charles W. Herf, Esq.  
Non-Public Arbitrator, Presiding Chair

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

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Howard R. Gaines, Esq.  
Public Arbitrator

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

  
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Allan D. Breyer  
Public Arbitrator

11-03-04  
\_\_\_\_\_  
Signature Date

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Date of Service (For NASD office use only)