

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Darlene R. Sunde, Claimant v. Wells Fargo Investments, LLC and Ross A. Clark, Respondents

Case Number: 04-02897

Hearing Site: Reno, Nevada

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

REPRESENTATION OF PARTIES

For Claimant:

Thomas C. Bradley, Esq.
Sinai, Schroeder, Mooney,
Boetsch, Bradley & Pace
Reno, Nevada

For Respondents:

Thomas F. Kopshever, Esq.
Wells Fargo Investments,
Inc.
San Francisco, California

CASE INFORMATION

Statement of Claim filed: April 16, 2004

Claimant Darlene Sunde's Uniform Submission Agreement signed: April 30, 2004

Joint Statement of Answer filed by Respondents Wells Fargo Investments, LLC and Ross A. Clark: July 31, 2004

Joint Uniform Submission Agreement signed by Respondents Wells Fargo Investments, LLC and Ross A. Clark: July 29, 2004 and July 22, 2004, respectively

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability, negligence, fraud, deceit, omission of material fact, breach of fiduciary duty, and failure to supervise. The causes of action relate to the purchase of C shares of stock mutual funds that were weighted in the technology sector as well as the purchase of Wells Fargo unit investment trusts for Claimant's account.

Unless specifically admitted in its Answer, Respondents denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted the following defenses: failure to state a cause of action, unclean hands, waiver, estoppel, ratification, failure to exercise reasonable care and diligence, statutes of limitations, laches, and assumption of risk.

RELIEF REQUESTED

Claimant requested \$238,497.00 in compensatory damages, disgorgement of ill gotten revenue, unspecified punitive damages, pre- and post-judgment interest, and costs, including attorney's fees and consulting fees.

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

OTHER ISSUES CONSIDERED AND DECIDED

At the evidentiary hearing, Claimant withdrew her fraud and deceit claims and her request for punitive damages.

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 oral argument at the post-hearing conference, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety. The Panel finds that Claimant has not met her burden of proof regarding her claims for unsuitability, negligence, breach of fiduciary duty, omission of material facts, and failure to supervise.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) Any and all relief not specifically addressed herein 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	= \$ 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, the member firm Wells Fargo Investments, Inc. is a party, and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
Total Member Fees	= \$5,200.00

Adjournment Fees

The following adjournment fees are assessed:

July 18-20, 2005, adjournment requested by Respondents Wells Fargo Investments, LLC and Ross A. Clark	= \$1,125.00
--	--------------

The Panel assessed the adjournment fee jointly and severally to Respondents Wells Fargo Investments, LLC and Ross A. Clark

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. The following forum fees are assessed:

One (1) pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: June 9, 2005 1 session	
One (1) pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: September 8, 2004 1 session	
One (1) post-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Post-hearing conference: November 3, 2005 1 session	
Six (6) hearing sessions @ \$1,125.00/session	= \$6,750.00
Hearings: October 4, 2005 2 sessions	
October 5, 2005 2 sessions	
October 6, 2005 2 sessions	
Total Forum Fees	= \$9,450.00

1. The Panel assessed \$4,725.00 of the forum fees to Claimant Darlene R. Sunde.
2. The Panel assessed \$4,725.00 of the forum fees jointly and severally to Wells Fargo Investments, LLC and Ross A. Clark.

Fee Summary

1. Claimant Darlene R. Sunde is charged solely with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 4,725.00
Total Fees	= \$ 5,025.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
Balance Due NASD Dispute Resolution	= \$ 3,600.00

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

Member Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Wells Fargo Investments, LLC and Ross A. Clark are charged jointly and severally with the following fees and costs:

Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 4,725.00
Total Fees	= \$ 5,850.00
<u>Less Payments by Wells Fargo Investments, LLC</u>	<u>= \$ 1,125.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,725.00

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.

NASD Dispute Resolution
Arbitration No. 04-02897
Award Page 5 of 5

ARBITRATION PANEL

<i>Kevin D. Swenson, J.D.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Mary Alice Cox, CPA</i>	.	<i>Public Arbitrator</i>
<i>D. Ann Degenshein</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Kevin D. Swenson
Kevin D. Swenson
Chair, Public Arbitrator

11-4-05
Signature Date

Mary Alice Cox, CPA
Public Arbitrator

Signature Date

D. Ann Degenshein
Non-Public Arbitrator

Signature Date

11/4/05
Date of Service

NASD Dispute Resolution
Arbitration No. 04-02897
Award Page 5 of 5

ARBITRATION PANEL

Kevin D. Swenson, J.D.
Mary Alice Cox, CPA
D. Ann Degenshein

-
-
-

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Kevin D. Swenson
Chair, Public Arbitrator

Signature Date

Mary Alice Cox
Mary Alice Cox, CPA
Public Arbitrator

11/4/05
Signature Date

D. Ann Degenshein
Non-Public Arbitrator

Signature Date

11/4/05
Date of Service

NASD Dispute Resolution
Arbitration No. 04-02897
Award Page 5 of 5

ARBITRATION PANEL

Kevin D. Swenson, J.D.
Mary Alice Cox, CPA
D. Ann Degenshein

-
-
-

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Kevin D. Swenson
Chair, Public Arbitrator

Signature Date

Mary Alice Cox, CPA
Public Arbitrator

Signature Date

D. Ann Degenshein
D. Ann Degenshein
Non-Public Arbitrator

11/4/05
Signature Date

11/4/05
Date of Service