

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

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In the Matter of the Arbitration Between:

Bernard D. Spangler and Vivian N. Spangler, Claimants v. Wells Fargo Securities Inc. and Wells Fargo Investments, LLC, Respondents

Case Number: 04-04639

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customers v. Members

**REPRESENTATION OF PARTIES**

For Claimant:

Thomas E. Elenbaas, Esq.  
Law Offices of Thomas E. Elenbaas  
Fullerton, California

For Respondent:

Thomas Kopshever, Esq.  
Wells Fargo Law Department  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: June 29, 2004

Claimants' Joint Uniform Submission Agreement signed: June 28, 2004

Statement of Answer filed by Respondent Wells Fargo Investments, LLC: October 4, 2004

Respondent Wells Fargo Investments, LLC's Uniform Submission Agreement signed: October 4, 2004

**CASE SUMMARY**

Claimants alleged breach of contract, breach of fiduciary duty, unsuitability, fraud, misrepresentation and omission of facts, and failure to supervise. Claimants' allegations involved transactions in Comdisco bonds..

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

**RELIEF REQUESTED**

Claimants requested \$129,040.00 in compensatory damages, \$258,080.00 in punitive damages, and costs, including attorney's fees.

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

**OTHER ISSUES CONSIDERED AND DECIDED**

On November 2, 2004, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators. Pursuant to the Code of Arbitration Procedure IM-10100, the waivers of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 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 = \$ 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, LLC and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

**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 Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: February 4, 2005 1 session	
Four (4) Hearing sessions @ \$1,125.00/session	= \$4,500.00
Hearings: October 24, 2005 2 sessions	
October 25, 2005 2 sessions	
<b>Total Forum Fees</b>	<b>= \$ 5,625.00</b>

1. The Panel assessed \$2,812.50 of the forum fees jointly and severally to Claimants Bernard D. Spangler and Vivian N. Spangler.
2. The Panel assessed \$2,812.50 of the forum fees to Respondent Wells Fargo Investments, LLC.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimants requested 32 photocopies @ \$0.50 each: = \$ 16.00

**Fee Summary**

1. Claimants Bernard D. Spangler and Vivian N. Spangler are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,812.50
<u>Administrative Costs</u>	= \$ 16.00
Total Fees	= \$ 3,128.50
<u>Less payments</u>	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 1,703.50

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

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 2,812.50
Total Fees	= \$ 8,012.50
<u>Less payments</u>	= \$(5,200.00)
Balance Due NASD Dispute Resolution	= \$ 2,812.50

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**

*Jack A. Weichman, Esq.*  
*Joel Mark, Esq.*  
*Mason A. Dinehart, III*

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*Public Arbitrator, Presiding Chair*  
*Public Arbitrator*  
*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Jack A. Weichman, Esq.  
Chair, Public Arbitrator

10/26/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Joel Mark, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Mason A. Dinehart, III  
Non-Public Arbitrator

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

October 26, 2005  
\_\_\_\_\_  
Date of Service

NASD Dispute Resolution  
Arbitration No. 04-04639  
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