

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Brian Barsky, Claimant v. Wells Fargo Investments, LLC, Wells Fargo Securities, Inc.,
and Anthony P. Brookfield, Respondents

Case Number: 04-05778

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimant:

Jay T. Jambeck, Esq.
The Schinner Law Group
San Francisco, California

For Respondents:

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

CASE INFORMATION

Statement of Claim filed: August 14, 2004

Claimant's Uniform Submission Agreement signed: July 1, 2004

Joint Statement of Answer filed by Respondents Wells Fargo Investments, Inc. and
Anthony P. Brookfield: November 19, 2004

Uniform Submission Agreement signed by Respondent Anthony P. Brookfield:
November 17, 2004

Uniform Submission Agreement signed by Respondent Wells Fargo Investments, LLC:
November 19, 2004

CASE SUMMARY

Claimant alleged breach of written contract, breach of fiduciary duty, intentional misrepresentation, negligent misrepresentation, unfair competition, violation of federal securities laws, negligence, and respondeat superior. Claimant's allegations involved various unspecified securities in money managed accounts.

Respondents Wells Fargo Investments, LLC and Anthony P. Brookfield denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted

various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$600,000.00 in compensatory damages, \$150,000.00 in punitive damages, restitution of all fees, and costs, including attorney's fees.

Respondents Wells Fargo Investments, LLC and Anthony P. Brookfield requested dismissal of Claimant's Statement of Claim in its entirety, expungement of references to this claim from Respondent Anthony P. Brookfield's NASD records, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Wells Fargo Securities, Inc. did not file with NASD Dispute Resolution a properly executed submission agreement, but it is required to submit to arbitration pursuant to NASD's Code of Arbitration Procedure ("Code"), and it is bound by the determination of the Panel on all issues submitted.

On Jun 7, 2006, Respondents Wells Fargo Investments, LLC and Anthony P. Brookfield filed a Motion to Dismiss based upon statute of limitations. On June 27, 2006, Claimant filed an Opposition. On July 13, 2006, after due deliberation, the Panel decided to deny the motion without prejudice.

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, evidence presented at the hearing, and the post-hearing submissions, 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.
- 2) Respondent Wells Fargo Investments, LLC is liable to and shall pay Claimant the sum of \$375.00 as reimbursement for filing costs.
- 3) With the exception of paragraph 2, the parties shall bear their respective costs, including attorney's fees.
- 4) Respondent Anthony P. Brookfield's request for expungement is denied.
- 5) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure, 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	= \$ 375.00
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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 Wells Fargo Investments, LLC is a party, and the following fees are assessed:

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 Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion decided on the papers. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

(1) Decision on discovery-related motion on the papers
with one arbitrators @ \$200.00 = \$ 200.00
Respondents submitted (1) discovery-related motion

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$1,200.00
Pre-hearing conference: August 24, 2005 1 session

(6) Hearing sessions @ \$1,200.00/session = \$7,200.00
Hearings: August 14, 2006 2 sessions
August 15, 2006 2 sessions
August 16, 2006 2 sessions

Total Forum Fees = \$8,600.00

The Panel assessed \$8,600.00 of the forum fees to Respondent Wells Fargo Investments, LLC.

Fee Summary

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

Initial Filing Fee	= \$ 375.00
<u>Less payments</u>	<u>= \$(1,250.00)</u>
Refund Due Claimant	= \$ (875.00)

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

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$ 8,600.00</u>
Total Fees	= \$ 15,600.00
<u>Less payments</u>	<u>= \$ (4,450.00)</u>
Balance Due NASD Dispute Resolution	= \$ 11,150.00

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.

ARBITRATION PANEL

Gail Killefer, Esq.	-	Public Arbitrator, Presiding Chair
Michelle Brant	-	Public Arbitrator
Judith M. Rosenberg	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Gail Killefer, Esq.
Chair, Public Arbitrator

10/13/06
Signature Date

Judith M. Rosenberg
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

I dissent from the majority's decision not to award Claimant any damages. The issue in this case is not the amount allocated to equity investments but rather the selection of appropriate managed funds for Claimant, who is an investor with moderate risk tolerance. Respondent failed to moderate computer-generated suggestions to be consistent with reasonable observations about Claimant's risk tolerance. Thus, Respondent violated the "know your customer" rule.

In the allocation of the equity funds, Claimant had approximately 25% of his net worth allocated to two "aggressive" funds – Campbell and Insight - this was high given Claimant's risk tolerance. Most troublesome was Respondent's ultimate suggestion of Campbell, a large cap fund which had lost all but two employees about two months previously, over the more established Groupama. The selection of Campbell substantially increased the potential risk because it had no track record and was unsuitable for Claimant.

Michelle Brant
Public Arbitrator

Signature Date

10/13/06
Date of Service

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Arbitration No. 04-05778

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Michelle Brant
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Public Arbitrator

OCT. 12, 2006
Signature Date

10/13/06
Date of Service