

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

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In the Matter of the Arbitration Between

Claimant

Janet Dykshoorn

v.

04-08248

Minneapolis, Minnesota

Respondents

Wells Fargo Investments, LLC  
and Shawn Dunnigan

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Nature of Dispute: Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Janet Dykshoorn ("Claimant") was represented by Charles L. Chapman, Esq., of Chapman & Chapman, P.C., Bismarck, North Dakota until on or about December 23, 2004, when Michael MacDonald, Esq., of the Law Office of Michael MacDonald, West St. Paul, Minnesota, filed a Notice of Appearance.

Wells Fargo Investments, LLC ("Wells Fargo") and Shawn Dunnigan ("Dunnigan"), hereinafter collectively referred to as "Respondents," were represented by Chad A. Snyder, Esq., of Zelle Hofmann, Voelbel, Mason & Gette, LLP, Minneapolis, Minnesota.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 2, 2004. The Submission Agreement of Claimant was signed on or about November 8, 2004. Claimant filed an Amended Statement of Claim on or about February 4, 2005.

The Statement of Answer was filed jointly by Respondents, Wells Fargo Investments, LLC and Shawn Dunnigan, on or about January 26, 2005. The Submission Agreement of Respondent, Wells Fargo Investments, LLC, was signed on or about January 26, 2005. The Submission Agreement of Respondent, Shawn Dunnigan, was signed on or about January 21, 2005. Respondents, Wells Fargo Investments, LLC and Shawn Dunnigan, filed an Answer to Claimant's Amended Statement of Claim on or about April 7, 2005.

Respondents, Wells Fargo Investments, LLC and Shawn Dunnigan, filed a Motion to Dismiss on or about May 16, 2005. Claimant filed an Opposition to Respondents' Motion to Dismiss on or about May 20, 2005.

### **CASE SUMMARY**

Claimant asserted causes of action including the following: excessive trading, breach of fiduciary duty, suitability, negligence, common law fraud, negligent misrepresentation, breach of contract, violation of state securities laws, and federal securities fraud. The causes of action related to Claimant's allegation that Respondents invested her in various high-risk securities and variable annuities that were in contrast to her financial objective of retirement and her previous investment experience. Claimant alleged that Respondents paid no attention to her financial needs and focused solely on generating commissions.

Respondent denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant's claims are barred, in whole or in part, by the applicable statutes of limitation; Claimant's claims are barred, in whole or in part, by the doctrines of set off, laches, waiver, estoppel and/or ratification; and Claimant's claims are barred, in whole or in part, by her failure to take reasonable steps to mitigate her losses.

### **RELIEF REQUESTED**

Claimant requested an award of \$140,032 in compensatory damages, plus \$40,000 for the disgorgement of all commissions charged, \$150,000 for violations of the Minnesota Consumer Fraud statutes, punitive damages of \$100,000, attorneys' fees, interest, costs and such other relief the panel deemed just and equitable. In addition, Claimant requested an Award of \$22,067 in compensatory damages against Respondent, Shawn Dunnigan, individually.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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

On or about June 7, 2005, the Panel granted Respondents' Motion to Dismiss as to the March 1996 American Skandia transaction, but denied the remainder of Respondents' Motion to Dismiss.

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 originals remain on file with NASD Dispute Resolution ("NASD").

### **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. Respondents, Wells Fargo Investments, LLC and Shawn Dunnigan, are jointly and severally liable for and shall pay to Claimant, Janet Dykshoorn, the sum of One Hundred Eighteen Thousand Dollars and No Cents (\$118,000) as compensatory damages;
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, are denied with prejudice; and
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee	= \$ 300
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#### **Member Fees**

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

Member surcharge	= \$ 1,700
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 2,750

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

Two (2) Pre-hearing sessions with Panel x \$ 1,125	= \$ 2,250
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Pre-hearing conferences:	04/12/2005	1 session
	06/06/2005	1 session

Six (6) Hearing sessions with Panel x \$ 1,125 = \$ 6,750

Hearing Dates:	08/16/2005	2 sessions
	08/17/2005	2 sessions
	08/18/2005	2 sessions

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Total Forum Fees = \$ 9,000

The Arbitration Panel has assessed \$ 9,000 of the forum fees jointly and severally to Wells Fargo Investments, LLC and Shawn Dunnigan.

**FEE SUMMARY**

Claimant, Janet Dykshoorn, is liable for:

<u>Initial Filing Fee</u>	= \$ 300
<u>Total Fees</u>	= \$ 300
<u>Less payments</u>	= \$ 1,425
Balance Refunded By NASD Dispute Resolution	= \$ 1,125

Respondent, Wells Fargo Investments, LLC, is liable for:

<u>Member Fees</u>	= \$ 5,200
<u>Total Fees</u>	= \$ 5,200
<u>Less payments</u>	= \$ 5,200
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Wells Fargo Investments, LLC and Shawn Dunnigan, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 9,000
<u>Total Fees</u>	= \$ 9,000
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 9,000

**All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code of Arbitration**

**ARBITRATION PANEL**

Joan L. Volz - Public Arbitrator, Presiding Chair  
John P. Mazzitelli, J.D. - Public Arbitrator  
Jane L. Lawless - Non-Public Arbitrator

Concurring Arbitrators:

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Joan L. Volz  
Public Arbitrator, Presiding Chair

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Signature Date

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John P. Mazzitelli, J.D.  
Public Arbitrator

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Signature Date

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Jane L. Lawless  
Non-Public Arbitrator

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Signature Date

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*8/25/05*  
Date of Service (NASD use only)

## NASD Dispute Resolution

**Arbitration No. 04-08248**

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**ARBITRATION PANEL**

**Joan L. Volz - Public Arbitrator, Presiding Chair**

**John P. Mazzitelli, J.D. - Public Arbitrator**

**Jane L. Lawless - Non-Public Arbitrator**

### Concurring Arbitrators:

**Joan L. Volz**

**Public Arbitrator, Presiding Chair**

25 Feb 05

**Signature Date**

**John P. Mazzitelli, J.D.**

## Public Arbitrator

**Signature Date**

**Jane L. Lawless**

### Non-Public Arbitrator

**Signature Date****Date of Service (NASD use only)**

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**Concurring Arbitrators:**

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Joan L. Volz  
Public Arbitrator, Presiding Chair

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Signature Date

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*John P. Mazzitelli*

John P. Mazzitelli, J.D.  
Public Arbitrator

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*8-25-05*

Signature Date

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Jane L. Lawless  
Non-Public Arbitrator

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Signature Date

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*8/25/05*  
Date of Service (NASD use only)

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Concurring Arbitrators:

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Joan L. Volz  
Public Arbitrator, Presiding Chair

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Signature Date

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John P. Mazzitelli, J.D.  
Public Arbitrator

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Signature Date

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Jane L. Lawless  
Non-Public Arbitrator

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08/24/2005  
Signature Date

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8/25/05  
Date of Service (NASD use only)