

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Alfred B. Sprague and Sharon G. Sprague, Claimants v. Wells Fargo Investments, LLC  
and Kyle J. Gauthreaux, Respondents

Case Number: 05-01753

Hearing Site: Phoenix, Arizona

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

**REPRESENTATION OF PARTIES**

For Claimants:

Robert D. Mitchell, Esq.  
Mitchell Law Offices, PC  
Phoenix, Arizona

For Respondents:

Michael J. Lawson, Esq.  
Morgan, Lewis & Bockius  
LLP  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: March 31, 2005

Claimants' Joint Uniform Submission Agreement signed: March 28, 2005

Joint Statement of Answer filed by Respondents: July 7, 2005

Respondent Wells Fargo Investments, LLC's Uniform Submission Agreement: None  
Submitted

Respondent Kyle J. Gauthreaux' Uniform Submission Agreement: None submitted

### **CASE SUMMARY**

Claimants alleged negligence, suitability, violations of the Arizona Securities Act, violation of the Arizona Investment Management Act § 44-3101 *et seq.*, breach of fiduciary duty, breach of contract, common law fraud and intentional misrepresentation, negligent misrepresentation, and failure to supervise. Claimants' allegations involved unspecified securities.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested \$380,000.00 in compensatory damages, \$250,000.00 in punitive damages, recovery of commissions, margin interest, and other fees charged by Respondents, pre- and post-judgment interest and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, expungement of all reference to the above captioned arbitration from Respondents registration records maintained by the NASD Central Registration Depository ("CRD"), and costs, including attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents did not file with the NASD Dispute Resolution properly executed submission agreements but are required to submit to arbitration pursuant to the Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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) Respondents request for expungement is denied.
- 3) The parties shall bear their respective costs, including attorney's fees.

4) 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	= \$ 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
<b>Total Member Fees</b>	<b>= \$ 7,000.00</b>

#### **Forum Fees and Assessments**

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

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: September 19, 2005	1 session
(6) Hearing sessions @ \$1,200.00/session	= \$ 7,200.00
Hearings: May 22, 2006	2 sessions
May 23, 2006	2 sessions
May 24, 2006	2 sessions

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<b>Total Forum Fees</b>	<b>= \$8,400.00</b>
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1. The Panel assessed \$4,200.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$4,200.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 4,200.00
Total Fees	= \$ 4,575.00
Less payments	= \$(1,575.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,000.00</b>

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

Member Fees	= \$ 7,000.00
Less payments	= \$(7,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents are charged jointly and severally with the following fees and costs:

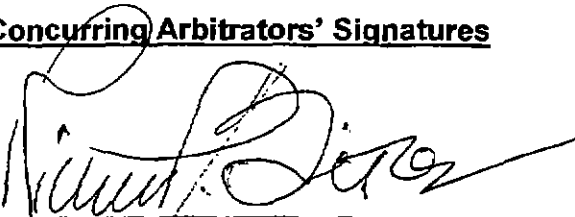
Forum Fees	= \$ 4,200.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,200.00</b>

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**

Richard P. Gitter, Esq.	-	Public Arbitrator, Presiding Chair
Loren Scott Buell	-	Public Arbitrator
Jeffrey Charles Evanello	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



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Richard P. Gitter, Esq.  
Chair, Public Arbitrator

6-2-2006  
Signature Date

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Loren Scott Buell  
Public Arbitrator

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Signature Date

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Jeffrey Charles Evanello  
Non-Public Arbitrator

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Signature Date

6/2/06  
Date of Service

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Loren Scott Buell	-	Public Arbitrator
Jeffrey Charles Evanello	-	Non-Public Arbitrator

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Chair, Public Arbitrator

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Loren Scott Buell  
Public Arbitrator

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Signature Date

  
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Jeffrey Charles Evanello  
Non-Public Arbitrator

6-2-06  
Signature Date

6/2/06  
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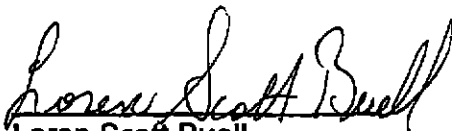
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