

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Claimant
Wells Fargo Advisors, LLC

Case Number: 13-03131

vs.

Respondent
Steve W. Marciniak

Hearing Site: Philadelphia, Pennsylvania

Nature of the Dispute: Member vs. Associated Person

REPRESENTATION OF PARTIES

For Claimant Wells Fargo Advisors, LLC: Megan M. Christensen, Esq., Stevens & Lee, Lawrenceville, New Jersey.

For Respondent Steve W. Marciniak: David A. Gehn, Esq., Gusrae Kaplan Nusbaum PLLC, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: October 18, 2013.
Answer to Counterclaim filed by Claimant on or about: April 1, 2014.
Claimant signed the Submission Agreement: October 18, 2013.

Statement of Answer and Counterclaim filed by Respondent on or about: January 24, 2014.
Respondent signed the Submission Agreement: January 24, 2014.

CASE SUMMARY

Claimant asserted the following cause of action: breach of contract for non-payment of promissory note.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the Counterclaim, Respondent asserted the following causes of action: defamation and interference with client relationships.

Unless specifically admitted in its Answer, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$246,938.47 plus interest, attorneys' fees, costs, and such other legal or equitable relief as deemed appropriate.

At the close of the hearing, Claimant requested attorneys' fees in the amount of \$50,841.00.

Respondent requested that Claimant's claims be denied.

In the Counterclaim, Respondent requested unspecified damages, costs, and any further relief as deemed just and equitable.

At the close of the hearing, Respondent requested damages in an amount not less than \$164,712.76.

In its Answer to the Counterclaim, Claimant requested dismissal of Respondent's Counterclaim, unspecified compensatory damages, punitive damages, attorneys' fees, costs, and such other legal or equitable relief as deemed appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

At the hearing, Respondent made a motion for expungement of a customer complaint from his CRD record. Claimant did not oppose the request for expungement.

The Panel conducted a recorded telephonic hearing on December 30, 2014 so that the parties could present oral argument on Respondent's request for expungement.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$248,750.00 plus interest at the rate of 5% per annum, accruing from 30 days after the date of the award until the award is paid in full. The amount of \$248,750.00 includes pre-award interest.
2. Respondent is liable for and shall pay to Claimant attorneys' fees in the amount of \$1,800.00. The Panel awarded attorneys' fees pursuant to the terms of the promissory note.

3. Claimant is liable for and shall pay to Respondent compensatory damages in the amount of \$165,000.00. This award is subject to an offset as described in item 4 below. Claimant's obligation is extinguished by the offset.
4. Respondent's award in the amount of \$165,000.00 is an offset to Claimant's award. As such, Respondent is liable for and shall pay to Claimant the amount of \$250,550.00 (\$248,750.00 plus \$1,800.00) minus \$165,000.00 awarded to Respondent, for a net amount due of \$85,550.00.
5. The Panel recommends the expungement of all references to the customer complaint submitted by Seth Weber and dated February 20, 2013 from Steven W. Marciniak's (CRD # 4154796) registration records maintained by the Central Registration Depository ("CRD"), with the understanding that, pursuant to Notice to Members 04-16, Steven W. Marciniak must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the arbitration Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The arbitration Panel has made the above Rule 2080 finding based on the following reasons:

The customer complaint was that Respondent overcharged fees and misappropriated funds. The evidence and testimony from Claimant and Respondent clearly show that there was no misappropriation and no overcharging of fees.

In recommending expungement, the Panel reviewed Respondent's BrokerCheck report, and relied upon the following documentary or other evidence: testimonies of Respondent and Andrew L. Workman, and Respondent's Exhibits 2, 3, 11, 16, 20, 21 and 22.

6. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$ 2,125.00
Counterclaim Filing Fee	= \$ 1,250.00

**The filing fee is made up of a non-refundable and a refundable portion.*

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. Accordingly, as a party, Wells Fargo Advisors, LLC, is assessed the following:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

December 2, 2014 adjournment by the parties	= \$ 1,125.00
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1. The Panel has assessed \$562.50 of the adjournment fees to Claimant.
2. The Panel has assessed \$562.50 of the adjournment fees to Respondent.

Hearing Session Fees and Assessments

The Panel has assessed hearing session 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. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: September 17, 2014 1 session	

One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: June 10, 2014 1 session	

Three (3) Hearing sessions @ \$1,125.00 = \$ 3,375.00
Hearing Dates: December 3, 2014 2 sessions
December 4, 2014 1 session

One Hearing session on expungement request @ \$1,125.00
Hearing Date: December 30, 2014 1 session = \$ 1,125.00
Total Hearing Session Fees = \$ 6,075.00

1. The Panel has assessed \$2,475.00 of the hearing session fees to Claimant.
2. The Panel has assessed \$3,600.00 of the hearing session fees to Respondent, which includes the \$1,125.00 fee for the December 30, 2014 expungement hearing.


All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Gordon M. Wase	-	Public Arbitrator, Presiding Chairperson
Patrick R. Westerkamp	-	Public Arbitrator
John Joseph Borzi, Jr.	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures



Gordon M. Wase
Public Arbitrator, Presiding Chairperson



Signature Date

Patrick R. Westerkamp
Public Arbitrator

Signature Date

John Joseph Borzi, Jr.
Non-Public Arbitrator

Signature Date

January 15, 2015

Date of Service (For FINRA Dispute Resolution office use only)

ARBITRATION PANEL

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Patrick R. Westerkamp	-	Public Arbitrator
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Concurring Arbitrators' Signatures

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Public Arbitrator, Presiding Chairperson

Signature Date

Patrick R. Westerkamp

Patrick R. Westerkamp
Public Arbitrator

January 14, 2015

Signature Date

John Joseph Borzi, Jr.
Non-Public Arbitrator

Signature Date

January 15, 2015

Date of Service (For FINRA Dispute Resolution office use only)

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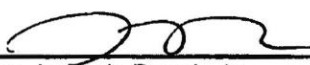
Concurring Arbitrators' Signatures

Gordon M. Wase
Public Arbitrator, Presiding Chairperson

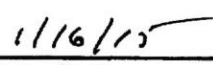
Signature Date

Patrick R. Westerkamp
Public Arbitrator

Signature Date



John Joseph Borzi, Jr.
Non-Public Arbitrator



Signature Date

January 15, 2015

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