

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Alba T. Pfeffer

Case Number: 15-00294

vs.

Respondents  
Wells Fargo Advisors, LLC  
Andre Mirkine

Hearing Site: New York, New York

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Nature of the Dispute: Customer vs. Member and Associated Person

This case was decided by a majority-public panel.

**REPRESENTATION OF PARTIES**

Claimant Alba T. Pfeffer appeared pro se.

For Respondents Wells Fargo Advisors, LLC and Andre Mirkine: Demian J. Betz, Esq.,  
Wells Fargo Advisors, LLC, Charlotte, North Carolina.

**CASE INFORMATION**

Statement of Claim filed on or about: February 8, 2015.  
Claimant signed the Submission Agreement: February 6, 2015.

Joint Statement of Answer filed by Respondents on or about: April 16, 2015.  
Wells Fargo Advisors, LLC signed the Submission Agreement: April 16, 2015.  
Andre Mirkine signed the Submission Agreement: April 27, 2015.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty based on fraud and intentional misrepresentation, breach of contract, negligent misrepresentation, and conversion of money.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages in an amount not less than \$910,492.33 plus interest, other damages, treble and punitive damages, attorneys' fees, and such other and further relief as deemed just and proper.

In the Statement of Answer, Respondents requested that Claimant's claim be denied in its entirety, expungement of this matter from Respondent Andre Mirkin's CRD records, and any other relief as is just.

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

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

At the conclusion of Claimant's case-in-chief, Respondents made a Motion to Dismiss and Claimant opposed the motion. After due deliberation, the Panel denied the motion.

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. Claimant's claim is denied in its entirety.
2. Respondent Andre Mirkin's request for expungement of his CRD records is denied.
3. Any and all claims for relief not specifically addressed herein, including punitive damages, treble damages, and attorneys' fees, are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim Filing Fee	= \$ 2,000.00
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*\*The filing fee is made up of a non-refundable and a refundable portion. FINRA Office of Dispute Resolution previously deferred the Claimant's filing fee of \$2,000.00. Upon conclusion of the matter, the Panel determined to assess the non-refundable filing fee of \$600.00 to Respondent Wells Fargo Advisors, LLC.*

### **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	= \$ 3,025.00
Member Process Fee	= \$ 6,175.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

December 14 – 16, 2015 adjournment by Respondents	= \$ 1,400.00
January 25, 2016 adjournment by Respondents	= \$ 1,400.00
January 26, 2016 adjournment by Respondents	WAIVED
<u>March 15 – 17, 22 – 23, 2016 adjournment by Respondents</u>	<u>= \$ 1,400.00</u>
Total Adjournment Fees	= \$ 4,200.00

1. The Panel waived the \$1,400.00 adjournment fees assessed to the Claimant.
2. The Panel has assessed \$2,800.00 of the adjournment fees jointly and severally to the Respondents.

### **Last Minute Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

January 26, 2016 adjournment by Respondents	WAIVED
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### **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:

Two (2) pre-hearing sessions with a single arbitrator @ \$ 450.00/session	= \$ 900.00
Pre-hearing conferences: November 23, 2015	1 session
December 31, 2015	1 session
One (1) pre-hearing session with the Panel @ \$ 1,400.00/session	= \$ 1,400.00
Pre-hearing conference: September 15, 2015	1 session
Eleven (11) hearing sessions @ \$ 1,400.00/session	= \$ 15,400.00
Hearing Dates: January 27, 2016	1 session
May 3, 2016	2 sessions
May 4, 2016	2 sessions
May 5, 2016	2 sessions
September 13, 2016	2 sessions
September 14, 2016	2 sessions
<hr/> Total Hearing Session Fees	<hr/> = \$ 17,700.00

The Panel has assessed the \$17,700.00 hearing session fees to Respondent Wells Fargo Advisors, LLC.

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

**ARBITRATION PANEL**

Peter A. Goldman	-	Public Arbitrator, Presiding Chairperson
Leona Beane	-	Public Arbitrator
Tracey Scott Bernstein	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Peter A. Goldman  
Public Arbitrator, Presiding Chairperson

9/30/16  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Leona Beane  
Public Arbitrator

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

\_\_\_\_\_  
Tracey Scott Bernstein  
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\_\_\_\_\_  
Signature Date

September 30, 2016  
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Date of Service (For FINRA Office of Dispute Resolution office use only)

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*Leona Beane*  
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Public Arbitrator

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