Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants Case Number: 17-01077
Brian Leggett
Bryson Holdings, LLC

vs.

Respondents Hearing Site: Atlanta, Georgia
Wells Fargo Clearing Services, LLC
Jay Windsor Pickett III

Nature of the Dispute: Customers vs. Member and Associated Person
This case was decided by an all public Panel.

REPRESENTATION OF PARTIES

For Claimants Brian Leggett (“Leggett”) and Bryson Holdings, LLC: Jeffrey D. Horst, Esq., Krevolin & Horst, LLC, Atlanta, Georgia, and Craig H. Kuglar, Esq., Law Office of Craig Kuglar, LLC, Atlanta, Georgia.

For Respondents Wells Fargo Clearing Services, LLC (“Wells Fargo”) and Jay Windsor Pickett III (“Pickett”): Terry R. Weiss, Esq. and Stefanie M. Wayco, Esq., DLA Piper LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: April 27, 2017.
Brian Leggett signed the Submission Agreement: April 27, 2017.
Bryson Holdings, LLC signed the Submission Agreement: April 27, 2017.

Amended Statement of Claim filed on or about: July 31, 2017.

Wells Fargo Clearing Services, LLC signed the Submission Agreement: August 28, 2017.

CASE SUMMARY

In their Statement of Claim, as amended, Claimants asserted the following causes of action: negligence; violation of the Georgia Uniform Securities Act of 2008 (O.C.G.A. §
10-5-1 et seq.); failure to supervise; churning; breach of fiduciary duty; breach of contract; breach of implied warranty of good faith and fair dealing; respondeat superior; violation of SEC and FINRA Rules, as well as federal securities laws. The causes of action relate to Respondent Wells Fargo’s alleged failure to adequately train, monitor and supervise two of its representatives, Respondent Pickett and Non-Party Jacob McKelvey (“McKelvey”), and the representatives alleged mismanagement of Claimants’ accounts.

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, as amended, Claimants requested: compensatory damages in the amount no less than $1,500,000.00; interest; attorneys’ fees; costs and expenses; under-performance damages; consequential damages; punitive damages; interest at the legal rate on all sums recovered; and such other and further relief deemed just and appropriate by the Panel.

In the Statement of Answer, Respondents requested that: all claims be dismissed, with prejudice; Respondent Pickett and Non-Party McKelvey’s Central Depository Registration (“CRD”) records be expunged; and all forum fees be assessed against Claimants.

At the close of the hearing, Claimants requested: $1,178,446.78 in realized losses; $272,407.44 in commissions, margin interest, and fees; $68,218.58 in costs and arbitration expenses; and $433,770.00 in attorneys’ fees.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about April 23, 2018, Respondents filed a Motion to Compel and for Sanctions. In their Motion, Respondents sought to impose sanctions against Claimants for failure to comply with the Chairperson’s March 19, 2018, discovery order, requesting that the Panel draw an adverse inference at the final hearing based on the documents that were not produced and the evidence otherwise presented. Further, Respondents requested that all forum fees associated with this Motion be assessed against Claimants. In their response, Claimants asserted that they produced 3,563 pages of documents, along with 9,710 pages in response to third-party orders of production, and would be producing the additional documents requested by Respondents shortly. The Panel, by Order dated May 14, 2018, denied Respondents’ request for sanctions, but reserved the right to reconsider sanctions if Claimants failed to provide the documents.

On or about August 29, 2018, Claimants filed a Motion to Strike Respondents’ Defenses and Other Sanctions for Failure to Maintain Books and Records. In their Motion, Claimants asserted Respondents failed to maintain scores of separate text message communications between Claimants and their registered representatives, violating SEC
and FINRA rules and regulations, and which are directly relevant and necessary to resolve key disputes in this case. Claimants requested, among other things, that the Panel: (1) preclude Respondents from presenting evidence in support of their defense of Claimants’ claims; and (2) assess attorneys’ fees, costs and expenses against Respondents in an amount proven at hearing. On or about September 10, 2018, Respondents’ filed their Opposition to Claimants’ Motion for Sanctions, which included a Cross-Motion for Discovery Sanctions against Claimants. Inasmuch as the Respondents’ Cross-Motion for Discovery Sanctions was filed within 20 days of the evidentiary hearing, the Panel determined it would not consider this portion of Respondents opposition. With respect to their Opposition to Claimants’ Motion for Sanctions, Respondents argued: (1) the Panel cannot sanction Respondents because the requirements of FINRA Rules 12511 and 12212 have not been met; (2) Wells Fargo has satisfied its books and records obligations; (3) Respondents have acted in good faith by producing all text messages that have been collected; and (4) Claimants possessed missing texts and, therefore, have not been prejudiced. On or about September 13, 2018, Claimants filed a reply in support of their Motion to Strike Respondents’ Defenses and Other Sanctions for Failure to Maintain Books and Records. In their reply, Claimants reasserted, among other things, the argument set forth in their motion. By Order dated May 14, 2018, the Panel denied Claimants’ Motion to Strike Respondents’ Defenses and Other Sanctions for Failure to Maintain Books and Records.

During the evidentiary hearing, Respondents made an ore tenus motion to amend their Statement of Answer to include a counterclaim for the sole purpose of requesting attorneys’ fees and costs. The Panel denied the motion as untimely.

During the evidentiary hearing, Respondents’ counsel questioned one of Respondents’ witnesses regarding some of the costs incurred in this matter, including expert witness fees. The witness provided specific numbers in this regard. The Panel deemed this line of questioning to be Respondents’ request for costs, which the Panel notes does not require an amendment to the pleadings in order to be considered.

At the conclusion of the hearing, the Panel requested post-hearing submissions from the parties, which the Panel thereafter deemed to be unnecessary. The Panel thereafter communicated to the parties to discontinue with their submissions and advised that they did not, and would not, consider any such submissions in their final decision in this matter.

At the conclusion of the hearing, Respondents reasserted their request for expungement on behalf of Respondent Pickett and Non-Party McKelvey.

The Panel reviewed the BrokerCheck® Reports for Respondent Pickett and Non-Party McKelvey. The Panel noted that Respondent Pickett and Non-Party McKelvey did not previously file claims requesting expungement of the same disclosures in the CRD.

In recommending expungement, the Panel relied upon the following documentary or other evidence: eight (8) days of testimony from multiple witnesses and thousands of pages of exhibits, including, but not limited to, emails from Claimant Leggett, dated April
18, 2015 and November 11, 2016, which revealed that Claimant Leggett’s complaints about Respondent Pickett and Non-Party McKelvey have no factual basis.

The parties present at the hearing 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 Arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants’ claims are denied in their entirety.

2. Claimant Leggett is liable for and shall pay to Respondents the sum of $51,000.00, representing costs incurred by Respondents in connection with this matter.

3. Any and all claims for relief not specifically addressed herein, including Claimants’ requests for punitive damages and attorneys’ fees, are denied.

4. The Panel recommends the expungement of all references to the above-captioned arbitration from registration records maintained by the CRD, for Respondent Pickett (CRD #2041509) and Non-Party McKelvey (CRD #5288433), with the understanding that, pursuant to Notice to Members 04-16, Respondent Pickett and Non-Party McKelvey 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 of Arbitration Procedure (“Code”), the Panel has made the following Rule 2080 affirmative findings of fact:

- The claim, allegation, or information is factually impossible or clearly erroneous; and
- The claim, allegation, or information is false.

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

Upon consideration of the full record of evidence, including the documents and testimony, the Panel finds that the claims asserted by Claimants against Respondent Pickett, and the allegations concerning Non-Party McKelvey set forth in Claimants’ Statement of Claim, are without merit and false. Specifically, the Panel finds that the losses sustained by Claimants were solely caused by the trading strategy devised, implemented and undertaken by Claimant Leggett. None of Claimants’ alleged losses were caused by Respondent
Pickett’s and/or Non-Party McKelvey’s action, inaction, or advice. The Panel finds that neither Respondent Pickett nor Non-Party McKelvey engaged in any wrongful conduct. Claimant Leggett alleges that he was misled by both Respondent Pickett and Non-Party McKelvey. The Panel finds that neither Respondent Pickett nor Non-Party McKelvey misled Claimant Leggett in any way, and that these allegations are without merit and false. Claimant Leggett’s testimony as to these issues was not credible.

By e-mail dated April 18, 2016 Claimant Leggett accused Non-Party McKelvey of misleading him with respect to a call option on Amazon. Claimant Leggett’s testimony was that Claimant Leggett did not have option experience, did not know how options worked, that he relied on Non-Party McKelvey, and Non-Party McKelvey misled him. However, in a text message from Claimant Leggett to Non-Party McKelvey, dated April 13, 2016, Claimant Leggett stated, “anytime I’ve ever put in an option to sell it [sic] a certain strike it should automatically execute...” The Panel concluded from this text message that Claimant Leggett did have option experience, that his testimony to the contrary was untrue, and that his complaints about Non-Party McKelvey were false and untrue.

By e-mail dated November 8, 2016, Claimant Leggett complained to Respondent Pickett about the NXPI trades stating, “Jay, I’m [sic] not taking the loss on this trade...” Further, by e-mail to Respondent Pickett, dated November 11, 2016, Claimant Leggett stated, “Jay, I’m writing to comment about the matter below and let you know after further thought and review of our discussion, that there was simply a misunderstanding about our discussion...” Based upon Respondent Pickett’s testimony at the hearing, and Claimant Leggett’s November 11, 2016 e-mail, the Panel concluded that Claimant Leggett’s complaints about Respondent Pickett were false and untrue.

The Panel’s decision to grant the expungement requests of Non-Party McKelvey and Respondent Pickett is buttressed by the Panel’s conclusion that Claimant Leggett was not a credible witness, and his complaints about Non-Party McKelvey and Respondent Pickett were false and untrue. Claimant Leggett’s testimony was inconsistent and untrue, his testimony was in conflict with the documents entered into evidence, and his testimony was not corroborated by the documents. Accordingly, the Panel finds that the information to be expunged has no meaningful regulatory or investor protection value.

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

*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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent Wells Fargo is assessed the following:

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<th>Amount</th>
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<tr>
<td>Member Surcharge</td>
<td>$3,025.00</td>
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<td>Member Process Fee</td>
<td>$6,175.00</td>
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**Discovery-Related Motion Fee**
Fees apply for each decision rendered on a discovery-related motion.

Two (2) decisions on discovery-related motions on the papers with one (1) arbitrator @ $200.00/decision

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<td>Two (2) decisions on discovery-related motions</td>
<td>$400.00</td>
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Respondents submitted two (2) discovery-related motions

Total Discovery-Related Motion Fees

|$ 400.00

The Arbitrator has assessed the total $400.00 discovery-related motion fees to Claimant Leggett.

**Hearing Session Fees and Assessments**
The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s) that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ $1,400.00/session

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<td>Two (2) pre-hearing sessions with the Panel</td>
<td>$2,800.00</td>
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Pre-hearing conferences:

- November 16, 2017: 1 session
- November 14, 2018: 1 session

Twenty-one (21) hearing sessions @ $1,400.00/session

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<td>Twenty-one (21) hearing sessions</td>
<td>$29,400.00</td>
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Hearing Dates:

- September 24, 2018: 3 sessions
- September 25, 2018: 2 sessions
- September 26, 2018: 2 sessions
- September 27, 2018: 1 session
- June 24, 2019: 2 sessions
- June 25, 2019: 3 sessions
- June 26, 2019: 2 sessions
- June 27, 2019: 3 sessions
- June 28, 2019: 3 sessions

Total Hearing Session Fees

|$32,200.00

The Arbitrator has assessed the total $32,200.00 of the hearing session fees to Claimant Leggett.
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.
FINRA Office of Dispute Resolution
Arbitration No. 17-01077
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ARBITRATION PANEL

Robert L. Lestina, Jr. - Public Arbitrator, Presiding Chairperson
Charles E. White - Public Arbitrator
Scott A. Schweber - 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

[Signature]
Robert L. Lestina, Jr.
Public Arbitrator, Presiding Chairperson

[Signature]
Charles E. White
Public Arbitrator

[Signature]
Scott A. Schweber
Public Arbitrator

July 30, 2019
Signature Date

August 1, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)
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

Robert L. Lestina, Jr.
Public Arbitrator, Presiding Chairperson

Signature Date 7/31/19

Charles E. White
Public Arbitrator

Signature Date 7/31/2019

Scott A. Schweber
Public Arbitrator

August 1, 2019

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