

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Paul T. Boscia, Claimant vs. Wells Fargo Securities Corporation, Respondent.

Case Number: 00-00615

Hearing Site: San Francisco, CA

REPRESENTATION OF PARTIES

Claimant, Paul T. Boscia (hereinafter referred to as "Claimant"): Frank E. Mayo, Esq., 5150 El Camino Real, Suite B-14, Los Altos, CA 94022.

Respondent, Wells Fargo Securities Corporation (hereinafter referred to as "Respondent"): Robert T. Sullwold, Esq., Sullwold & Hughes, 235 Montgomery Street, Suite 730, San Francisco, CA 94104.

CASE INFORMATION

Statement of Claim filed on or about: February 14, 2000

Claimant signed the Uniform Submission Agreement: February 7, 2000

Statement of Answer filed by Respondent on or about: May 23, 2000

Respondent did not sign or submit a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: Wrongful termination. Claimant asserted that Respondent terminated his employment based on false allegations made by one of Respondent's customers. Claimant alleged that Respondent incorrectly withheld commissions and management account fees due to the Claimant at the time of his termination.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: The Statement of Claim fails to allege facts sufficient to constitute a cause of action; any wrongful termination is barred by Labor Code Section 2922; Respondent acted in good faith in terminating the Claimant's employment; the statements about which the Claimant complains are true and were made by Respondent in good faith, honestly and not maliciously; any claim for defamation is barred by Civil Code Section 47(b) and 47(c); all of the statements are barred or reduced because of Claimant's own alleged neglect or fault and; Claimant's claims are barred or must be reduced because Claimant failed to mitigate the alleged damages.

RELIEF REQUESTED

Claimant requested in the *Statement of Claim*:

Compensatory Damages \$16,500 for commissions and
\$17,000 for managed account fees.

Attorneys' Fees Unspecified, but pursuant to
California Labor Code Section
218.5.

Other Costs Commissions and fees associated
with the accounts he managed, and
waiting time penalties pursuant to
California Labor Code Section 203.

Non-Monetary Relief: To have deleted from the Form U-5
all comments regarding this matter.

Claimant requested in the *Post-Hearing Brief*:

Compensatory Damages \$16,000
All other claims remained the same.

Respondent requested in the *Statement of Answer and in the Post-Hearing Brief*:

Non-Monetary Relief That all claims be denied in their
entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but, as a member firm is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

During the arbitration hearing on this matter, the Claimant dropped his claim to recover commissions allegedly owed to him.

During the arbitration hearing on this matter, the Claimant dropped his claim for wrongful termination.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the

post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent shall pay nothing to Claimant.
2. All other claims not abandoned by the Claimant at the hearing are denied in their entirety.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:
Initial claim filing fee = \$175

Adjournment Fees

Adjournments requested during these proceedings:

January 26, 2001 adjournment by Claimant = \$450

Forum Fees and Assessments

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

One (1) Pre-hearing session with a single arbitrator x \$450	= \$450
Pre-hearing conference: September 22, 2000	1 session
Two (2) Hearing sessions x \$450	= \$900
Hearing Date: February 16, 2001	2 sessions
<u>Total Forum Fees</u>	<u>= \$1350</u>

1. The Arbitrator has assessed 50% of the forum fees to Claimant.
2. The Arbitrator has assessed 50% of the forum fees to Respondent.

Fee Summary

Claimant is hereby solely liable for:

Initial Filing Fee	= \$ 175
Adjournment Fee	= \$ 450
<u>Forum Fees</u>	<u>= \$ 450</u>
Total Fees	= \$1075
<u>Less payments</u>	<u>= \$1075</u>

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Balance Due NASD Dispute Resolution, Inc. = \$ 0

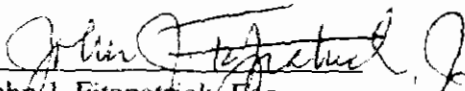
Respondent is hereby solely liable for:

<u>Forum Fees</u>	= \$ 450
<u>Total Fees</u>	= \$ 450
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 450

All balances are due to NASD Dispute Resolution, Inc. Inc. and are payable within 30 days of the service date of this Award.

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Arbitrators' Signature


John J. Fitzpatrick, Esq.
Public Arbitrator, Presiding Chair

3/15/01
Signature Date

Date Served:

MAR 16 2001

Date of Service (For NASD office use only)