

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Robert G. and Sheila A. Kelly and  
Automated Information Management, Inc.

and

00-01133  
Scottsdale, Arizona

Name of Respondents

Wells Fargo Securities, Inc.  
Wells Fargo Bank, N.A.

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**REPRESENTATION OF PARTIES**

Robert G. and Sheila A. Kelly and Automated Information Management, Inc. ("**Claimants**") were represented by Gary L. Lane, Esq., Scottsdale, Arizona.

Wells Fargo Securities, Inc. and Wells Fargo Bank, N.A. (collectively as "**Respondents**") were represented by Robert T. Sullwold, Esq., Sullwold & Hughes, San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 10, 2000. Submission Agreement of Claimants Robert G. and Sheila A. Kelly and Automated Information Management, Inc. was signed on April 3, 2000.

Statement of Answer was filed by Respondents Wells Fargo Securities, Inc. and Wells Fargo Bank, N.A. on or about June 6, 2000. Submission Agreement of Respondents Wells Fargo Securities, Inc. and Wells Fargo Bank, N.A. was signed on September 21, 2000 by Patricia Rau.

**CASE SUMMARY**

Claimants alleged as follows:

That to secure a loan to Automated Information Management, Inc., Sheila A. Kelly, Robert G. Kelly and The Sheila A. Kelly Trust pledged and deposited with Respondent Wells Fargo Bank, 2,158 shares of EuroPacific Growth Fund, 3,201 shares of Growth Fund of America and 7,045 shares of Washington Mutual Investors Fund.

That on or about September 20, 1997, Mr. Kelly contacted Respondent Wells Fargo bank, instructed it to sell the securities held as collateral, pay off the loan with the proceeds from the sale and remit the balance to Claimants.

After not receiving any communication from Respondent Wells Fargo Bank, Mr. Kelly contacted the bank on October 10, 1997. At that time, Mr. Kelly was informed that Respondent Wells Fargo Bank required written authorization to sell the securities. Claimants stated that Mr. Kelly faxed to Respondent Wells Fargo Bank the written authorization to liquidate the collateral on the loan to pay off the loan and send the balance of the proceeds to their checking account.

Respondents sold the securities on October 27, 1997.

Respondents denied the allegations of wrongdoing set forth in the Statement of Claim. Respondents specifically stated that on October 10, 1997, Mr. Kelly contacted his relationship manager at Wells Fargo Bank about paying off the business loan by selling he three mutual funds. It was stated that the relationship manager requested that Mr. Kelly fax written instructions authorizing the liquidation of the collateral. Respondents stated that those instructions did not specify any limit price for the three mutual funds, nor were any other restrictions on the terms or manner of sale.

It was further stated that in order to accomplish the requested sale, a brokerage account needed to be opened. Respondents stated that on October 20, 1997, the Kellys signed the brokerage account application in addition to executing other documents required for the sale. It was also stated that there was no limit price specified, nor were any other restrictions placed on the terms or manner of sale.

Respondents further stated that upon opening the brokerage account, Respondent Wells Fargo Bank delivered to Respondent Wells Fargo Securities, Inc., the certificates which were then received by the clearing firm on October 27, 1997, the date that the securities were sold.

### **RELIEF REQUESTED**

Claimants requested an award against Respondents as follows:

- A. Damages in the amount of \$35,000, which represents the loss in the value of Claimants' securities, plus interest at the rate of 10% per annum from October 27, 1997;
- B. Punitive damages in an amount to be proven at the arbitration hearing;
- C. Reasonable attorneys' fees pursuant to A.R.S. §12-341.01;
- D. Costs of this arbitration; and
- E. Such other and further relief as the Arbitrators may deem just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety.

**OTHER ISSUES CONSIDERED & DECIDED**

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

**AWARD**

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

1. Respondents Wells Fargo Securities, Inc. and Wells Fargo Bank, N.A. shall be and hereby are jointly and severally liable for and shall pay to Claimants Robert G. and Sheila A. Kelly and Automated Information Management, Inc. the sum of \$19,760 (**Nineteen Thousand Seven Hundred Sixty Dollars**) as compensatory damages.
2. Respondents Wells Fargo Securities, Inc. and Wells Fargo Bank, N.A. shall be and hereby are jointly and severally liable for and shall pay to Claimants Robert G. and Sheila A. Kelly and Automated Information Management, Inc. the sum of \$6,603 (**Six Thousand Six Hundred Three Dollars**) as interest.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$175.00

**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. In this matter, the member firm is Wells Fargo Securities, Inc.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

**Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

One (1) Pre-hearing session(s) with Panel x \$600.00	= \$ 600.00
Pre-hearing conference(s): October 3, 2000 1 session	
Two (2) Hearing sessions x \$600.00	= \$1,200.00
Hearing Date(s): January 16, 2000 2 sessions	
Total Forum Fees	= \$1,800.00

The Arbitration Panel has assessed \$900.00 of the forum fees to Robert G. and Sheila A. Kelly and Automated Information Management, Inc.

The Arbitration Panel has assessed \$900.00 of the forum fees jointly and severally to Wells Fargo Securities, Inc. and Wells Fargo Bank.

**Fee Summary**

Claimants, Robert G. and Sheila A. Kelly and Automated Information Management, Inc., shall be and hereby is liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$1,075.00
<u>Less payments</u>	= \$ 775.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 300.00

Respondent, Wells Fargo Securities, Inc., shall be and hereby is liable for:

Member Fees	= \$2,400.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$2,400.00
<u>Less payments</u>	= \$2,400.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents, Wells Fargo Securities, Inc. and Wells Fargo Bank, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$900.00
Balance Due NASD Dispute Resolution, Inc.	= \$900.00

**All balances are due to NASD Dispute Resolution, Inc.**

Dated:

/s/ Howard R. Gaines  
Howard R. Gaines, Esq.  
Public Arbitrator, Presiding Chair

January 29, 2001

/s/ Howard W. Shannon  
Howard W. Shannon  
Public Arbitrator

January 29, 2001

/s/ Stephen E. Lyders  
Stephen E. Lyders  
Industry Arbitrator

January 29, 2001


NASD Dispute Resolution, Inc.  
Arbitration No. 00-01133  
Award Page 5 of 5

Member Fees	= \$2,400.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$2,400.00
<u>Less payments</u>	= \$2,400.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents, Wells Fargo Securities, Inc. and Wells Fargo Bank, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$900.00
Balance Due NASD Dispute Resolution, Inc.	= \$900.00

All balances are due to NASD Dispute Resolution, Inc.

  
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 Howard R. Gaines, Esq.  
 Public Arbitrator, Presiding Chair

Dated: \_\_\_\_\_  
 1-29-01

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 Howard W. Shannon  
 Public Arbitrator

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 Stephen E. Lyders  
 Industry Arbitrator

NASD Dispute Resolution, Inc.  
Arbitration No. 00-01133  
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Public Arbitrator, Presiding Chair

  
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Howard W. Shannon  
Public Arbitrator

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NASD Dispute Resolution, Inc.  
Arbitration No. 00-01133  
Award Page 5 of 5

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Dated:

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 Howard R. Gaines, Esq.  
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 Howard W. Shannon  
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*Stephen E. Lyders*  
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 Stephen E. Lyders  
 Industry Arbitrator

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1-29-2001