

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jeffrey E. Franzen and Franzen Family Living Trust, Claimants v. Wells Fargo Investments, LLC
and Mark Burger, Respondents

Case Number: 02-04473

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimants:

Jeffrey E. Franzen
Oakland, California

For Respondents:

Robert T. Sullwold, Esq.
Sullwold & Hughes
San Francisco, California

CASE INFORMATION

Statement of Claim filed: July 26, 2002

Claimants' Uniform Submission Agreement signed: August 16, 2002

Joint Statement of Answer filed by Respondents Wells Fargo Investments, LLC ("WFI") and
Mark Burger: November 20, 2002

CASE SUMMARY

Claimants alleged unsuitability with respect to investments in various technology companies, including but not limited to investments in Hikari Tsushin International (formerly Golden Power International), Softbank International (formerly Cheung Wah Development) and Safeguard Scientific. Claimants also alleged failure to supervise and alleged that Respondents failed to adequately inform Claimants of the facts associated with Claimants' investments.

Respondents denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimants requested damages in the amount of \$88,799.59, plus punitive damages, interest and costs.

Respondents requested dismissal of Claimants' Statement of Claim with prejudice and requested costs.

OTHER ISSUES CONSIDERED AND DECIDED

On December 13, 2002, Claimants signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On December 23, 2002, Respondents' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Respondents did not file with NASD Dispute Resolution ("NASD-DR") properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered the Claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

During the hearing, Respondents moved that the entire Case Assessment (Exhibit #3) be stricken in its entirety from the record. The Panel ruled that the Case Assessment would be admitted, except that all material therein related to analyses by Morningstar Principia software would be stricken from the record.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims by Claimants, including claims for punitive damages, are dismissed.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$225.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, WFI is a party and the following fees are assessed:

Member Surcharge = \$1,100.00

Pre-Hearing Process Fee = \$ 750.00

Hearing Process Fee = \$1,700.00

Total Member Fees = \$3,550.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Panel @ \$750.00/session = \$1,500.00

Pre-hearing conferences: May 6, 2003 1 session

October 1, 2003 1 session

(2) Hearing sessions @ \$750.00/session = \$1,500.00

Hearing: October 20, 2003 2 sessions

Total Forum Fees = \$3,000.00

The Panel assessed \$1,500.00 in forum fees to Claimants.

The Panel assessed \$1,500.00 in forum fees to Respondents, WFI and Mark Burger, jointly and severally.

Fee Summary

1. Claimants are charged with the following fees and costs:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 1,500.00</u>
Total Fees	= \$ 1,725.00
<u>Less Payments</u>	<u>= \$ (975.00)</u>
Balance Due NASD-DR	= \$ 750.00

2. Respondent WFI is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
<u>Less Payments</u>	<u>= \$(3,550.00)</u>
Balance Due NASD-DR	= \$ 0.00

3. Respondents WFI and Burger are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,500.00
<u>Less Payments</u>	<u>= \$ (0.00)</u>
Balance Due NASD-DR	= \$ 1,500.00

All balances are payable to NASD Dispute Resolution and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

James N. D'Orso	-	Public Arbitrator, Presiding Chair
Terry Lloyd, CPA, CFA	-	Public Arbitrator
Nicholas J. Caputo	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

James N. D'Orso
Chair, Public Arbitrator

Signature Date

Terry Lloyd, CPA, CFA
Public Arbitrator

Signature Date

Nicholas J. Caputo
Non-Public Arbitrator

Signature Date

Date of Service

ARBITRATION PANEL

James N. D'Orso	-	Public Arbitrator, Presiding Chair
Terry Lloyd, CPA, CFA	-	Public Arbitrator
Nicholas J. Caputo	-	Non-Public Arbitrator

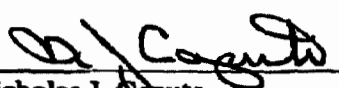
Concurring Arbitrators' Signatures

James N. D'Orso
Chair, Public Arbitrator

Signature Date

Terry Lloyd, CPA, CFA
Public Arbitrator

Signature Date


Nicholas J. Caputo
Non-Public Arbitrator

11/4/03
Signature Date

11/7/03
Date of Service

ARBITRATION PANEL

James N. D'Onso	-	Public Arbitrator, Presiding Chair
Terry Lloyd, CPA, CFA	-	Public Arbitrator
Nicholas J. Caputo	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

James N. D'Onso
Chair, Public Arbitrator

Signature Date



Terry Lloyd, CPA, CFA
Public Arbitrator

11/8/03

Signature Date

Nicholas J. Caputo
Non-Public Arbitrator

Signature Date

11/7/03

Date of Service