

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Claimant
College Health and Investment, Ltd.

Case Number: 10-03554

vs.

Respondent
Wells Fargo Advisors, LLC
(f/k/a Wachovia Securities, LLC)

Hearing Site: Boca Raton, Florida

vs.

Third Party Respondents
Shari Jacobowitz
Esther Spero (a/k/a Esther Burstyn)

Nature of the Dispute: Customer vs. Member vs. Non-Members
Public Arbitrator Pilot Program/All Public Panel

REPRESENTATION OF PARTIES

For Claimant College Health and Investment, Ltd., hereinafter referred to as "Claimant":
Robert W. Pearce, Esq. and Adam Kara-Lopez, Esq., Robert Wayne Pearce, P.A.,
Boca Raton, Florida.

For Respondent Wells Fargo Advisors, LLC (f/k/a Wachovia Securities, LLC),
hereinafter referred to as "Respondent": Brian Amery, Esq., Matthew Plant, Esq. and
Alex Sabo, Esq., Bressler, Amery & Ross, P.C., Fort Lauderdale, Florida.

Third Party Respondent, Shari Jacobowitz, hereinafter referred to as "Jacobowitz," did
not enter an appearance as a party in this matter.

Third Party Respondent Esther Spero (a/k/a Esther Burstyn), hereinafter referred to as
"Spero," did not enter an appearance as a party in this matter.

CASE INFORMATION

Statement of Claim filed on or about: August 6, 2010.
Amended Statement of Claim filed on or about: November 8, 2010.
College Health and Investment, Ltd. signed the Submission Agreement: July 1, 2010.

Statement of Answer and Third Party Claims against Jacobowitz and Spero filed by Respondent on or about: October 8, 2010.
Answer to Amended Statement of Claim and Motion to Strike and/or Exclude Spero's Deposition Testimony filed by Respondent on or about: November 29, 2010.
Wells Fargo Advisors, LLC (f/k/a Wachovia Securities, LLC) signed the Submission Agreement: September 2, 2010.

Third Party Respondent Jacobowitz did not file a Statement of Answer or sign the Submission Agreement.

Third Party Respondent Spero did not file a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty, negligence, negligent supervision and breach of contract. The causes of action relate to the alleged theft of cash and unspecified securities deposited in Claimant's account held by, and in the custody of, Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Third Party Claims, Respondent asserted a claim for indemnification and/or contribution against Third Party Respondents Jacobowitz and Spero.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimant requested compensatory damages in excess of \$6,000,000.00; margin interest expense; prejudgment interest at the legal rate; punitive damages; costs of this proceeding; and such other relief as this Panel deemed just and appropriate.

In its Answer to the Amended Statement of Claim, Respondent requested that the Panel issue an award dismissing the Amended Statement of Claim in its entirety, recommending the expungement of this matter from any applicable registration records, assessing the costs and expenses of this proceeding against Claimant, and awarding such other and further relief as is deemed just and proper. Respondent also adopted from its Answer the Third Party Claims against Jacobowitz and Spero.

At the close of the hearing, Claimant requested compensatory damages in the amount of \$4,437,507.00 inclusive of margin interest expense and prejudgment interest through May 17, 2013.

OTHER ISSUES CONSIDERED AND DECIDED

This case proceeded under the Public Arbitrator Program, which allows parties to choose whether to have a non-public arbitrator on the Panel.

The Arbitrators acknowledge that they have each read the pleadings and other

materials filed by the parties.

In the Motion to Strike and/or Exclude Spero's Deposition Testimony, Respondent asserted, among other things, the following: Spero's deposition testimony may not be offered into evidence unless Spero is unavailable to testify at the hearing; it is unfair and prejudicial to Respondent for the deposition transcript to be admitted into evidence through the Statement of Claim because Spero's testimony was not given in front of the Panel where the Panel could hear Spero's testimony and see her demeanor; and Respondent was not present at Spero's deposition and did not have an opportunity to cross examine her. In its Response to the Motion to Strike and/or Exclude Spero's Deposition Testimony, Claimant asserted, among other things the following: Spero's deposition transcript supports Claimant's Amended Statement of Claim and is clearly permitted under Rule 12302 of the Code of Arbitration Procedure ("Code"); and Respondent has joined Spero as a Third Party Respondent to the arbitration proceeding and may question her during the final hearing. On or about January 20, 2011, the Panel entered an order which denied Respondent's Motion to Strike and/or Exclude Spero's Deposition testimony.

Upon review of the file and representations made by the Claimant and Respondent in their post-hearing submissions including references to any pre-dispute arbitration agreements, the Panel finds that it does not have jurisdiction over Third Party Respondents Jacobowitz and Spero who are not associated persons of a FINRA member firm and who did not submit Statements of Answer or sign Submission Agreements. Therefore, the Panel made no determination with respect to Respondent's claims against Third Party Respondents Shari Jacobowitz and Esther Spero. This finding only relates to the Third Party Claims by Respondent against Jacobowitz and Spero and does not impact other portions of this Award.

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

1. Respondent is liable and shall pay to Claimant compensatory damages of \$2,298,062.00 which includes prejudgment interest through May 17, 2013 at the legal rate provided by Florida law. In or about August 2011, Claimant, through its counsel, sent a letter to a number of nonparties who had received subpoenas in this arbitration pursuant to requests for them by Respondent. Claimant did not provide these letters to FINRA or to Respondent's counsel. The letters can best be understood as intended to discourage the recipients from producing all responsive documents. We therefore impose sanctions of \$5,000.00 on Claimant, and we reduce the amount awarded of \$2,303,062.00 by this amount arriving at the above awarded amount of \$2,298,062.00. We recognize that in the context of an award this size that this is a very light sanction, and note that we only refrain

from imposing a more substantial sanction because we have determined that the impact of the letter was substantially mitigated, thanks in large part to the diligence of Respondent's counsel.

2. Claimant's request for margin interest expense is granted in the amount of \$418,987.00 which includes prejudgment interest through May 17, 2013 at the legal rate provided by Florida law.
3. Claimant's request for costs is granted. Respondent shall pay to Claimant costs in the amount of \$35,000.00.
4. Any and all requested relief not specifically addressed herein, including Claimant's request for punitive damages and Respondent's request for expungement, is denied.

In making the above determinations, the Panel has carefully considered the argument of Respondent that Florida Statutes Section 670.505 or Section 8.4A-5-5 of the Virginia Code provides a one-year statute of repose on Claimant's sole possible cause of action, to wit, a claim under the Uniform Commercial Code. After reviewing the authorities provided by counsel for the parties, the Panel finds that the Claimant is not barred from common law causes of action. See *Gilson v. TD Bank, NA*, 2011 U.S. Dist. Lexis 7805, 73 UCC Rep. Serv. 2d (Callaghan) 430; 2011 WL 294447 quoting *Regions Bank v. Provident Bank, Inc.*, 345 F.3d 1267, 1275 (11th Cir. 2003) "[T]he only restraint on a plaintiff [seeking to redress an alleged harm arising from a funds transfer] is that resort to principles of law or equity outside of Article 4A is not appropriate to create rights, duties and liabilities *inconsistent* with those stated in this article." (emphasis in original). Therefore, the Panel must resolve those common law claims on the merits.

If the Panel provides an explanation of their decision in this Award, the explanation is for the information of the parties only and is not precedential in nature.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee

= \$ 1,800.00

Third Party Filing Fee

= \$ 3,700.00

**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 is assessed the following:

Member Surcharge

= \$ 3,350.00

Pre-Hearing Processing Fee

= \$ 750.00

Hearing Processing Fee = \$ 5,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

July 26-29 and August 1- 2, 2011, adjournment by Respondent	= \$ Waived
December 12-16 and 19-21, 2011, adjournment by Respondent	= \$ 1,200.00
May 6, 2013, adjournment by Respondent	= \$ Waived

The Panel has assessed the total adjournment fee of \$1,200.00 against Claimant.

Three-Day 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:

May 6, 2013, adjournment by Respondent	= \$ 300.00
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The Panel has assessed \$120.00 of the Three-Day Cancellation fee to Claimant.

The Panel has assessed \$180.00 of the Three-Day Cancellation fee to Respondent.

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) Decision on a discovery-related motion on the papers with three (3) arbitrator(s) @ \$600.00	= \$ 600.00
Respondent submitted one (1) discovery-related motion	

Total Discovery-Related Motion Fees	= \$ 600.00
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The Panel has assessed \$240.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$360.00 of the discovery-related motion fees to Respondent.

Contested Motion for Issuance of a Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena With one (1) arbitrator @ \$200.00 (maximum of \$600)	= \$ 200.00
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Total Contested Motion for Issuance of Subpoena Fee	= \$ 200.00
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The Panel has assessed \$80.00 of the contested motion for issuance of a subpoena fee to Claimant.

The Panel has assessed \$120.00 of the contested motion for issuance of subpoena fee to Respondent.

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 1,800.00
Pre-hearing conferences:

April 26, 2011	1 session
July 8, 2011	1 session
September 1, 2011	1 session
January 5, 2012	1 session

Eleven (11) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 13,200.00
Pre-hearing conferences:

January 4, 2011	1 session
January 20, 2011	1 session
July 6, 2011	1 session
September 29, 2011	1 session
December 2, 2011	1 session
December 20, 2011	1 session
February 1, 2012	1 session
December 10, 2012	1 session
April 19, 2013	1 session
April 26, 2013	1 session
May 3, 2013	1 session

Twenty-six (26) Hearing sessions @ \$1,200.00/session = \$ 31,200.00
Hearing Dates:

May 7, 2013	2 sessions
May 8, 2013	3 sessions
May 9, 2013	2 sessions
May 10, 2013	2 sessions
May 13, 2013	2 sessions
May 14, 2013	2 sessions
May 15, 2013	2 sessions
May 16, 2013	2 sessions
May 17, 2013	2 sessions
May 20, 2013	2 sessions
May 21, 2013	2 sessions
May 22, 2013	3 sessions

Total Hearing Session Fees = \$ 46,200.00

The Panel has assessed \$18,480.00 of the hearing session fees to Claimant.

The Panel has assessed \$27,720.00 of the hearing session fees to Respondent.

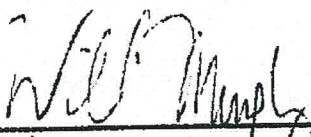
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Will Murphy	-	Public Arbitrator, Presiding Chairperson
Paul W. Sterman	-	Public Arbitrator
Kenneth E. Merklen	-	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



Will Murphy
Public Arbitrator, Presiding Chairperson




Signature Date

Paul W. Sterman
Public Arbitrator

Signature Date

Kenneth E. Merklen
Public Arbitrator

Signature Date

 3, 2013

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

ARBITRATION PANEL

Will Murphy	-	Public Arbitrator, Presiding Chairperson
Paul W. Sterman	-	Public Arbitrator
Kenneth E. Merklen	-	Public Arbitrator

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Concurring Arbitrators' Signatures

Will Murphy
Public Arbitrator, Presiding Chairperson

Signature Date

Paul W. Sterman

Paul W. Sterman
Public Arbitrator

July 2, 2013

Signature Date

Kenneth E. Merklen
Public Arbitrator

Signature Date

July 3, 2013

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

ARBITRATION PANEL

Will Murphy
Paul W. Stermen
Kenneth E. Merklen

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Public Arbitrator

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and who executed this instrument which is my award.


Concurring Arbitrators' Signatures

Will Murphy
Public Arbitrator, Presiding Chairperson

Signature Date

Paul W. Stermen
Public Arbitrator

Signature Date



Kenneth E. Merklen
Public Arbitrator

July 02, 2013

Signature Date

July 3, 2013

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