

**Award**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

Malvin G. Johnson, Jr. and Dana Johnson

Case Number: 13-03327

vs.

Respondent

Wells Fargo Advisors, LLC

Hearing Site: Dallas, Texas

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Nature of the Dispute: Customers vs. Member

**REPRESENTATION OF PARTIES**

For Claimants Malvin G. Johnson, Jr. and Dana Johnson: Jonathan E. Neuman, Esq.,  
Fresh Meadows, New York.

For Respondent Wells Fargo Advisors, LLC: Michael Naccarato, Wells Fargo Advisors,  
LLC, St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: November 6, 2013.

Malvin G. Johnson, Jr. signed the Submission Agreement: October 25, 2013.

Dana Johnson signed the Submission Agreement: October 25, 2013.

Statement of Answer filed by Respondent on or about: January 24, 2014.

Wells Fargo Advisors, LLC signed the Submission Agreement: January 24, 2014.

**CASE SUMMARY**

Claimants asserted the following causes of action: fraud; negligent misrepresentation; breach of fiduciary duty and breach of the covenants of good faith and fair dealing; negligent supervision; breach of conduct; and respondeat superior. Claimants alleged that Respondent improperly invested them in risky sub-prime real estate related products and that Respondent did not institute stop loss orders on these products and, as a result, their accounts suffered damages in the amount of \$100,000.00 when the market declined.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested:

|                      |               |
|----------------------|---------------|
| Compensatory Damages | \$ 100,000.00 |
| Other Costs          | Unspecified   |

At the Hearing, Claimants requested:

|                       |               |
|-----------------------|---------------|
| Compensatory Damages  | \$ 100,000.00 |
| Other Costs           | Unspecified   |
| Interest              | Unspecified   |
| Attorneys' Fees       | Unspecified   |
| Other Monetary Relief | Unspecified   |

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

On or about September 15, 2015, Respondent filed a Motion to Limit Damages, or in the Alternative, Postpone ("Motion to Limit Damages"). At the arbitration hearing Claimants objected to the Motion to Limit Damages. Claimants agreed to leave the damages as listed in the Statement of Claim and the Motion to Limit Damages was determined moot by the Arbitrator. During the September hearing, Respondent requested the expungement of this on behalf of unnamed party, Spencer McGowan (CRD# 1546977). The Arbitrator determined that an additional hearing would be needed in regard to this request for expungement.

On or about November 6, 2015, Respondent filed a Submission in Support of unnamed party Spencer McGowan's request for Expungement. No response was received.

The Arbitrator conducted a recorded telephonic hearing on December 1, 2015, so that Respondent could present oral argument and evidence on its request for expungement on behalf of Spencer McGowan. Counsel for Claimants appeared and objected to the request for expungement.

In making his decision on the request for expungement, the Arbitrator relied on the Statement of Claim, the Statement of Answer, the request for expungement and all exhibits attached thereto, the evidence and testimony offered at the evidentiary hearing, and Spencer McGowan's current BrokerCheck® Report.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearings, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimants \$10,600.00 in compensatory damages;

2. Respondent is liable and shall pay to Claimants interest on the above-stated sum in the amount of 5% per annum, from and including January 21, 2013, through and including the date this Award is paid in full;
3. Other than Forum Fees, which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
4. Any and all relief not specifically addressed herein, including punitive damages and expungement, is denied.

### **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 | = \$ 975.00 |
|--------------------------|-------------|

*\*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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Wells Fargo Advisors, LLC is assessed the following:

|                            |               |
|----------------------------|---------------|
| Member Surcharge           | = \$ 1,100.00 |
| Pre-Hearing Processing Fee | = \$ 750.00   |
| Hearing Processing Fee     | = \$ 1,700.00 |

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

|   |             |
|---|-------------|
| September 16-18, 2014, adjournment by all parties | = \$ 450.00 |
| Total Adjournment Fees                            | = \$ 450.00 |

The Arbitrator has assessed \$450.00 of the adjournment fees jointly and severally to Malvin G. Johnson, Jr. and Dana Johnson.

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

|  |             |
|--|-------------|
| Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session | = \$ 900.00 |
| Pre-hearing conferences: April 30, 2014                                  | 1 session   |
| February 27, 2015  | 1 session   |

|   |                    |               |
|---|--------------------|---------------|
| Three (3) Hearing sessions @ \$450.00/session |                    | = \$ 1,350.00 |
| Hearing Dates:                                | September 17, 2015 | 2 sessions    |
|   | September 18, 2015 | 1 session     |

|  |                  |           |
|--|------------------|-----------|
| One (1) Hearing sessions on expungement request @ \$450.00/session | = \$ 450.00      |           |
| Hearing Date:  | December 1, 2015 | 1 session |
| <hr/>  |                  |           |
| Total Hearing Session Fees   | = \$ 2,700.00    |           |

The Arbitrator has assessed \$1,125.00 of the hearing session fees jointly and severally to Malvin G. Johnson, Jr. and Dana Johnson.

The Arbitrator has assessed \$1,575.00 of the hearing session fees to Wells Fargo Advisors, LLC.

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

**ARBITRATOR**

Philip I. McConnell

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Sole 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.

**Arbitrator's Signature**

/s/ Phillip I. McConnell

Philip I. McConnell  
Sole Public Arbitrator

12/14/15

Signature Date

12/15/15

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

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