

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Kathryn A. Schmierer

Case Number: 16-02832

vs.

Respondent
Wells Fargo Advisors, LLC

Hearing Site: Tampa, Florida

Nature of the Dispute: Customer vs. Member

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimant Kathryn A. Schmierer: Kalju Nekvasil, Esq. and Stephen Krosschell, Esq.,
Goodman & Nekvasil, P.A., Clearwater, Florida.

For Respondent Wells Fargo Advisors, LLC: Demian J. Betz, Esq., Wells Fargo
Advisors Law Department, Charlotte, North Carolina.

CASE INFORMATION

Statement of Claim filed on or about: September 19, 2016.
Kathryn A. Schmierer signed the Submission Agreement: September 15, 2016.
Amended Statement of Claim filed on or about: January 17, 2017.

Statement of Answer filed by Respondent on or about: February 3, 2017.
Wells Fargo Advisors, LLC signed the Submission Agreement: December 23, 2016.

CASE SUMMARY

In the Statement of Claim and in the Amended Statement of Claim, Claimant asserted the following causes of action: violations of federal securities laws; violation of the North Dakota Unlawful Sales or Advertising Practices Act; violation of the North Dakota Securities Act; breach of contract; common law fraud; breach of fiduciary duty; negligence; and gross negligence. The causes of action relate to the purchase of numerous investments, including but not limited to: Oasis Petroleum, Inc.; Ritchie Bros Auctioneers, Inc.; TCF Financial Corp.; Arts-Way MFG Co., Inc.; Monsanto Co New; James River Coal, Inc.; Intrepid Potash, Inc.; CNH Global NV; BP PLC SPONS ADR; and Pengrowth Energy Corp.

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

RELIEF REQUESTED

In the Statement of Claim and in the Amended Statement of Claim, Claimant requested: damages in the amount of at least \$300,000.00; bargain damages; lost opportunity costs; model portfolio damages; pre-judgment interest; costs; reasonable attorneys' fees; non-economic damages; rescission; restitution; specific performance; statutory damages; punitive damages in an amount to be determined; and such other relief deemed necessary and proper.

In the Statement of Answer, Respondent requested the dismissal of the Statement of Claim, as amended, in its entirety.

At the close of the hearing, Claimant requested compensatory damages in the amount of \$172,000.00.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On or about January 17, 2017, Claimant filed its First Amended Statement of Claim amending the causes of action and requesting statutory damages.

During the final hearing, Respondent orally argued its Motion to Dismiss, alleging, among other things, failure to state a cause of action in the light most favorable to Claimant based on argument, evidence and pleadings presented at the close of Claimant's evidence. Claimant orally opposed the Motion. After considering the records, arguments and pleadings, the Panel denied Respondent's Motion to Dismiss for failure to meet the burden of persuasion in the light most favorable to Claimant.

The parties present at the hearing 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 (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant the sum of \$172,000.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant the sum of \$68,800.00 in attorneys' fees pursuant to: a violation of federal securities laws that

specifically provide for attorneys' fees; N.D.C.C. §51-15-09, §51-15-02, and §10-04-17; and any other relevant basis contained in the record.

3. Respondent is liable for and shall pay to Claimant the sum of \$100,000.00 in punitive damages pursuant to: Sections 12(2) and 15 of the Securities Act, 15 U.S.C. §§ 77l(2), 77o; and Sections 10(b) and 20 of the Securities Exchange Act, 15 U.S.C. §§ 78j(b), 78t and Rule 10b-5 thereunder and 17 C.F.R. §240.10b-5. The Panel also finds, based on record evidence of violations of common law fraud, breach of fiduciary duty and gross negligence that punitive damages are awardable, in addition to any other record evidence and argument or pleadings that support an award of punitive damages.
4. Respondent is liable for and shall pay to Claimant interest on the compensatory damages, attorney's fees and punitive damages awarded at the prevailing Florida statutory rate from September 26, 2018, and shall continue until this Award is satisfied or otherwise extinguished.
5. Respondent is liable for and shall pay to Claimant the sum of \$20,000.00 in costs.
6. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	=\$ 1,425.00
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**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	=\$ 1,900.00
Member Process Fee	=\$ 3,750.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

October 4-6, 2017, postponement by Respondent	=\$ 1,125.00
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Total Postponement Fee	=\$ 1,125.00
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The Panel has assessed the entire adjournment fee of \$1,125.00 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:

Three (3) pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 1,350.00

Pre-hearing conferences:	September 1, 2017	1 session
	September 20, 2017	1 session
	October 3, 2017	1 session

Five (5) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 5,625.00

Pre-hearing conferences:	March 8, 2017	1 session
	July 14, 2017	1 session
	September 26, 2017	2 sessions
	July 11, 2018	1 session

Twelve (12) hearing sessions @ \$1,125.00/session = \$13,500.00

Hearing Dates:	June 11, 2018	2 sessions
	June 12, 2018	2 sessions
	June 13, 2018	2 sessions
	June 14, 2018	2 sessions
	June 15, 2018	1 session
	September 24, 2018	2 sessions
	September 25, 2018	1 session

Total Hearing Session Fees = \$20,475.00

The Panel has assessed \$10,237.50 of the hearing session fees to Claimant.

The Panel has assessed \$10,237.50 of the hearing session fees to Respondent.


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

ARBITRATION PANEL


Russell W. Merriman	-	Public Arbitrator, Presiding Chairperson
Frank Brenner	-	Public Arbitrator
Anne Marie Martin	-	Non-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



Russell W. Merriman
Public Arbitrator, Presiding Chairperson



Signature Date

Frank Brenner
Public Arbitrator

Signature Date

Anne Marie Martin
Non-Public Arbitrator

Signature Date



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

FINRA Office of Dispute Resolution
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Russell W. Merriman
Public Arbitrator, Presiding Chairperson

Signature Date



Frank Brenner
Public Arbitrator

10-29-18
Signature Date

Anne Marie Martin
Non-Public Arbitrator

Signature Date

10/30/2018

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

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Russell W. Merriman
Public Arbitrator, Presiding Chairperson

Signature Date

Frank Brenner
Public Arbitrator

Signature Date

AM Martin

Anne Mane Martin
Non-Public Arbitrator

10/29/18

Signature Date

10/30/2018

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