

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Richard Murdza and David Murdza, (Claimants) vs. Fidelity Investments, Inc. a/k/a Fidelity Brokerage Services, Inc., (Respondents)

Case Number: 00-00528

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimants, Richard Murdza ("R. Murdza") and David Murdza ("D. Murdza"), hereinafter collectively referred to as "Claimants": Miles E. Hoisington, Esq., Hoisington & Morrissey, Westport, MA.

Respondent, Fidelity Investments, Inc. a/k/a Fidelity Brokerage Services, Inc., hereinafter referred to as "Respondent": Michael R. Weissmann, Esq., Bingham Dana, LLP, Boston, MA.

CASE INFORMATION

Statement of Claim filed on or about: February 5, 2000.

Reply to Counterclaim filed on or about: July 11, 2001.

R. Murdza signed the Uniform Submission Agreement: January 28, 2000.

D. Murdza signed the Uniform Submission Agreement: January 30, 2000.

Statement of Answer and Counterclaim filed by Respondent on or about: July 19, 2000.

Respondent signed the Uniform Submission Agreement: August 1, 2000.

CASE SUMMARY

Claimants asserted the following causes of action: unauthorized trading; unsuitability; breach of fiduciary duty; breach of contract; negligence; violations of the Securities Exchange Act of 1934; common law fraud; violations of the Massachusetts Uniform Securities Act; breaches of the standards and practices of the securities industry; and unfair and deceptive acts and practices in trade or commerce in violation of G.L. C. 93A. Claimants' claim involved the stock of Shop at Home.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Claimants were fully aware of the risk involved in trading securities and voluntarily accepted that risk; Claimants' claims are barred by the

doctrines of waiver, laches, and/or estoppel; Claimants' claims are barred because they neither alleged nor sustained any damages that proximately resulted from any alleged acts or omissions of Respondent; Claimants' account was a non-discretionary account and thus Respondent had no duty to monitor the activity in their account to determine whether Claimants' transactions were suitable for them; any damages suffered by Claimants resulted solely from their own acts or omissions and/or the acts or omissions of other third parties for whom Respondent is not responsible; if Claimants suffered any damages, any recovery is barred by their own negligence, which exceeds any alleged negligence of Respondent; Claimants failed to mitigate any alleged damages; Claimants expressly ordered, approved, authorized, consented to, participated in, and ratified the acts and transactions complained of; Claimants have failed to allege fraud with the requisite particularity; and at all times, Respondent acted in good faith and at no time committed any acts which would give rise to a valid claim by Claimants.

In its Counterclaim, Respondent asserted the following causes of action: failure to satisfy debit balance in account; breach of contract; and unjust enrichment.

Unless specifically admitted in their Reply, Claimants denied the allegations made in the Counterclaim and asserted the following defenses: Respondent is barred from recovery by its own unclean hands; the Counterclaim is barred, in whole or in part, by the doctrines of ratification, waiver, estoppel, and laches; at all times, Claimants acted in good faith and committed no acts giving rise in any way to a valid claim by Respondent; the Counterclaim fails to state a claim upon which relief can be granted; Respondent's damages, if any, resulted from its own actions and/or omissions and/or the actions or omissions of other parties for whom Claimants are not responsible; Respondent's damages, if any, were the product of its own negligence; and Respondent failed to mitigate its alleged damages.

RELIEF REQUESTED

Claimants requested:

- a. Compensatory damages in the approximate amount of \$80,000.00;
- b. Interest, costs, and reasonable attorneys' fees; and
- c. Such other and further relief as the Panel deems appropriate.

Respondent requested that all claims against it be dismissed.

In its Counterclaim, Respondent requested compensatory damages in the amount of \$16,666.11, plus interest and costs in an amount to be proven at the hearing.

In their Reply, Claimants requested an Award:

- a. Dismissing Respondent's Counterclaim, with prejudice;
- b. Awarding interest, costs, and reasonable attorneys' fees; and
- c. Granting such other and further relief as the Panel may deem appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant D. Murdza was not present at the hearings in this matter, although he was represented by his attorney, Miles E. Hoisington, Esq. Upon review of the file and the representations made on behalf of the Respondent, the undersigned arbitrators (the "Panel") determined that D. Murdza has been properly served with the Counterclaim and received due notice of the hearing, and that arbitration of the matter would proceed without D. Murdza present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

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

1. Claimants' claims are hereby dismissed in their entirety.
2. R. Murdza and D. Murdza be and hereby are jointly and severally liable for and shall pay to Respondent the sum of \$16,666.11 as compensatory damages, plus interest at the rate of 12% per year accruing from July 19, 2000 until paid.
3. All other requests for relief are hereby denied.

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	= \$ 225.00
Counterclaim filing fee	= \$ 750.00

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 person at the time of the events giving rise to the dispute. In this matter, Fidelity Investments, Inc. a/k/a Fidelity Brokerage Services, Inc. is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: July 12, 2001	1 session
Four (4) Hearing sessions x \$750.00	= \$3,000.00
Hearing Dates: November 6, 2001	2 sessions
November 7, 2001	2 sessions
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Total Forum Fees	= \$3,750.00

The Panel has assessed all of the forum fees jointly and severally against Claimants.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$3,750.00
Total Fees	= \$3,975.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,000.00


2. Respondent be and hereby is solely liable for:	
Counterclaim Filing Fee	= \$ 750.00
<u>Member Fees</u>	<u>= \$3,100.00</u>
Total Fees	= \$3,850.00
<u>Less payments</u>	<u>= \$3,700.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 150.00

All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Kevin J. Mulrey	-	Public Arbitrator, Presiding Chair
Mark J. Levinson, Esq.	-	Public Arbitrator
John A. Goc	-	Industry Arbitrator

Concurring Arbitrators' Signatures


Kevin J. Mulrey
Public Arbitrator, Presiding Chair

Signature Date

Mark J. Levinson, Esq.
Public Arbitrator

Signature Date

John A. Goc
Industry Arbitrator

Signature Date

November 28, 2001

Date of Service (For NASD office use only)

ARBITRATION PANEL

Kevin J. Mulrey	-	Public Arbitrator, Presiding Chair
Mark J. Levinson, Esq.	-	Public Arbitrator
John A. Goc	-	Industry Arbitrator

Concurring Arbitrators' Signatures

Kevin J. Mulrey
Public Arbitrator, Presiding Chair

Signature Date



Mark J. Levinson, Esq.
Public Arbitrator

11/26/01

Signature Date

John A. Goc
Industry Arbitrator

Signature Date

November 28, 2001

Date of Service (For NASD office use only)

ARBITRATION PANEL

Kevin J. Mulrey	-	Public Arbitrator, Presiding Chair
Mark J. Levinson, Esq.	-	Public Arbitrator
John A. Goc	-	Industry Arbitrator


Concurring Arbitrators' Signatures

Kevin J. Mulrey
Public Arbitrator, Presiding Chair

Signature Date

Mark J. Levinson, Esq.
Public Arbitrator

Signature Date


John A. Goc
Industry Arbitrator

11/23/01
Signature Date

November 28, 2001
Date of Service (For NASD office use only)