

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Nicholas A. Nayak Sep-IRA, Nicholas A. Nayak Custodian for David A. Nayak, Nicholas A. Nayak Custodian for Zachary S. Nayak, Nicholas A. Nayak, and Anjuli S. Nayak, MD, and Nayak Foundation Charitable Trust (Claimants) v. Fidelity Brokerage Services, Inc., n/k/a Fidelity Brokerage Services, LLC (Respondent)

Case Number: 00-03252

Hearing Site: Chicago, Illinois

REPRESENTATION OF PARTIES

Claimants Nicholas A. Nayak Sep-IRA, Nicholas A. Nayak Custodian for David A. Nayak, Nicholas A. Nayak Custodian for Zachary S. Nayak, Nicholas A. Nayak, and Anjuli S. Nayak, MD, and Nayak Foundation Charitable Trust ("Nayak"): Stephen J. Thomas, Esq. of the Thomas Group located in Peoria, Illinois.

Respondent Fidelity Brokerage Services, Inc. n/k/a Fidelity Brokerage Services, LLC ("Fidelity"): Michael R. Weissmann, Esq. of Bingham Dana, LLP located in Boston Massachusetts

CASE INFORMATION

Statement of Claim filed on or about: July 31, 2000

Claimants signed the Uniform Submission Agreement: July 26, 2000

Statement of Answer filed by Respondent Fidelity on or about: October 03, 2000

Respondent Fidelity signed the Uniform Submission Agreement: August 16, 2000

CASE SUMMARY

Claimants Nayak asserted the following causes of action: Breach of Fiduciary Duty, Omission of Facts; Misrepresentations; and Mark Ups.

The causes of action relate to the following bonds:

Ill. Health Facs Auth Rev. Alexian Brothers Health Services Corp. 1999
Chicago, Ill. Midway Arpt Rev., 1998 B
Chicago, Ill. Water Rev., 1997
Ill. Dev. Fin Auth Hosp Rev. Sisters of St. Francis Health Services
Iowa Financial Authority Hospital Fac Rev Iowa Health Sys 1998 A
Fedl Natl Mtg Assn Cons
Fedl Natl Mtg Assn Med
Fedl Home Ln Mtg Crp.

Unless specifically admitted in its Answer, Respondent Fidelity Brokerage Services, Inc. denied the allegations made in the Statement of Claim and asserted the following defenses: Failure to State a Claim Upon Which Relief Can Be Granted; Waiver; Failure to Mitigate; and Assumption of Risk.

RELIEF REQUESTED

Claimants Nayak requested:

| | |
|----------------------|-----------------|
| Compensatory Damages | \$10,000,000.00 |
| Punitive Damages | \$10,000,000.00 |
| Attorneys' Fees | not specified |
| Other Costs | not specified |

Respondent Fidelity requested:

| | |
|--|----------------------|
| Other Monetary/Non-Monetary Relief if any: | denial of all claims |
|--|----------------------|

AWARD

Both parties to this case presented extensive written and testimonial evidence, including testimony by expert witnesses on both sides, all of which has been carefully considered by the arbitrators. The arbitrators began their deliberations immediately after the closing of arguments were concluded on December 12, 2001 and continued deliberating for the rest of that afternoon. Over the next week the arbitrators individually studied all the evidence and then reconvened on December 21, 2001 at the NASD offices in Chicago to further deliberate all that day.

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. Any and all claims asserted by Claimants Nicholas A. Nayak Sep-IRA, Nicholas A. Nayak Custodian for David A. Nayak, Nicholas A. Nayak Custodian for Zachary S. Nayak, Nicholas A. Nayak, and Anjuli S. Nayak, MD, and Nayak Foundation Charitable Trust are denied in their entirety. The panel finds that the Claimants did not prove that Respondent's markups or other relevant pricing factors were unfair or unreasonable in connection with Claimants' bond transactions, and therefore Respondent did not breach any duty to disclose such markups or pricing factors.
2. Parties shall bear their own costs, including attorney's fees.
3. Any and all relief not specifically addressed herein, including punitive damages, is 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 | = \$600.00 |
|--------------------------|------------|

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, the member firm is a party.

| | |
|----------------------------|---------------------|
| Member surcharge | = \$3,600.00 |
| Pre-hearing process fee | = \$ 600.00 |
| <u>Hearing process fee</u> | <u>= \$5,000.00</u> |
| Total Member Fees | = \$9,200.00 |

Forum Fees and Assessments

The panel has the authority to assess 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 \$1,200.00 | = \$1,200.00 |
| Pre-hearing conference: April 16, 2001 Date | 1 session |

| | |
|--|--------------|
| Four (4) Hearing sessions x \$1,200.00 | = \$4,800.00 |
| Hearing Dates: December 11, 2001 | 2 sessions |
| December 12, 2001 | 2 sessions |
| Total Forum Fees | = \$6,000.00 |

1. The panel has assessed \$4,000.00 of the forum fees, jointly and severally, to Claimants Nicholas A. Nayak Sep-IRA, Nicholas A. Nayak Custodian for David A. Nayak, Nicholas A. Nayak Custodian for Zachary S. Nayak, Nicholas A. Nayak, and Anjuli S. Nayak, MD, and Nayak Foundation Charitable Trust.
2. The panel has assessed \$2,000.00 of the forum fees to Respondent Fidelity Brokerage Services, Inc. n/k/a Fidelity Brokerage Services, LLC

Fee Summary

1. Claimants Nicholas A. Nayak Sep-IRA, Nicholas A. Nayak Custodian for David A. Nayak, Nicholas A. Nayak Custodian for Zachary S. Nayak, Nicholas A. Nayak, and Anjuli S. Nayak, MD, and Nayak Foundation Charitable Trust shall be and hereby are jointly and severally liable for:

| | |
|---|---------------|
| Initial Filing Fee | = \$ 600.00 |
| Forum Fees | = \$ 4,000.00 |
| Total Fees | = \$ 4,600.00 |
| Less payments | = \$ 1,800.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 2,800.00 |

2. Respondent Fidelity Brokerage Services, Inc. is solely liable for:

| | |
|---|---------------|
| Member Fees | = \$ 9,200.00 |
| Forum Fees | = \$ 2,000.00 |
| Total Fees | = \$11,200.00 |
| Less payments | = \$ 8,600.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 2,600.00 |

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Theodore M. Utchen, Esq. -Public Arbitrator, Presiding Chair
Philip J. Glick, Esq. -Public Arbitrator
Michael S. Gregory-Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Theodore M. Utchen

01/12/02

Theodore M. Utchen, Esq.
Public Arbitrator, Presiding Chair

Signature Date

/s/ Philip J. Glick

01/14/02

Philip J. Glick, Esq.
Public Arbitrator

Signature Date

/s/ Michael S. Gregory

01/16/02

Michael S. Gregory
Non-Public Arbitrator

Signature Date

01/17/02

Date of Service (For NASD-Dispute Resolution office use only)

ARBITRATION PANEL

Theodore M. Utchen, Esq. -Public Arbitrator, Presiding Chair
Philip J. Glick, Esq. -Public Arbitrator
Michael S. Gregory-Non-Public Arbitrator

Concurring Arbitrators' Signatures

Theodore M. Utchen
Theodore M. Utchen, Esq.
Public Arbitrator, Presiding Chair

January 12, 2002
Signature Date

Philip J. Glick, Esq.
Public Arbitrator

Signature Date

Michael S. Gregory
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution, Inc.
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Concurring Arbitrators' Signatures

Theodore M. Utchen, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Philip J. Glick, Esq.
Public Arbitrator

1/14/02

Signature Date

Michael S. Gregory
Non-Public Arbitrator

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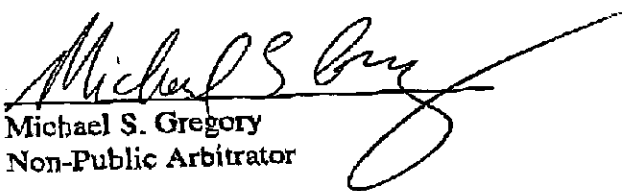
Concurring Arbitrators' Signatures

Theodore M. Utchen, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Philip J. Glick, Esq.
Public Arbitrator

Signature Date



Michael S. Gregory
Non-Public Arbitrator

1/16/02
Signature Date

Date of Service (For NASD-Dispute Resolution office use only)