

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Fidelity Brokerage Services, Inc., Claimant v. Francis Eustis and Sean Michael Jones,  
Respondents

Case Number: 00-05178

Hearing Site: San Francisco, CA

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**REPRESENTATION OF PARTIES**

For Claimant:

Laurence K. Richmond, Esq.  
Laurence K. Richmond &  
Associates, P.C.  
1419 Hancock Street  
Greenleaf Building  
Quincy, MA 02169

For Respondents:

Jeffrey A. Feldman, Esq.  
601 California Street  
Suite 2000  
San Francisco, CA 94108

**CASE INFORMATION**

Statement of Claim filed: November 22, 2000

Claimant's Uniform Submission Agreement signed: October 23, 2000

Statement of Answer and Counterclaim filed by Respondent: January 12, 2001

Respondent Frances Eustis' Uniform Submission Agreement signed: January 10, 2001

Respondent Sean Michael Jones' Uniform Submission Agreement signed: January 3, 2001

Reply to the Counterclaim filed by Claimants: January 30, 2001

**CASE SUMMARY**

Claimant alleged that Respondents failed to satisfy a debit balance in the margin account  
Respondents held at Claimant's firm. Respondents purchased penny stocks over the Internet.

When Respondents allegedly refused to pay for the trades, Claimant liquidated the account resulting in the debit balance.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim. Additionally, Respondents asserted several affirmative defenses, including that Claimant failed to state a claim for relief; Claimant's claims are barred by the doctrines of estoppel, waiver and laches; Claimant was the direct and proximate cause of the damages which it now complains of; Claimant failed to mitigate the alleged damages; and Claimant is barred from recovery because Claimant knowingly consented to the Respondents' actions.

In the Counterclaim, Respondents alleged that Claimant erroneously executed trades in their account. Accordingly, they were entitled to recover the amount of equity in their account, plus interest, that existed before the error took place.

In the Reply to the Counterclaim, Claimant denied the allegations of wrongdoing. Additionally, Claimant asserted several affirmative defenses, including that Respondents failed to state a claim for relief; Respondents' claims are barred by the doctrines of estoppel and waiver; and Respondents breached their agreement with Claimants.

#### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested \$20,317.81 (amount of the debit balance in the account), and unspecified interest, costs and reasonable attorney's fees.

In the Statement of Answer, the Respondents requested \$11,412.50 (the amount representing the equity that Respondents had in their account prior to the alleged erroneous trades), interest at the rate of 10% per annum through the date of the Award, an order directing Claimant to pay Respondents' costs to collect any amounts entered against Claimant and defend against this action, a denial of the claims in their entirety and such other relief as the Arbitrator may deem just and proper.

In the Reply to the Counterclaim, the Claimant requested that the counterclaim be dismissed with prejudice.

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

The parties 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, testimony, and evidence presented at the hearing, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims against Respondents are denied in their entirety.
- 2) Claimant, Fidelity Brokerage Services, Inc., shall pay Respondents \$11,412 on the Respondents' counterclaim.
- 3) Each party shall bear its own costs, including attorney's fees.
- 4) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 750
Respondents' Counterclaim	= \$ 125

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member is a party and the following fees are assessed:

<u>Member Surcharge</u>	= \$ 400
<u>Total Member Fees</u>	= \$ 400

#### **Forum Fees and Assessments**

The Arbitrator assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with a single arbitrator @ \$ 450/session	= \$ 900
Pre-hearing conferences: April 24, 2001	1 session
May 29, 2001	1 session
Four (4) Hearing sessions @ \$450/session	= \$1800
Hearings: September 10, 2001	2 sessions
September 12, 2001	2 sessions
<u>Total Forum Fees</u>	= \$2700

1. The Arbitrator assessed \$ 1350 of the forum fees against Claimant.
2. The Arbitrator assessed \$1350 of the forum fees jointly and severally against Respondents.

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**Fee Summary**

Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 750
Member Fees	= \$ 400
<u>Forum Fees</u>	<u>= \$1350</u>
Total Fees	= \$2500
<u>Less Payments</u>	<u>= \$(2050)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 450

Respondents are charged jointly and severally with the following fees and costs:

Counterclaim Filing Fee	= \$ 125
<u>Forum Fees</u>	<u>= \$1350</u>
Total Fees	= \$1475
<u>Less Payments</u>	<u>= \$(1100)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 375

All balances are payable to NASD Dispute Resolution, Inc. and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.


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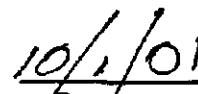
**ARBITRATION PANEL**

Russell D. Jones, Esq.

- Public/Non-Public, Presiding Chair

**Concurring Arbitrators' Signature**

  
Russell D. Jones, Esq.  
Chair, Public Arbitrator

  
Signature Date

Date Served:

OCT 02 2001

Date of Service