

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 01-01229

Fidelity Brokerage Services, LLC

Names of the Respondents

Hearing Site: Boca Raton, Florida

Julian Garcia Sellek and Kathleen R. Garcia-Sellek

REPRESENTATION OF PARTIES

For Fidelity Brokerage Services, LLC ("Fidelity"), hereinafter referred to as "Claimant": Michael R. Weissman, Esq., Bingham Dana, LLP, Boston, Massachusetts.

Julian Garcia Sellek and Kathleen R. Garcia-Sellek, hereinafter collectively referred to as "Respondents", did not appear.

CASE INFORMATION

Statement of Claim filed on or about: March 9, 2001.

Claimant's Uniform Submission Agreement signed on: May 5, 2001, by Richelle Kennedy, Assistant Clerk, on behalf of the firm.

Respondents did not file Statements of Answer or properly executed Uniform Submission Agreements.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract and unjust enrichment. Claimant alleged that Respondents have failed to cure the deficit in their margin account thereby breaching the Customer Agreement, which contained a Margin Account Agreement, executed by Respondents when they opened an Ultra Service Account at Fidelity, on or about June 5, 1999. Claimant maintained that the deficit was caused by trading losses associated with the liquidation of Respondents' Delia's stock.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$57,162.09, interest, attorney's fees, costs, and such other relief deemed appropriate by the Panel.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not attend the evidentiary hearing which was conducted telephonically, upon the request of Claimant and by order of the Panel. Upon review of the file and the representations made on behalf of the Claimant, the undersigned Arbitrators (the "Panel") determined that Respondents have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Respondents present, in accordance with Rule 10318 of the NASD Code of Arbitration Procedure (the "Code").

Respondents did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the contract executed by Respondents and are bound by the determination of the Panel on all issues submitted.

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. Respondents are found liable, jointly and severally, on the claim of breach of contract, and shall pay to Claimant compensatory damages in the amount of \$49,185.60.
2. Respondents are found liable, jointly and severally, and shall pay to Claimant pre-judgment interest in the amount of \$14,442.40, plus post-judgment interest, at the highest rate permitted by law, from June 13, 2002 to the date of payment of the Award.
3. Respondents are found liable, jointly and severally, and shall pay to Claimant attorney's fees in the amount of \$8,430.00, pursuant to the terms of the Customer Agreement.
4. Respondents are found liable, jointly and severally, and shall pay to Claimant the sum of \$1,000.00, representing reimbursement of the claim filing fee previously paid by Claimant to the NASD.
5. Any and all requests for relief not specifically addressed herein, are 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 = \$1,000.00

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, Fidelity is a party.

| | |
|----------------------------|----------------------|
| Member surcharge | = \$1,000.00 |
| Pre-hearing process fee | = \$ 600.00 |
| <u>Hearing process fee</u> | <u>= \$ 1,500.00</u> |
| Total Member Fees | = \$ 3,100.00 |

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournments were requested during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum 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:

| | |
|--|---------------------|
| One (1) Pre-hearing session with the Panel @ \$750.00 | = \$ 750.00 |
| Pre-hearing conference date: March 18, 2002 1 session | |
| One (1) Hearing session @ \$750.00 | = \$ 750.00 |
| Hearing date: June 13, 2002 1 session | |
| <u>Total Forum Fees</u> | <u>= \$1,500.00</u> |

The Panel has assessed the total forum fees of \$1,500.00 jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

No administrative costs were incurred in this matter.

FEE SUMMARY

Claimant is solely liable for:

| | |
|--------------------|--------------|
| Initial Filing Fee | = \$1,000.00 |
| Member Fees | = \$3,100.00 |

| | |
|---------------|--------------|
| Total Fees | = \$4,100.00 |
| Less payments | = \$4,100.00 |

| | |
|---|----------|
| Balance Due NASD Dispute Resolution, Inc. | = \$0.00 |
|---|----------|

Respondents are jointly and severally liable for:

| | |
|------------|--------------|
| Forum Fees | = \$1,500.00 |
|------------|--------------|

| | |
|---------------|--------------|
| Total Fees | = \$1,500.00 |
| Less payments | = \$0.00 |

| | |
|---|--------------|
| Balance Due NASD Dispute Resolution, Inc. | = \$1,500.00 |
|---|--------------|

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

ARBITRATION PANEL

| | | |
|------------------------|---|-----------------------------------|
| Gary D. Lipson, Esq. | - | Public Arbitrator/Presiding Chair |
| P. David Isenberg | - | Non-Public/Panelist |
| Joan Kirkpatrick Crain | - | Public/Panelist |

Concurring Arbitrators' Signatures

/s/

07/15/02

Gary D. Lipson, Esq.
Public Arbitrator, Presiding Chair

Signature Date

/s/

02/03/03

P. David Isenberg
Non-Public Arbitrator

Signature Date

/s/

07/15/02

Joan Kirkpatrick Crain
Public Arbitrator

Signature Date

07/29/02

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

NASD Dispute Resolution, Inc.
 Arbitration No. 01-01229
Award Page 4 of 5

Fee Summary

Claimant is solely liable for:

| | |
|---|--------------|
| Initial Filing Fee | = \$1,000.00 |
| Member Fees | = \$3,100.00 |
| Total Fees | = \$4,100.00 |
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| Balance Due NASD Dispute Resolution, Inc. | = \$ 0.00 |

Respondents are jointly and severally liable for:

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| Forum Fees | = \$1,500.00 |
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| P. David Isenberg | - | Non-Public/Panelist |
| Joan Kirkpatrick Crain | - | Public/Panelist |

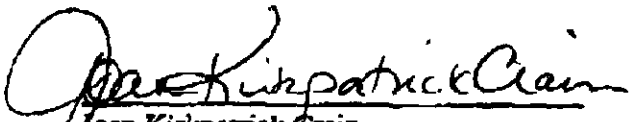
Concurring Arbitrators' Signatures

 Gary D. Lipson, Esq.
 Public Arbitrator, Presiding Chairperson

 Signature Date

 P. David Isenberg
 Non-Public Arbitrator

 Signature Date


 Joan Kirkpatrick Crain
 Public Arbitrator

July 15, 2002
 Signature Date

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

NASD Dispute Resolution, Inc.
 Arbitration No. 01-01229
Award Page 4 of 5

Fee Summary

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| Initial Filing Fee | = \$1,000.00 |
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| Total Fees | = \$4,100.00 |
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| Forum Fees | = \$1,500.00 |
| Total Fees | = \$1,500.00 |
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| P. David Isenberg | - | Non-Public/Panelist |
| Joan Kirkpatrick Crain | - | Public/Panelist |

Concurring Arbitrators' Signatures

 Gary D. Lipson, Esq.
 Public Arbitrator, Presiding Chairperson

7/15/02

 Signature Date

 P. David Isenberg
 Non-Public Arbitrator

 Signature Date

 Joan Kirkpatrick Crain
 Public Arbitrator

 Signature Date

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

Fee Summary

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| Total Fees | = \$4,100.00 |
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| Balance Due NASD Dispute Resolution, Inc. | = \$ 0.00 |

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| Forum Fees | = \$1,500.00 |
| Total Fees | = \$1,500.00 |
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| Balance Due NASD Dispute Resolution, Inc. | = \$1,500.00 |

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| P. David Isenberg | - | Non-Public/Panelist |
| Joan Kirkpatrick Crain | - | Public/Panelist |

Concurring Arbitrators' Signatures

Gary D. Lipson, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



P. David Isenberg
Non-Public Arbitrator

5/3/03

Signature Date

Joan Kirkpatrick Crain
Public Arbitrator

Signature Date

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