

**Stipulated Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Joan M. Kenny, Claimant v. James Vernale, Fidelity Brokerage Services, Inc. and John A. Klobe, Respondents

Case Number: 01-02126

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

James Jay Seltzer, Esq.  
Law Offices of James Jay Seltzer  
Emeryville, California

For Respondents:

Anne Marie Murphy, Esq.  
Steeffel, Levitt & Weiss  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: April 26, 2001

Claimant's Uniform Submission Agreement signed: April 25, 2001

Joint Statement of Answer filed by Respondents: August 17, 2001

Respondent James Vernale's Uniform Submission Agreement signed: January 7, 2002

Respondent Fidelity Brokerage Services, Inc.'s Uniform Submission Agreement signed:  
July 17, 2001

Respondent John A. Klobe's Uniform Submission Agreement signed: January 25, 2002

### **CASE SUMMARY**

Claimant alleged violation of NASD Conduct Rule 2110 and California Department of Corporations Rule 260.218 , suitability, omissions and misrepresentations of material fact, violation of margin requirements, negligent supervision and failure to supervise, violations of California Corporations Code §§ 25401 and 25504.1, negligence, breach of contract, breach of implied covenant of good faith and fair dealing, breach of fiduciary duty, common law fraud, violation of Elder Abuse and Dependent Adult Protection Act, involving unspecified securities.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$100,000.00, punitive damages in the amount of \$300,000.00, treble damages, interest, and costs, including attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

### **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 and the parties' request for this stipulated award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant and Respondents have entered into a confidential settlement agreement.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents James Vernale's and John A. Klobe's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondents James Vernale and John A. Klobe must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The parties shall bear their respective costs, including attorney's fees.
4. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 300.00
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#### **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 firm Fidelity Brokerage Services, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 2,500.00
<b>Total Member Fees</b>	<b>= \$ 4,600.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

1. Postponement of the July, 2002 Hearing Dates, requested by Respondents;  
fee waived by Panel: = \$ waived
2. Postponement of the March, 2003 Hearing Dates, requested by Respondents;  
fee assessed to Respondents: = \$ 1,500.00

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

The Panel 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 or the parties and the Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences:	
December 4, 2001	1 session
June 14, 2002	1 session
One (1) Hearing session @ \$1,125.00/session	= \$ 1,125.00
Hearing:	
April 15, 2003	1 session
<b>Total Forum Fees</b>	<b>= \$ 3,375.00</b>

By party stipulation, the forum fees are assessed as follows:

1. \$1,125.00 of the forum fees assessed to Claimant.
2. \$2,250.00 of the forum fees assessed jointly and severally to Respondents

**Fee Summary**

1. Claimant, is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,425.00
Less payments	= \$( 1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

2. Respondent Fidelity Brokerage Services, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
Less payments	= \$( 4,600.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents James Vernale, Fidelity Brokerage Services, Inc. and John A. Klobe are charged jointly and severally with the following fees and costs:

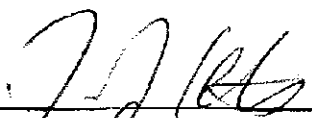
Adjournment Fee	= \$ 1,500.00
Forum Fees	= \$ 2,250.00
Total Fees	= \$ 3,750.00
Less payments	= \$( 1,500.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,250.00</b>

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

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Arbitration No. 01-02126  
Award Page 6 of 7

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**Parties' Signatures**

  
James Jay Seltzer, Esq.  
on behalf of Claimant

3/11/04  
Signature Date

\_\_\_\_\_  
Anne Marie Murphy, Esq.  
On behalf of Respondents

\_\_\_\_\_  
Signature Date

NASD Dispute Resolution  
Arbitration No. 01-02126  
Award Page 6 of 7

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**Parties' Signatures**

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James Jay Seltzer, Esq.  
on behalf of Claimant

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Signature Date

  
Michael D. Early, Esq.  
On behalf of Respondents

2/12/04  
Signature Date

**ARBITRATION PANEL**

<b>Sterling N. Frost</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>Walter N. Hitchcock</b>	-	<b>Public Arbitrator</b>
<b>Stephen Gregory Brown</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

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**Sterling N. Frost**  
Chair, Public Arbitrator

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Signature Date

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**Walter N. Hitchcock**  
Public Arbitrator

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Signature Date

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**Stephen Gregory Brown**  
Non-Public Arbitrator

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Signature Date

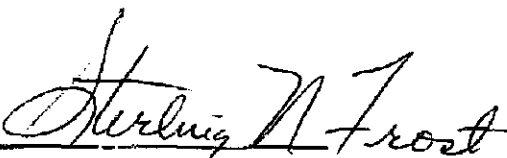
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Date of Service

**ARBITRATION PANEL**

Sterling N. Frost	-	Public Arbitrator, Presiding Chair
Walter N. Hitchcock	-	Public Arbitrator
Stephen Gregory Brown	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Sterling N. Frost  
Chair, Public Arbitrator

4/12/04  
Signature Date

\_\_\_\_\_  
Walter N. Hitchcock  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Stephen Gregory Brown  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

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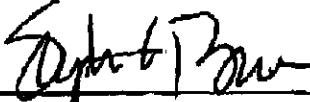
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**Sterling N. Frost**  
Chair, Public Arbitrator

\_\_\_\_\_  
Signature Date

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**Walter N. Hitchcock**  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
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**Stephen Gregory Brown**  
Non-Public Arbitrator

5/7/2013  
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Signature Date

**ARBITRATION PANEL**

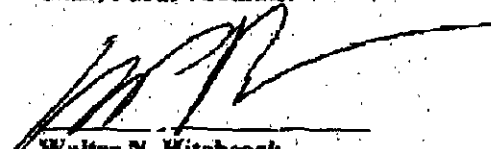
Sterling N. Frost  
Walter N. Hitchcock  
Stephen Gregory Brown

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Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Sterling N. Frost  
Chair, Public Arbitrator



Walter N. Hitchcock  
Public Arbitrator

Signature Date

4/8/04  
Signature Date

Stephen Gregory Brown  
Non-Public Arbitrator

Signature Date

5/5/04  
Date of Service