

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Name of Claimant

Ann T. Donahue

and

02-05904
Phoenix, Arizona

Name of Respondents

Fidelity Brokerage Services LLC
Steven D. Biedermann
Fidelity Investments Life Insurance Company

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

For Ann T. Donahue, hereinafter referred to as "Claimant": John J. Nicgorski, Esq., Mohr, Hackett, Pederson, Blakley & et al., 2800 North Central Avenue, Suite 1100, Phoenix, Arizona 85004-1043.

For Respondents Fidelity Brokerage Services LLC and Fidelity Investments Life Insurance Company (collectively "Fidelity"): Michael R. Weismann, Esq., Bingham McCutchen, 150 Federal Street, Boston, MA 02110-1726.

For Respondent Steven D. Biedermann ("Biedermann"): Andrew W. Sidman, Esq., Butler, Fitzgerald & Potter, 350 Fifth Avenue, Suite 6215, New York, NY 10118.

Steven D. Biedermann and Fidelity are hereinafter collectively referred to as "Respondents."

CASE INFORMATION

Statement of Claim filed on or about: October 2, 2002;
Claimant signed the Uniform Submission Agreement: September 18, 2002;
Statement of Answer filed by Biedermann on or about: January 6, 2003;
Statement of Answer filed by Fidelity on or about: January 6, 2003;
Biedermann signed the Uniform Submission Agreement by an individual with Power of Attorney: January 3, 2003;
Fidelity Brokerage Services LLC signed the Uniform Submission Agreement: October 28, 2002;
Fidelity Investments Life Insurance Company did not execute a Uniform Submission Agreement;
Motion to Compel Production of Documents filed by Fidelity on or about: December 3, 2003;

Supplemental Motion to Compel Production of Documents filed by Fidelity on or about: December 8, 2003;

Claimant filed a Response to Fidelity's Motion to Compel Production of Documents on or about: December 19, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; breach of fiduciary duty; failure to supervise; breach of duty; breach of contract; fraudulent misrepresentation and omission; negligence/negligent misrepresentation; violation of Federal and Arizona securities law; violation of NYSE Rules 401, 405, 405(2); violation of NASD Rules of Conduct Sections 3010, 2110, 2310; violation of NASD Rules of Fair Practice Section 2120.

Unless specifically admitted in his Answer, Biedermann denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant fails to state viable causes of action against Biedermann; no private right of action exists for alleged violations of the rules of self regulatory organizations like the NASD and the NYSE; the claims are barred by the applicable statute of limitations (Biedermann noted that in particular, claims for violations of the antifraud provisions of the federal securities laws must be brought within one year from the time that a claimant knows, or reasonably should know, of the events in issue and, in all cases, within three years from such events); the claims are barred by the doctrines of waiver, estoppel and ratification; Claimant knowingly assumed the risks associated with the transactions in issue; Claimant's contributory negligence bars her claims; any losses incurred by Claimant were not proximately caused by any of the statements or actions of Biedermann that are the subject of the Statement of Claim; Claimant failed to mitigate any damages allegedly caused by Biedermann; under applicable law, Claimant has no right to recover punitive damages or attorneys' fees.

Unless specifically admitted in its Answer, Fidelity denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant fails to state a claim for which relief can be granted; Claimant failed to mitigate damages; Claimant's alleged losses were proximately caused by her own conduct, negligence, or contributory negligence in relation to the transactions complained of by her; Claimant, by her action or failure to act, waived any right she might have had to seek damages; Claimant's claims are barred by the doctrine of laches; to the extent that Claimant was injured, a point not conceded, that injury was caused by persons or events for which Respondents are not responsible; all allocations in Claimant's Annuity were consistent with her stated investment objective of Long Term Growth; Fidelity at all times acted in good faith and maintained and enforced a reasonable and proper system of supervision and internal control over its employees; Claimant's misrepresentation claims must be dismissed because Fidelity made no misrepresentations and to the extent any misrepresentations were made, a point not conceded, the alleged misrepresentations were not material and would not have been relied upon by a reasonable investor; Claimant's breach of fiduciary duty claim must be dismissed because under applicable law ordinarily there is no fiduciary relationship between a broker and customer and Claimant has not alleged facts

sufficient to establish such a relationship; Claimant knew the nature and characteristics of the subaccounts into which she allocated assets and was in a position to assess the risks associated with the allocations in her accounts and knowingly accepted and assumed those risks.

Fidelity filed a motion to compel the production of documents with reference to its First Request for the Production of Documents and Information to Claimant. Fidelity also filed a supplemental motion to compel the production of documents, after Claimant served a written response which Fidelity characterized as inadequate. Claimant responded, in sum and substance, that all documents in Claimant's possession had already been produced. Claimant also requested in her response that the panel order Biedermann to produce documents on or before January 2, 2004.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$250,000.00; lost profits/loss of opportunity damages; punitive damages; pre and post-award interest at the maximum rate allowed by law; Claimant's costs, expenses and disbursements, including reasonable attorneys' fees; and such other relief as the panel deemed just and proper.

Biedermann requested that the Statement of Claim be dismissed with prejudice, that he be awarded the costs, including reasonable attorneys' fees, incurred in defending against this proceeding, that this matter be expunged from his CRD record, and that he be awarded such other and further relief as may be just and proper.

Fidelity requested that Claimant's claims be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The Chairman of the arbitration panel decided on or about January 7, 2004, in sum and substance, that Fidelity's motion to compel the production of documents was granted, but with the understanding that Claimant cannot be compelled to produce documents that neither she nor her agents or other representatives have.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the proposed Stipulated Award and the record in this matter, the Panel has decided in full and final resolution of the issue submitted for determination as follows:

1. The claims against Respondents are dismissed with prejudice. The parties have entered into a confidential settlement agreement.

2. Each party shall bear its own costs and expenses.
3. Pursuant to the agreement of the parties, the Panel recommends the expungement of all references to the above captioned arbitration from Steven D. Biedermann's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Biedermann must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.
4. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
5. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$300.00

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. In this matter, the member firm(s) is Fidelity Brokerage Services LLC.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

1 Pre-hearing session(s) with Panel	x	1,125.00	\$	1,125.00
	June 4, 2003	1 session		
Total Forum Fees			\$	1,125.00

The Arbitration Panel has assessed \$562.50 of the forum fees to Ann T. Donahue.

The Arbitration Panel has assessed \$562.50 of the forum fees jointly and severally to Fidelity Brokerage Services LLC and Steven D. Biedermann.

Fee Summary

Claimant, Ann T. Donahue, shall be and hereby is liable for:

Initial Filing Fee	= \$	300.00
Retained Hearing Session Deposit pursuant to Rule 10332(g)	= \$	562.50
<u>Forum Fees</u>	= \$	562.50
Total Fees	= \$	1,425.00
<u>Less payments</u>	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondent, Fidelity Brokerage Services LLC, shall be and hereby is liable for:

Member Fees	= \$	5,200.00
<u>Forum Fees</u>	= \$	0.00
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Fidelity Brokerage Services LLC and Steven D. Biedermann, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	562.50
Total Fees	= \$	562.50
<u>Less payments</u>	= \$	-562.50
Balance Due NASD Dispute Resolution	= \$	0.00

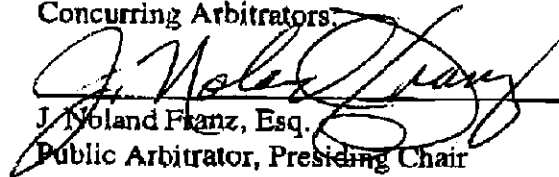
All balances are due to NASD Dispute Resolution

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ARBITRATION PANEL

J. Noland Franz, Esq. - Public Arbitrator, Presiding Chair
Jay A. Canel, Esq. - Public Arbitrator
James Sullivan - Non-Public Arbitrator

Concurring Arbitrators:


J. Noland Franz, Esq.
Public Arbitrator, Presiding Chair

3/15/04
Signature Date

Jay A. Canel, Esq.
Public Arbitrator

Signature Date

James Sullivan
Non-Public Arbitrator

Signature Date

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Jay A. Canel, Esq. - Public Arbitrator
James Sullivan - Non-Public Arbitrator

Concurring Arbitrators:

J. Noland Franz, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Jay A. Canel, Esq.
Public Arbitrator

March 15, 2004

Signature Date

James Sullivan
Non-Public Arbitrator

Signature Date

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Jay A. Canel, Esq. - Public Arbitrator
James Sullivan - Non-Public Arbitrator


Concurring Arbitrators:

J. Noland Franz, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Jay A. Canel, Esq.
Public Arbitrator

Signature Date



James Sullivan
Non-Public Arbitrator

3/25/2004
Signature Date