

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 02-06329

Michael S. Radetsky
Sally M. D'Angelo
Michael S. Radetsky and Sally M. D'Angelo Revocable Trust
Michael R. Alford
Shannon R. Alford
Robertson and Mary Paige Alford
Dorothea B. Alford Trust

Names of the Respondents

Hearing Site: Washington, D.C.

Fidelity Brokerage Services, LLC
Fidelity Investments
Ferris Baker Watts, Inc.
Mary L. Mathias
Shawn B. O'Reilly
Gary J. Kopff
Judy G. Kopff
Heritage Management, LTD

Nature of the Dispute: Customers vs. Members, Non-Members and Associated Persons.

REPRESENTATION OF PARTIES

Claimants, Michael S. Radetsky ("M. Radetsky"), Sally M. D'Angelo and the Michael S. Radetsky and Sally M. D'Angelo Revocable Trust, hereinafter collectively referred to as "the Radetsky Claimants", were represented by Arthur M. Schwartzstein, Esq., Arthur M. Schwartzstein, P.C., McLean, Virginia.

Claimants, Michael R. Alford, Shannon R. Alford, Robertson and Mary Paige Alford, and the Dorothea B. Alford Trust, hereinafter collectively referred to as "the Alford Claimants", were represented by Morris J. Levin, Esq., Attorney at Law, Washington, D.C.

Respondents, Fidelity Brokerage Services, LLC ("Fidelity Brokerage") and Fidelity Investments ("Fidelity Investments"), were represented by Matthew Farley, Esq., Drinker Biddle & Reath, LLP, New York, New York.

Respondents, Ferris Baker Watts, Inc. ("Ferris Baker"), Mary L. Mathias ("Mathias"), and Shawn B. O'Reilly ("O'Reilly"), hereinafter collectively referred to as the "Ferris Baker Respondents", were represented by Joseph A. Ingrisano, Esq., Kutak Rock, LLP, Washington, D.C.

Respondents, Gary J. Kopff ("G. Kopff"), Judy G. Kopff ("J. Kopff") and Heritage Management, LTD ("Heritage Management"), hereinafter collectively referred to as "the Kopff Respondents",

were represented by Thomas E. Patton, Esq., Tighe Patton Armstrong Teasdale, PLLC, Washington, D.C.

CASE INFORMATION

Statement of Claim filed by the Radetsky Claimants and the Alford Claimants on October 22, 2002.

The Radetsky Claimants signed the Uniform Submission Agreements on October 3, 2002.

The Alford Claimants signed the Uniform Submission Agreements on September 14, 2002 and October 3, 2002.

Statement of Answer, Motion to Dismiss and Counterclaim filed by Respondent Fidelity Brokerage on November 18, 2002.

Supplement to Motion to Dismiss filed by Respondent Fidelity Brokerage on March 9, 2004.

Reply Memorandum filed by Respondent Fidelity Brokerage on July 14, 2003.

A representative of Respondent Fidelity Brokerage filed an undated Uniform Submission Agreement.

Statement of Answer filed by the Ferris Baker Respondents on November 18, 2002.

Counterclaim filed by Respondent Ferris Baker on November 18, 2002.

A representative of Respondent Ferris Baker executed the Uniform Submission Agreement on December 24, 2002.

Respondent Mathias signed the Uniform Submission Agreement on January 6, 2003.

Respondent O'Reilly signed the Uniform Submission Agreement on January 15, 2003.

Statement of Answer filed by Respondent G. Kopff on March 11, 2003.

Respondent G. Kopff signed the Uniform Submission Agreement on February 25, 2003.

Statement of Answer and Counterclaim filed by the Kopff Respondents on November 15, 2002.

Respondents J. Kopff and Heritage Management signed the Uniform Submission Agreement on November 15, 2002.

The Radetsky and Alford Claimants filed an Answer to Respondent Fidelity Brokerage's Motion to Dismiss and Counterclaim in January, 2003.

The Radetsky and Alford Claimants filed an Answer to Respondent Ferris Baker's Counterclaim on January 31, 2003.

The Radetsky Claimants filed an Answer to the Kopff Respondents' Counterclaim in January, 2003.

The Radetsky Claimants filed a Further Response to Respondent Fidelity Brokerage's Motion to Dismiss on March 8, 2004.

Motion to Dismiss filed by Respondent J. Kopff on June 16, 2003.

The Radetsky Claimants filed a Response to J. Kopff's Motion to Dismiss on June 30, 2003.

Respondent J. Kopff filed a Reply to the Motion to Dismiss on July 15, 2003.

The Radetsky Claimants filed a Further Response to Respondent J. Kopff's Motion to Dismiss on March 8, 2004.

Cross-Motion to Dismiss The Alford Claimants' Fraud Claims and Claims against Respondent J. Kopff filed by the Kopff Respondents on October 19, 2004.

The Alford Claimants filed a Response to the Kopff Respondent's Cross-Motion to Dismiss on November 3, 2004.

The Ferris Baker Respondents filed a Response to the Kopff Respondent's Cross-Motion to Dismiss filed on November 11, 2004.

Motion to Reconsider the Dismissal of Claims against Respondent Fidelity Brokerage filed by the Alford Claimants on May 20, 2005.

Respondent Fidelity Brokerage filed a Response to the Alford Claimants' Motion to Reconsider Dismissal of Claims against Respondent Fidelity on June 13, 2005.

The Radetsky and Alford Claimants filed a Response to Respondent Fidelity Brokerage's July, 2005 Counterclaim on August 1, 2005.

Respondent Fidelity Brokerage filed a Reply to the Radetsky and Alford Claimants' Response to its Counterclaim on August 3, 2005.

CASE SUMMARY

In the Statement of Claim, the Radetsky and Alford Claimants asserted the following causes of action, among others: civil conspiracy, fraud, negligent misrepresentation, breach of fiduciary duty, breach of duty of agent, breach of contract, and *respondeat superior*. The causes of action relate to the purchase and sale of various unspecified securities.

Unless specifically admitted in its Statement of Answer and Motion to Dismiss and Reply Memorandum, Respondent Fidelity Brokerage denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; the Radetsky and Alford Claimants' claims are barred by the doctrines of waiver, estoppel, laches, and/or ratification; all of the investments at issue were the results of the decisions and actions of either the Radetsky and Alford Claimants or an independent third party; and the losses complained of are solely the results of the Radetsky and Alford Claimants' actions and/or inaction, and are not the result of any fault or culpability on the part of Respondent Fidelity Brokerage.

Respondent Fidelity Brokerage, in its Counterclaim against the Radetsky and Alford Claimants, asserted a cause of action for: indemnification and contribution.

Unless specifically admitted in their Answer to Respondent Fidelity Brokerage's Motion to Dismiss and Counterclaim, the Radetsky and Alford Claimants denied the allegations set forth in the Counterclaim.

Unless specifically admitted in their Statement of Answer, the Ferris Baker Respondents denied

the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; the Radetsky and Alford Claimants' claims are barred by the doctrines of estoppel and laches; the Radetsky and Alford Claimants' claims are barred by breach of their contracts; failure to mitigate damages; and contributory negligence.

Respondent Ferris Baker, in its Counterclaim against the Radetsky and Alford Claimants, asserted a cause of action for indemnification and breach of contract.

Unless specifically admitted in their Answer to Respondent Ferris Baker's Counterclaim, the Radetsky and Alford Claimants denied the allegations set forth in the Counterclaim.

Unless specifically admitted in their Statements of Answer the Kopff Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; the Radetsky and Alford Claimants' claims are barred by the doctrines of estoppel, waiver, ratification and laches; the Radetsky and Alford Claimants' claims are barred by statute of limitations; the Radetsky and Alford Claimants' claims are barred because they suffered no damages; and failure to mitigate damages.

The Kopff Respondents, in their Counterclaim against Claimant Radetsky, asserted a cause of action for contribution.

Unless specifically admitted in his Answer to the Kopff Respondent's Counterclaim, Claimant Radetsky denied the allegations set forth in the Counterclaim.

RELIEF REQUESTED

The Radetsky and Alford Claimants in the Statement of Claim requested:

Compensatory Damages	\$ 8,000,000.00
Punitive Damages	\$ 16,000,000.00
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent Fidelity Brokerage requested that it be dismissed from this proceeding and that it be awarded costs and expenses in defending the claim.

The Ferris Baker Respondents requested that the Radetsky and Alford Claimants' claims be denied and that the Radetsky and Alford Claimants be directed to pay all filing and forum fees.

In its Counterclaim, Respondent Fidelity Brokerage requested:

Compensatory Damages	\$ 8,000,000.00
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The Radetsky and Alford Claimants requested that Respondent Fidelity Brokerage's Motion to Dismiss and Counterclaim be denied.

In its Counterclaim, Respondent Ferris Baker requested:

Compensatory Damages	\$ 1,921,578.60
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

The Radetsky and Alford Claimants requested that Respondent Ferris Baker's Counterclaim be denied.

In their Counterclaim, the Kopff Respondents requested:

Compensatory Damages	\$ 8,000,000.00
Punitive Damages	\$16,000,000.00

Claimant Radetsky requested that the Kopff Respondents' Counterclaim be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Fidelity Investments, as named by the Radetsky and Alford Claimants, is not a legal entity, thus it did not submit to arbitration.

On October 22, 2002, Respondent G. Kopff filed for protection under the United States Bankruptcy laws and, as such, this proceeding was stayed with respect to him. On February 8, 2003, the United States Bankruptcy Court for the District of Columbia entered a Stipulation and Consent Order modifying the automatic stay in this matter and referring it to arbitration.

Prior to the hearing on the merits, the Arbitration Panel (the "Panel") denied all outstanding motions to dismiss filed by the parties.

The Kopff Respondents filed a deficient counterclaim with NASD Dispute Resolution that was not addressed by the Panel.

At the hearing on the merits Respondent J. Kopff renewed her Motion to Dismiss. The Alford Claimants filed a Response to the Respondent J. Kopff's Renewed Motion to Dismiss on January 28, 2005. The Panel granted Respondent J. Kopff's Renewed Motion to Dismiss.

The Panel granted the Kopff Respondents' Cross-Motion to Dismiss The Alford Claimants' Fraud Claims and Claims against Respondent J. Kopff.

At the hearing on the merits, Respondent Fidelity Brokerage made an oral Motion to Dismiss the Radetsky and Alford Claimants' claims. The Panel granted the motion.

At the hearing on the merits, the Kopff Respondents made an oral Motion to Dismiss the Radetsky and Alford Claimants' claims. The Panel granted the motion as to Respondent J. Kopff and denied the motion as to Respondents G. Kopff and Heritage Management.

At the hearing on the merits, the Ferris Baker Respondents made an oral Motion to Dismiss the Radetsky and Alford Claimants' claims. The Panel granted the motion as to Respondents Mathias and O'Reilly and denied the motion as to Respondent Ferris Baker.

At the hearing on the merits, Respondent Fidelity Brokerage amended its counterclaim to request attorney's fees in the amount of \$ 419,102.48.

At the hearing on the merits, the Ferris Baker Respondents requested that the Panel order the expungement of all reference to this matter from Respondents Mathias and O'Reilly's Central Registration Depository ("CRD") records.

On July 6, 2005, the Panel denied the Alford Claimants' Motion to Reconsider the Dismissal of Claims against Respondent Fidelity Brokerage

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, 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. The Radetsky and Alford Claimants' claims are denied in their entirety;
2. Claimant M. Radetsky is liable to and shall pay to Respondent Fidelity Brokerage the sum of \$50,000.00 in attorney's fees based on contract;
3. Respondent Ferris Baker's counterclaim is denied in its entirety;
4. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondents Mathias and O'Reilly's registration records maintained by the CRD with the understanding that, pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Mathias and O'Reilly 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, except as Fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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 = \$ 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. Accordingly, Respondents Fidelity Brokerage and Ferris Baker are parties.

Respondent Fidelity Brokerage:

Member surcharge = \$ 3,750.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 5,500.00

Respondent Ferris Baker:

Member surcharge = \$ 3,750.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 5,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

October 27-31, 2003, adjournment by all parties waived

October 18-20, 2004, adjournment by all parties waived

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 a single arbitrator @ \$450.00 = \$ 900.00

Pre-hearing conference: February 5, 2004 1 session

Four (4) Pre-hearing sessions with Panel @ \$ 1,200.00 = \$ 4,800.00

Pre-hearing conferences: May 1, 2003 1 session

October 28, 2003 1 session

March 15, 2004 1 session

November 19, 2003 1 session

Forty-Two (42) Hearing sessions @ \$ 1,200.00 = \$ 50,400.00

Hearing Dates: May 17, 2004 2 sessions

May 18, 2004	2 sessions
May 19, 2004	2 sessions
May 20, 2004	2 sessions
May 21, 2004	2 sessions
November 22, 2004	2 sessions
November 23, 2004	2 sessions
December 9, 2004	2 sessions
December 10, 2004	2 sessions
December 20, 2004	2 sessions
December 21, 2004	2 sessions
December 22, 2004	2 sessions
March 28, 2005	2 sessions
March 29, 2005	2 sessions
March 30, 2005	2 sessions
March 31, 2005	2 sessions
July 11, 2005	2 sessions
July 12, 2005	2 sessions
July 13, 2005	2 sessions
July 14, 2005	2 sessions
July 15, 2005	2 sessions

Total Forum Fees = \$ 55,650.00

1. The Panel has assessed \$ 18,550.00 of the forum fees jointly and severally to the Alford Claimants.
2. The Panel has assessed \$ 37,100.00 of the forum fees to M. Radetsky.

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.

1. The Radetsky and Alford Claimants, tape duplication = \$ 60.00
2. Claimant M. Radetsky, tape duplication = \$ 60.00
3. The Kopff Respondents = \$ 510.00

Fee Summary

1. The Radetsky and Alford Claimants are jointly and severally assessed and shall pay:

Initial Filing Fee	= \$ 600.00
Administrative Costs	= \$ 60.00
Total Fees	= \$ 660.00
Less payments	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 60.00

2. The Alford Claimants are jointly and severally assessed and shall pay:

<u>Forum Fees</u>	= \$ 18,550.00
<u>Total Fees</u>	= \$ 18,550.00
<u>Less payments</u>	= \$ 1,200.00
Balance Due NASD Dispute Resolution	= \$ 17,350.00

3. Claimant M. Radetsky is assessed and shall pay:

<u>Administrative Costs</u>	= \$ 60.00
<u>Forum Fees</u>	= \$ 37,100.00
<u>Total Fees</u>	= \$ 37,160.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 37,160.00

4. Respondent Fidelity Brokerage is assessed and shall pay:

<u>Filing Fee</u>	= \$ 2,500.00
<u>Member Fees</u>	= \$ 10,000.00
<u>Total Fees</u>	= \$ 12,500.00
<u>Less payments</u>	= \$ 13,200.00
Refund owed Respondent Fidelity Brokerage	= \$ 700.00

5. Respondent Ferris Baker is assessed and shall pay:

<u>Filing Fee</u>	= \$ 2,000.00
<u>Member Fees</u>	= \$ 10,000.00
<u>Total Fees</u>	= \$ 12,000.00
<u>Less payments</u>	= \$ 12,700.00
Refund Returned to CRD	= \$ 700.00

6. The Kopff Respondents are jointly and severally assessed and shall pay:

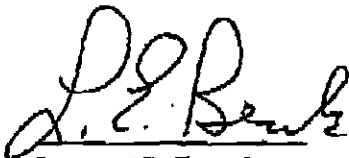
<u>Filing Fee</u>	= \$ 600.00
<u>Administrative Costs</u>	= \$ 510.00
<u>Total Fees</u>	= \$ 1,110.00
<u>Less payments</u>	= \$ 510.00
Balance Due NASD Dispute Resolution	= \$ 600.00

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

ARBITRATION PANEL

Leonard E. Benade	-	Public Arbitrator, Presiding Chairperson
Michael F. Halasz, Esq.	-	Public Arbitrator, Panelist
C. Gregory Ellison	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Leonard E. Benade
Public Arbitrator, Presiding Chairperson

8/16/05
Signature Date

Michael F. Halasz, Esq.
Public Arbitrator, Panelist

Signature Date

C. Gregory Ellison
Non-Public Arbitrator, Panelist

Signature Date

August 19, 2005
Date of Service (For NASD Dispute Resolution office use only)

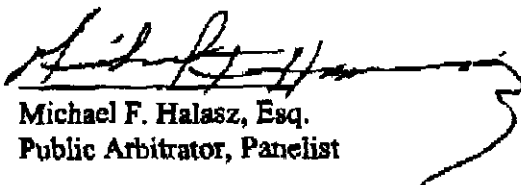
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Michael F. Halasz, Esq.	-	Public Arbitrator, Panelist
C. Gregory Ellison	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Leonard E. Benade
Public Arbitrator, Presiding Chairperson

Signature Date



Michael F. Halasz, Esq.
Public Arbitrator, Panelist

8/18/05

Signature Date

C. Gregory Ellison
Non-Public Arbitrator, Panelist

Signature Date

August 19, 2005

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

ARBITRATION PANEL

Leonard E. Benade	-	Public Arbitrator, Presiding Chairperson
Michael F. Halasz, Esq.	-	Public Arbitrator, Panelist
C. Gregory Ellison	-	Non-Public Arbitrator, Panelist


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Signature Date

Michael F. Halasz, Esq.
Public Arbitrator, Panelist

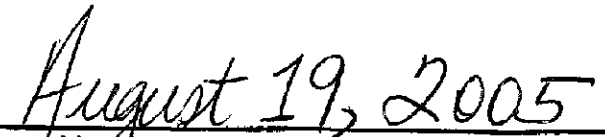
Signature Date



C. Gregory Ellison
Non-Public Arbitrator, Panelist



Signature Date



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