

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Virginia L. Pulcer

and

Case Number: 03-02588
Hearing Site: Troy, Michigan

Names of Respondents

Fidelity Brokerage Services, LLC
Fidelity Investments Life Insurance Co.,
Fidelity Insurance Agency, Inc.,
Fidelity Brokerage Services, Inc., and
Gary M. Pryka

NATURE OF DISPUTE

Customer v. Member, Non-Members, and Associated Person

REPRESENTATION OF PARTIES

Virginia L. Pulcer ("Claimant") was represented by Antony V. Trogan, Esq., and Lysa Postula-Stein, Esq., West Bloomfield, Michigan.

Fidelity Brokerage Services, LLC Fidelity Investments Life Insurance Co., Fidelity Insurance Agency, Inc., Fidelity Brokerage Services, Inc. and Gary M. Pryka, hereinafter referred to as "Respondents" were represented by Michael R. Weissman, Esq., Boston, Massachusetts.

CASE INFORMATION

The Statement of Claim was filed on or about April 10, 2003. The Submission Agreement of Claimant Virginia L. Pulcer was signed on or about March 3, 2003.

Statement of Answer was filed jointly by Respondents on or about July 1, 2003. The Submission Agreement of Respondent Fidelity Brokerage Services, LLC was signed on or about September 30, 2003. The Submission Agreement of Respondents Fidelity Investments Life Insurance Co., and Fidelity Insurance Agency, Inc. was signed on or about April 14, 2003. The Submission Agreement of Respondent Gary M. Pryka was signed on or about October 3, 2003.

CASE SUMMARY

Claimant asserted the following legal theories: breach of contract, common law fraud, promissory estoppel, negligence, malpractice, breach of fiduciary duty, and breach of Michigan Securities law. The causes of action relate to the recommendation and sale of a Fidelity Income Advantage variable annuity.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant fails to state a claim for which relief can be granted, Claimant failed to mitigate damages, Claimant's alleges losses were proximately caused by her own conduct, negligence, or contributory negligence, and Claimants' claims are barred by the doctrine of laches.

RELIEF REQUESTED

Claimant requested an award in the amount of \$91,000.00 in out-of-pocket losses, plus interest, costs, attorney fees, punitive and exemplary damages, rescission and any other damages the panel deems just and equitable.

Respondents requested that the claims asserted against them be dismissed in their entirety, that Respondent Pryka's registration records maintained by CRD be expunged of all references to this matter, and that the panel grant such other and further relief as it deems just and equitable.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Fidelity Brokerage Services, Inc. did not file with the NASD Dispute Resolution a properly executed submission to arbitration but having answered the claim, and appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

At the hearing, the parties stipulated to Arbitrator Raymond W. Henney, Esq., serving as chairperson.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gary M. Pryka's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Gary M. Pryka must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and,
- 4.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

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 = \$ 225.00

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(s) at the time of the events giving rise to the dispute. In this matter, the member firm is Fidelity Brokerage Services, LLC.

Member surcharge = \$ 1,100.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 1,700.00

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:

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: October 20, 2003 1 session	
Three (3) Hearing sessions x \$750.00	= \$ 2,250.00
Hearing Dates: June 2, 2004 2 sessions	
June 3, 2004 1 session	
Total Forum Fees	= \$ 3,000.00

The Arbitration Panel has assessed \$3,000.00 of the forum fees to Fidelity Brokerage Services, LLC.

Fee Summary

Claimant, Virginia L. Pulcer, is liable for:

Initial Filing Fee	= \$ 225.00
Total Fees	= \$ 225.00
Less payments	= \$ 975.00
Refund Due From NASD Dispute Resolution	= \$ 750.00

Respondent, Fidelity Brokerage Services, LLC, is liable for:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 3,000.00
Total Fees	= \$ 6,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 3,000.00

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

ARBITRATION PANEL

Raymond W. Henney, Esq. - Non-Public Arbitrator, Presiding Chair
William D. Keller - Public Arbitrator
Leonard G. Hendricks - Public Arbitrator

Concurring Arbitrators:

/s/ Raymond W. Henney, Esq.
Raymond W. Henney, Esq.
Non-Public Arbitrator, Presiding Chair

06/07/04
Signature Date

/s/ William D. Keller
William D. Keller
Public Arbitrator

06/04/04
Signature Date

/s/ Leonard G. Hendricks
Leonard G. Hendricks
Public Arbitrator

06/04/04
Signature Date

06/08/04
Date of Service (For NASD office use only)

ARBITRATION PANEL

Raymond W. Henney, Esq. - Non-Public Arbitrator, Presiding Chair
William D. Keller - Public Arbitrator
Leonard G. Hendricks - Public Arbitrator

Concurring Arbitrators:

Raymond W. Henney, Esq.
Non-Public Arbitrator, Presiding Chair

Signature Date

William D. Keller
William D. Keller
Public Arbitrator

June 4, 2004
Signature Date

Leonard G. Hendricks
Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

Raymond W. Henney, Esq. - Non-Public Arbitrator, Presiding Chair
William D. Keller - Public Arbitrator
Leonard G. Hendricks - Public Arbitrator

Concurring Arbitrators:

Raymond W. Henney, Esq.
Non-Public Arbitrator, Presiding Chair

Signature Date

William D. Keller
Public Arbitrator

Signature Date

Leonard G. Hendricks

Leonard G. Hendricks
Public Arbitrator

June 4, 2004

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 03-02588
Award Page 5 of 6

ARBITRATION PANEL

Raymond W. Henney, Esq. - Non-Public Arbitrator, Presiding Chair
William D. Keller - Public Arbitrator
Leonard G. Hendricks - Public Arbitrator

Concurring Arbitrators:

Raymond W. Henney
Raymond W. Henney, Esq.
Non-Public Arbitrator, Presiding Chair

6/7/04
Signature Date

William D. Keller
Public Arbitrator

Signature Date

Leonard G. Hendricks
Public Arbitrator

Signature Date

Date of Service (For NASD office use only)