

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Byron Kyle Ward

Case Number: 03-03024

Name of the Respondent
Fidelity Brokerage Services LLC

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Public Customer v. Member Firm

REPRESENTATION OF PARTIES

Claimant Byron Kyle Ward, hereinafter referred to as "Claimant": Appeared prose.

Respondent Fidelity Brokerage Services LLC, hereinafter referred to as "Respondent": Cameron S. Mattheson, Esq. of the law firm of LeClair Ryan, located in Richmond, Virginia and by Melissa Negger Shea, in-house counsel for Fidelity Brokerage Services.

CASE INFORMATION

Statement of Claim filed: April 24, 2003.

Claimant signed the Uniform Submission Agreement: April 22, 2003.

Claimant's Response to Respondent's Motion to Dismiss filed on: August 12, 2003.

Statement of Answer and Motion to Dismiss filed by Respondent: July 16, 2003.

Respondent's Representative signed the Uniform Submission Agreement: July 2, 2003.

CASE SUMMARY

Claimant Byron Kyle Ward, contended that the purchase by him of WorldCom and AT&T bonds in December of 2000 were made because of suggestions and recommendations by Respondent, Fidelity Brokerage Services; that the bonds were unsuitable investments for him and that Respondent was aware that WorldCom's bond rating was significantly lowered in early 2001 and should have informed him of that prior to his becoming aware of it in July 2001. Claimant also contends that Respondent had a duty to contact him concerning reallocating his portfolio.

Unless specifically admitted in its Answer, Respondent Fidelity Brokerage Services denied the allegations made in the Statement of Claim and alleged that it had only taken a purchase order from Claimant and had no duty to monitor Claimant's account. Further, Respondent asserts that

the transactions complained of were unsolicited and not based on Respondent's recommendations. In addition, Respondent asserted the following defenses:

1. The Statement of Claim fails to state a claim upon which relief can be granted;
2. Claimant was fully aware of the risks involved in trading securities and voluntarily accepted that risk;
3. Claimant's claims are barred by the doctrines of laches, waiver, and/or estoppel;
4. Claimant's claims are barred because he neither alleged nor sustained any damages that proximately resulted from any alleged acts or omissions of Fidelity;
5. Claimant's claims are barred because his was a non-discretionary account and thus Fidelity had no duty to monitor the activity in his account to determine whether Claimant's transactions were suitable for him;
6. If Claimant suffered any damages, then any such alleged damages resulted solely from his own acts or omissions and/or the acts or omissions of other third persons for whom Fidelity is not responsible;
7. If Claimant suffered any damages, which is denied, any recovery is therefore barred by his own negligence, which exceeds any alleged negligence of Fidelity;
8. If Claimant suffered any damages, his claims are barred because he failed to mitigate any such alleged damages;
9. Claimant expressly ordered, approved, authorized, consented to, participated in and ratified the acts and transactions complained of and upon which recovery is sought, and these claims against Fidelity are therefore barred;
10. Claimant's allegation of securities fraud is barred because he fails to allege fraud with the requisite particularity; and,
11. At all times, Fidelity acted in good faith and at no time did it commit, directly or indirectly, any acts which would give rise to a valid claim by the Claimant.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$98,396.00
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Respondent requested that the Panel dismiss all the claims in the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

On or About December 2, 2003, the Panel determined that the Motion to Dismiss filed by Respondent was denied.

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 Claimant's claims are dismissed and denied in their entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated herein; and,
3. Any and all relief not specifically addressed herein is denied.

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
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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, Fidelity Brokerage Services LLC is a party and the following member fees are assessed:

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

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	= \$ 450.00
Pre-hearing conference: March 8, 2004 1 session	
One (1) Pre-hearing session with Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: November 3, 2003 1 session	
Two (2) Hearing sessions @ \$750.00	= \$ 1,500.00
Hearing Date: May 20, 2004 2 sessions	
Total Forum Fees	= \$ 2,700.00

The Panel has assessed \$2,700.00 of the forum fees to Claimant Byron Kyle Ward.

NASD Dispute Resolution

Arbitration No. 03-03024

Award Page 4**FEE SUMMARY**

Claimant Byron Kyle Ward is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 2,700.00
Total Fees	= \$ 2,925.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 1,950.00

Respondent Fidelity Brokerage Services LLC is solely liable for:

Member Fees	= \$ 3,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

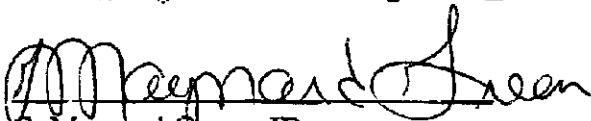
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

G. Maynard Green, JD -Public Arbitrator, Presiding Chairperson

Bill H. Brister - Public Arbitrator

Carol A. Freeland - Non-Public Arbitrator

Concurring Arbitrators' Signatures

G. Maynard Green, JD
Public Arbitrator, Presiding Chairperson

June 1, 2004
Signature Date

Bill H. Brister
Public Arbitrator

Signature Date

Carol A. Freeland
Non-Public Arbitrator

Signature Date

6/8/04 Klu
Date of Service (For NASD Dispute Resolution office use only)

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Award Page 4

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Signature Date

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Non-Public Arbitrator

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Signature Date

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