

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Fidelity Brokerage Services, LLC

Case Number: 03-03299

Name of the Respondents  
Philip Rousseaux  
Thomas Yost

Hearing Site: Baltimore, MD

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**REPRESENTATION OF PARTIES**

Claimant, Fidelity Brokerage Services, LLC ("Fidelity"), was represented by George F. Ritchie, Esq., Piper Rudnick, LLP, Baltimore, MD.

Respondents, Philip Rousseaux ("Rousseaux") and Thomas Yost ("Yost"), hereinafter collectively referred to as "Respondents", were represented by Jeffrey S. Evans, Esq., Saul Ewing, LLP, Baltimore, MD.

**CASE INFORMATION**

Statement of Claim was filed on May 6, 2003.

A representative of Fidelity signed the Uniform Submission Agreement on April 25, 2003.

Statement of Answer and Counterclaim were filed by Respondents on May 19, 2003.

Respondent Rousseaux signed the Uniform Submission Agreement on May 30, 2003.

Respondent Yost signed the Uniform Submission Agreement on May 27, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: misappropriation of trade secrets; and, breach of contract. The causes of action relate to Respondents' alleged breach of the Representative Agreement entered into while employed with Claimant.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim.

In their Counterclaim, Respondents asserted the following cause of action: wrongful injunction.

**RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	amount unspecified
Punitive Damages	amount unspecified
Attorneys' Fees	amount unspecified
Non-Monetary Relief	injunctive relief

Respondents requested:

Compensatory Damages	\$ 100,000.00
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**OTHER ISSUES CONSIDERED AND DECIDED**

Claimant obtained a Temporary Restraining Order ("TRO") on May 6, 2003, in the United States District Court for the District Of Maryland, Northern Division in "Fidelity Brokerage Services, LLC v. Philip Rousseaux and Thomas Yost, Case No.JFM-03-cv-01319". The parties were directed to proceed toward an expedited arbitration hearing pursuant to Rule 10335 of the NASD Code of Arbitration Procedure.

At the hearing, the Claimant and Respondents informed the Panel that they had settled all claims by and between them and submitted this Stipulated Award to the Panel.

The parties have agreed that this Stipulated Award may be entered in counterpart copies.

**AWARD**

1. Respondents agree that, through the close of business on October 4, 2003, they will not directly or indirectly solicit (as defined below), any customer of Fidelity or Fidelity Investments Life Insurance Company ("FILF") with whom Rousseaux had contact or whose identity became known to him while employed by Fidelity and/or who became known to Rousseaux and/or Yost to be Fidelity or FILF customers prior to Respondents' initial contact with that customer through, for example, research, vendor lists, or other sources utilized to target any Fidelity or FILF customers. This injunction includes, but is not limited to, the Fidelity customers identified in Exhibit A to the Amended TRO entered by the Court, as well as any customers identified in a notebook returned to Rousseaux in compliance with said TRO.

Solicitation for purposes of this agreement shall mean the initiation of any contact or engagement in any communication, verbal or written, direct or indirect, with any Fidelity or FILF customer for the purpose of inviting, encouraging or requesting that the customer: (a) open an account with Respondents' current employer; (b) purchase securities or insurance or annuity products or services from or through Respondents' current employer; (c) transfer assets or liquidate positions held at Fidelity or FILF; or, (d) otherwise discontinue or limit his or her patronage or business relationship with Fidelity or FILF.

It is understood that, effective October 5, 2003, Respondents shall no longer be subject to this limitation on solicitation of Fidelity and FILI customers.

This injunction shall not apply to any Fidelity customer who has already transacted business with Respondents at MetLife prior to May 6, 2003 or who, without any violation of this Award, opens a Met Life account or transacts business with Respondents at Met Life, or to any prospect identified on a list to be provided to Fidelity's outside counsel, for counsel's eyes only.

In the event that Respondents violate the terms of this injunction by soliciting Fidelity customers whom they are enjoined from soliciting, they shall pay to Fidelity the sum of \$10,000 per violation. This amount is not intended to punish Respondents, but is an estimate of the damages caused to Fidelity by each violation;

2. Respondents shall pay the sum of \$10,000.00 to Fidelity within seven days of the date of this Award;
3. Respondents further agree to refrain from any intentional disparagement of Fidelity, FILI, FMR Corp., or any entity directly or indirectly wholly or in part owned, controlled by, or under common control with Fidelity, FILI or FMR Corp. (the "Fidelity Companies") or their products, services, employees or other agents in any contact with any customer of the Fidelity Companies;
4. By virtue of this settlement, all claims and counterclaims involved in this case are hereby dismissed with prejudice;
5. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
6. Any and all relief not specifically addressed herein 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	= \$ 500.00
Counter 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 persons at the time of the events giving rise to the dispute. Accordingly, Fidelity Brokerage Services, LLC is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00

Hearing process fee = \$2,200.00

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

1. Claimant is assessed:

Injunctive relief surcharge = \$2,500.00  
Additional arbitrator honoraria = \$ 150.00

2. Respondents are jointly and severally assessed:

Additional arbitrator honoraria = \$ 150.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-Hearing session with Panel @ 1,000.00 = \$1,000.00  
Pre-hearing conference: May 15, 2003

One (1) Hearing session with Panel @ \$1,000.00 = \$1,000.0  
Hearing Date: May 30, 2003

Total Forum Fees = \$2,000.00

1. The Panel has assessed \$1,000.00 of the forum fees to Claimant.

2. The Panel has assessed \$1,000.00 of the forum fees jointly and severally to Respondents

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee = \$ 500.00  
Member Fees = \$4,450.00  
Injunctive Relief Fees = \$2,650.00  
Forum Fees = \$1,000.00

Total Fees	= \$8,600.00
Less payments	= \$6,250.00
Balance Due NASD Dispute Resolution	= \$2,350.00

3. Respondents are jointly and severally solely liable for:

Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,000.00
Injunctive Relief Fees	= \$ 150.00

Total Fees	= \$ 1,375.00
Less payments	= \$ 1,750.00
Balance Due Respondents	= \$ 375.00

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

ARBITRATION PANEL

Alan S. Carmel, Esq.	-	Public Arbitrator, Presiding
Joyce A. Mitchell, Esq.	-	Public Arbitrator
N. Clark Moran	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Alan S. Carmel, Esq.  
Public Arbitrator, Presiding Chairperson

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

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Joyce A. Mitchell, Esq.  
Public Arbitrator

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

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N. Clark Moran  
Non-Public Arbitrator

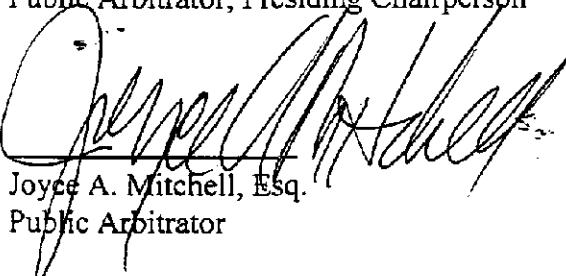
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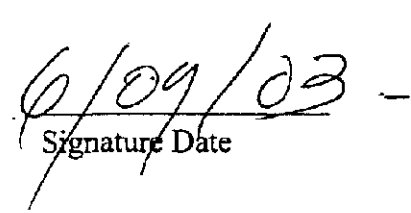
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Date of Service (For NASD Dispute Resolution office use only)

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Alan S. Carmel, Esq.  
Public Arbitrator, Presiding Chairperson

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Joyce A. Mitchell, Esq.  
Public Arbitrator

  
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Signature Date

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N. Clark Moran  
Non-Public Arbitrator

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Signature Date

6/20/03  
Date of Service (For NASD Dispute Resolution office use only)

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Alan S. Carmel, Esq.  
Public Arbitrator, Presiding Chairperson

6/10/03  
Signature Date

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Joyce A. Mitchell, Esq.  
Public Arbitrator

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Non-Public Arbitrator

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