

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Bernard Feldman, individually and on behalf of the Feldman Family
Trust and Myrna Feldman

and

04-01914
Phoenix, Arizona

Name of Respondents

Fidelity Brokerage Services LLC
Steven David Biedermann

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

REPRESENTATION OF PARTIES

Bernard Feldman, individually and on behalf of the Feldman Family Trust and Myrna Feldman ("**Claimants**") were represented at the hearing by Stephen M. Hansen, Esq., Lowenberg, Lopez & Hansen, P.S., Tacoma, Washington. A. Daniel Woska, Esq., Woska & Hayes, LLP, Oklahoma City, Oklahoma also represented Claimants.

Fidelity Brokerage Services LLC ("**Respondent Fidelity**") and Steven David Biedermann ("**Respondent Biedermann**") hereinafter referred to as ("**Respondents**") were Michael R. Weissmann, Esq., Bingham McCutchen, Boston, Massachusetts.

CASE INFORMATION

The Statement of Claim was filed on or about March 22, 2004. Amended Statement of Claim was filed on or about April 20, 2004. Submission Agreement of Claimant Bernard Feldman, individually and on behalf of the Feldman Family Trust was signed on March 10, 2004. Submission Agreement of Myrna Feldman was signed on March 9, 2004.

Answer of Fidelity Brokerage Services LLC and Steven Biedermann was filed on or about September 9, 2004. Submission Agreement of Respondent Fidelity Brokerage Services LLC was signed on June 4, 2004 by Richelle S. Kennedy.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; breach of contract; violation of know your customer rule; unsuitability; failure to diversify; overconcentration; failure to supervise; violations of securities laws; and failure to hedge. Specifically, Claimants alleged that

Respondents convinced Claimants to rely upon their investment analysis, evaluation, and recommendations. Part of the management company's tactics to improperly build trust with the [sic] was to tell them that the money manager, his family members, and their other clients were all investing in the stocks in which Respondents and the management company had invested the money.

As investors without knowledge of the investment industry, respondents knew they were extremely dependent on them, relied heavily on respondents to care for their money, and trusted their judgment as securities investment professionals much like they had learned to trust a highly-touted medical specialist.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated

First, the Claimants are experienced investors. Prior to moving to Fidelity, the Claimants maintained accounts at Smith Barney for many years. Because they disliked the way their accounts had been managed there and their lackluster performance, they decided to move them to Fidelity. Mr. Feldman demonstrated his investment experience, investing not only in several different mutual funds, but also in trading equity securities over Fidelity's website.

Second, the Claimants understood they were responsible for the investments they made at Fidelity. When Mr. Feldman first discussed moving his accounts to Fidelity, Mr. Biedermann explained to him the significant differences between investing with a full service firm, like Smith Barney, and a firm like Fidelity. Mr. Biedermann explained to Mr. Feldman that Fidelity customers took an active roll [sic] in managing their investment, that they were responsibility [sic] for making all the investment decisions, and that they were, therefore, ultimately responsible for their accounts' performance. ...

Fourth, the losses suffered in each of the Claimants' accounts were entirely consistent with the performance of the broader markets.

RELIEF REQUESTED

Claimants requested an award as follows:

- A. All of the accounts' losses, which are in excess of \$185,000.00;
- B. All charges to the accounts;
- C. The lost earnings on the accounts;

- D. Pre-judgment interest at the maximum statutory rate;
- E. The cost of these proceedings, including a reasonable attorney fee and punitive damages to be assessed by the arbitration panel to ensure the investing public that in the future, *Respondents and their financial consultants, will conduct their affairs to the highest integrity* required of financial advisors;
- F. That Claimants be granted all other and further relief to which they may be entitled; and
- G. That the Panel submits a report of its findings to both the NYSE and the NASD.

Respondents requested that the claims asserted against them be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Steven David Biedermann did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

At the conclusion of Claimants' case in chief, Respondents asserted a Motion for Involuntary Dismissal. The motion was granted with the Panel applying the standards of Federal Rule of Civil Procedure 41(b). However, even if the evidence was viewed most favorably for Claimants, the result would have been the same. The Panel finds no basis in fact or law for any of the claims and concludes that expungement is warranted.

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 the NASD Dispute Resolution (the "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. Motion for Dismissal was granted.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Steven David Biedermann's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Steven David Biedermann must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. 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.
4. 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
October 6, 2004	1	session		
4 Hearing sessions	x	1,125.00	\$	4,500.00
April 12, 2005	2	sessions		
April 13, 2005	2	sessions		
Total Forum Fees			\$	5,625.00

The Arbitration Panel has assessed \$2,812.50 of the forum fees to Bernard Feldman, individually and on behalf of the Feldman Family Trust and Myrna Feldman.

The Arbitration Panel has assessed \$2,812.50 of the forum fees jointly and severally to Fidelity Brokerage Services LLC and Steven David Biedermann.

Fee Summary

Claimants, Bernard Feldman, individually and on behalf of the Feldman Family Trust and Myrna Feldman shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	2,812.50
Total Fees	= \$	3,112.50
<u>Less payments</u>	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	1,687.50

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

Member Fees	= \$	5,200.00
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 David Biedermann, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	2,812.50
Total Fees	= \$	2,812.50
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	2,812.50

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Marc Kalish - Public Arbitrator, Presiding Chair
Amy L. Lieberman, Esq. - Public Arbitrator
Irving Mindes - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Marc Kalish

Marc Kalish
Public Arbitrator, Presiding Chair

April 28, 2005

Signature Date

/s/ Amy L. Lieberman

Amy L. Lieberman, Esq.
Public Arbitrator

April 28, 2005

Signature Date

/s/ Irving Mindes

Irving Mindes
Non-Public Arbitrator

May 1, 2005

Signature Date

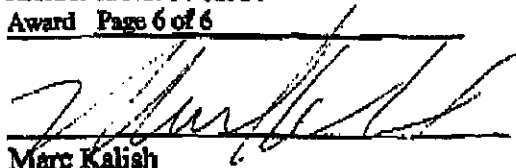
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Marc Kalish

Public Arbitrator, Presiding Chair

4/28/05
Signature Date

Amy L. Lieberman, Esq.
Public Arbitrator

Signature Date

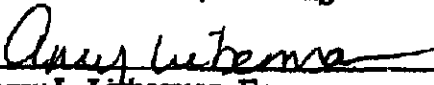
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Amy L. Lieberman, Esq.
Public Arbitrator

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Irving Mindes
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5-1-05
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