

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

James Robert Pearson and James Robert Pearson IRA, Claimants vs. Fidelity Brokerage Services LLC and Scott Nicolas Horton, Respondents

Case Number: 04-02217

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

James Jay Seltzer  
Law Offices of James Jay Seltzer  
Emeryville, California

For Respondents:

John Leonard  
Natasha Bellroth  
Jenkins & Gilchrist, LLP  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: March 30, 2004

Claimants' Uniform Submission Agreement signed: March 30, 2004

Joint Statement of Answer filed by Respondents Fidelity Brokerage Services LLC ("Fidelity") and Scott Nicolas Horton: June 7, 2004

Respondent Fidelity's Uniform Submission Agreement signed: April 5, 2004

Respondent Scott Nicolas Horton's Uniform Submission Agreement signed: May 28, 2004

**CASE SUMMARY**

Claimants' alleged the following causes of action: 1) violation of NASD Rules of Conduct; 2) suitability; 3) material misrepresentations and omissions of fact; 4) professional negligence; 5) breach of fiduciary duties; 6) negligent misrepresentation; 7) negligent failure to supervise; 8) breach of contract; 9) violation of the Consumer Legal Remedies Act; and 10) unfair business practices. Claimants alleged that the above-referenced dispute involved investments in Fidelity

Spartan Market Index Fund, Fidelity Spartan Diversified International, RS Emerging Growth and Janus Enterprises.

Respondents denied all of the claims in the Claimants' Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested actual and compensatory damages in an amount in excess of \$55,000.00, disgorgement and/or restitution of monies received from Claimants, prejudgment interest, attorney's fees, costs and such other and further relief as may be reasonable and just under the circumstances.

Respondents requested that the Claimants' Statement of Claim be dismissed against all parties with prejudice, and the Arbitrators should enter an order expunging or striking this claim from Scott Nicolas Horton's permanent registration record maintained by the NASD, the NYSE and the NASD Central Registration Depository ("CRD").

### **OTHER ISSUES CONSIDERED AND DECIDED**

On April 8, 2004, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **AWARD**

On the dates set forth below, the parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon joint motion of Claimant and Respondents for entry of an award and the written stipulation thereto, the Panel hereby grants the motion and enters this Award granting the following relief:

1. Respondents Fidelity and Scott Nicolas Horton are dismissed with prejudice. Claimants and Fidelity and Scott Nicolas Horton have entered into a confidential settlement agreement.

2. The Panel finds that Claimants have agreed that all references to this arbitration be expunged from Scott Nicolas Horton's registration records. The Panel also finds that Claimants filed their claims before April 12, 2004, the effective date of NASD Rule 2310, which limits the expungement of customer dispute information from the CRD. Therefore, the Panel recommends the expungement of all references to any and all of the above-captioned arbitrations from Scott Nicolas Horton's registration records maintained by the NASD, the NYSE and the NASD CRD, with the understanding that pursuant to NASD Notice to Members 99-09, and NYSE rules, Scott Nicolas Horton must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Each party shall bear its own costs, including attorney's fees.
4. All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 225.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Fidelity is a party and the following fees are assessed:

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 1,700.00
<b>Total Member Fees</b>	<b>= \$ 3,550.00</b>

#### **3-Day Cancellation Fee**

Referencing the cancelled hearing sessions scheduled on July 19-22, 2005, the Panel ruled that the parties shall split the 3-day cancellation fee in the amount of \$200.00, as follows: 50% jointly and severally to Claimants; and 50% to Respondent Fidelity.

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Panel @ \$750.00/session	= \$	1,500.00
Pre-hearing conferences: September 8, 2004	1 session	
September 19, 2005	1 session	

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<b>Total Forum Fees</b>	<b>= \$</b>	<b>1,500.00</b>
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1. The Panel assessed \$750.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$750.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$	225.00
3-Day Cancellation Fee	= \$	100.00
<u>Forum Fees</u>	= \$	750.00
<u>Total Fees</u>	= \$	1,075.00
<u>Less payments</u>	= \$(	1,250.00)
<b>Refund Paid To Claimants</b>	<b>= \$(</b>	<b>175.00)</b>

2. Respondent Fidelity is charged with the following fees and costs:

Member Fees	= \$	3,550.00
<u>3-Day Cancellation Fee</u>	= \$	100.00
<u>Total Fees</u>	= \$	3,650.00
<u>Less Payments</u>	= \$(	3,650.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$</b>	<b>0.00</b>

3. Respondents Fidelity and Scott Nicolas Horton are charged jointly and severally with the following fees and costs:

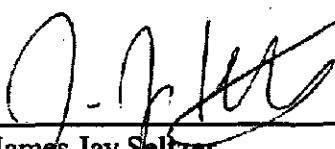
Forum Fees	= \$	750.00
<u>Less Payments by Fidelity</u>	= \$(	850.00)
<b>Refund Due Fidelity</b>	<b>= \$(</b>	<b>100.00)</b>

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

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Arbitration No. 04-02217  
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**Parties' Signatures**

Date: \_\_\_\_\_



\_\_\_\_\_  
James Jay Seltzer  
Attorney for Claimants

Date: \_\_\_\_\_

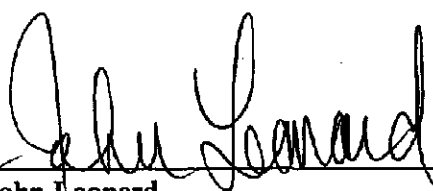
\_\_\_\_\_  
John Leonard  
Natasha Bellroth  
Attorneys for Respondents

**Parties' Signatures**

Date: \_\_\_\_\_

\_\_\_\_\_  
James Jay Seltzer  
Attorney for Claimants

Date: October 5, 2005

  
\_\_\_\_\_  
John Leonard  
Natasha Bellroth  
Attorneys for Respondents

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Arbitration No. 04-02217  
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**ARBITRATION PANEL**

Laurel Littman Gothelf, MPH	-	Public Arbitrator, Presiding Chair
Samuel I. Romano, JD	-	Public Arbitrator
James R. Dickson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Laurel Littman Gothelf, MPH  
Chair, Public Arbitrator

10-26-05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Samuel I. Romano, JD  
Public Arbitrator

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

\_\_\_\_\_  
James R. Dickson  
Non-Public Arbitrator

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

10/31/05  
\_\_\_\_\_  
Date of Service

**ARBITRATION PANEL**

Laurel Littman Gothelf, MPH	-	Public Arbitrator, Presiding Chair
Samuel I. Romano, JD	-	Public Arbitrator
James R. Dickson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Laurel Littman Gothelf, MPH  
Chair, Public Arbitrator



Signature Date

10/28/05

Samuel I. Romano, JD  
Public Arbitrator

Signature Date

James R. Dickson  
Non-Public Arbitrator

Signature Date

10/31/05  
Date of Service



**ARBITRATION PANEL**

Laurel Littman Gothelf, MPH	-	Public Arbitrator, Presiding Chair
Samuel I. Romano, JD	-	Public Arbitrator
James R. Dickson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Laurel Littman Gothelf, MPH  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Samuel I. Romano, JD  
Public Arbitrator

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

\_\_\_\_\_  
*James R. Dickson*

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10/12/05

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James R. Dickson  
Non-Public Arbitrator

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

\_\_\_\_\_  
10/31/05  
Date of Service