

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert J. Fogarty, Claimant v. Fidelity Brokerage Services LLC, Respondent

Case Number: 04-05418

Hearing Site: Seattle, Washington

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant Robert J. Fogarty:

Howard S. Meyers, Esq.
Meyers & Heim, LLP
New York, New York

For Respondent Fidelity Brokerage Services LLC:

Corin R. Swift, Esq. and Don
Davidson, Esq.
Bingham McCutchen, LLP
Boston, Massachusetts

CASE INFORMATION

Statement of Claim filed: July 28, 2004

Claimant Robert J. Fogarty's Uniform Submission Agreement signed: July 28, 2004

Statement of Answer filed by Respondent Fidelity Brokerage Services LLC: October 15, 2004

Respondent Fidelity Brokerage Services LLC's Uniform Submission Agreement signed: August 20, 2004

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, breach of fiduciary duty, negligence, reckless conduct, negligent supervision, omission of material facts, securities brokerage malpractice, negligent misrepresentation, violation of Washington state's consumer protection statutes, violation of Washington state's blue sky laws, violation of section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, violation of NASD Rules 2110 and NYSE Rules 401, 405, 342, and 476. Claimant's causes of action relate to Respondent's alleged failure to notify him in advance that the sale of any of these shares would also encompass a sale of the right to receive distribution shares to the purchaser of the shares.

Unless specifically admitted in its Answer, Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested specific performance requiring Respondent to deliver shares of Eagle Materials, Inc.'s common and class B shares to Claimant, lost opportunity costs, unspecified compensatory damages, unspecified punitive damages, pre- and post-judgment interest and costs, including attorney's fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety because, based on the evidence presented, Claimant did not sustain his burden of proof.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) Any and all relief not specifically addressed herein, including punitive damages, 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	= \$ 250.00
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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 Brokerage Services LLC is a party, and the following fees are assessed:

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,200.00</u>
Total Member Fees	= \$4,450.00

Adjournment Fees

The following adjournment fees are assessed:

October 17-21, 2005, adjournment requested by Claimant	= \$1,000.00
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The Panel waived the adjournment fee.

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. The following forum fees are assessed:

One (1) pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: April 21, 2006 1 session	
One (1) pre-hearing conference session with the Panel @ \$1,000.00/session	= \$1,000.00
Pre-hearing conference: January 10, 2005 1 session	
Three (3) hearing sessions @ \$1,000.00/session	= \$3,000.00
Hearings: May 1, 2006 2 sessions	
May 2, 2006 1 session	
Total Forum Fees	= \$4,450.00

1. The Panel assessed \$2,966.66 of the forum fees to Claimant.

2. The Panel assessed \$1,483.33 of the forum fees to Respondent.

Fee Summary

1. Claimant Robert J. Fogarty is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
<u>Forum Fees</u>	<u>= \$ 2,966.66</u>
Total Fees	= \$ 3,216.66
<u>Less payments</u>	<u>= \$(1,425.00)</u>
Balance Due NASD Dispute Resolution	= \$ 1,791.66

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

Member Fees	= \$ 4,450.00
<u>Forum Fees</u>	<u>= \$ 1,483.33</u>
Total Fees	= \$ 5,933.33
<u>Less payments</u>	<u>= \$(4,450.00)</u>
Balance Due NASD Dispute Resolution	= \$ 1,483.33

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


ARBITRATION PANEL

Donald J. Horowitz
Joseph C. Roberts
Michael W. Reinhardt

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


Donald J. Horowitz
Chair, Public Arbitrator

5/5/06
Signature Date

Joseph C. Roberts
Public Arbitrator

Signature Date

Michael W. Reinhardt
Non-Public Arbitrator

Signature Date

5/5/06
Date of Service

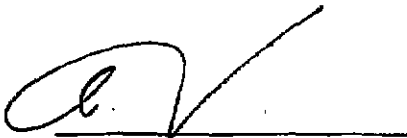
ARBITRATION PANEL

<i>Donald J. Horowitz</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Joseph C. Roberts</i>	-	<i>Public Arbitrator</i>
<i>Michael W. Reinhardt</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Donald J. Horowitz
Chair, Public Arbitrator

Signature Date



Joseph C. Roberts
Public Arbitrator

5.4.06

Signature Date

Michael W. Reinhardt
Non-Public Arbitrator

Signature Date

5/5/06

Date of Service