

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

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In the Matter of the Arbitration Between:

Edward Raice (Claimant) v. Fidelity Brokerage Services, LLC (Respondent)

Case Number: 04-06342

Hearing Site: New York, New York

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Nature of the Dispute: Customer v. Member

**REPRESENTATION OF PARTIES**

Claimant Edward Raice hereinafter referred to as "Claimant": Marc O. Sheridan, Esq., Wechsler & Cohen, LLP, New York, NY.

Respondent Fidelity Brokerage Services, LLC hereinafter referred to as "Respondent": Cameron S. Matheson, Esq., LeClair Ryan, A Professional Corporation, Richmond, VA.

**CASE INFORMATION**

Statement of Claim filed on or about: September 2, 2004.

Claimant signed the Uniform Submission Agreement: August 30, 2004.

Statement of Answer filed by Respondent on or about: October 28, 2004.

Respondent signed the Uniform Submission Agreement: October 27, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; unauthorized trading; negligence; breach of fiduciary duty; and failure to supervise. The causes of action relate to unspecified securities.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$129,300.00; interest at 9% per annum per the New York Civil Practice Law and Rules; punitive damages of a least \$129,300.00 as the result of Fidelity's reckless and/or intentional, egregious and continued misconduct so as to deter Fidelity and similarly situated investment advisors and institutions from conducting

themselves in the future in such a reprehensible manner in violation of the trust justifiably placed in them by their clients; attorneys' fees; arbitration costs and disbursements, such as forum fees, arbitrators' fees and expert witness fees; and such other and further relief as the arbitrators may deem just and proper.

Respondent requested that the Panel dismiss all of the claims against it in the Statement of Claim.

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

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.

By letter dated December 20, 2004, the parties notified NASD Dispute Resolution of their agreement that Paul Merolla serve as the Chairperson.

### **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. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$39,000.00.
2. Respondent is liable for and shall pay to Claimant interest in the amount of \$798.16.
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 will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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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.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

June 6-9, 2005, adjournment by Claimant	= Waived
June 6-9, 2005, adjournment by Respondent	= Waived

**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 the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 per session	= \$2,250.00
Pre-hearing conferences: January 6, 2005 1 session	
June 20, 2005 1 session	
Three (3) Hearing sessions @ \$1,125.00	= \$3,375.00
Hearing Date: September 8, 2005 2 sessions	
September 9, 2005 1 session	
<hr/> Total Forum Fees	<hr/> = \$5,625.00

1. The Panel has assessed \$2,812.50 of the forum fees to Claimant.
2. The Panel has assessed \$2,812.50 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$3,112.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$1,687.50
2. Respondent is solely liable for:	
Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$8,012.50
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$2,812.50

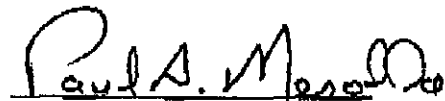
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Paul A. Merolla, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Gregory E. Sohns, Esq.	-	Public Arbitrator
Bennett A. Hall	-	Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Paul A. Merolla, Esq.  
Non-Public Arbitrator, Presiding Chairperson

Sept. 16, 2005  
Signature Date

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Gregory E. Sohns, Esq.  
Public Arbitrator

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

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Bennett A. Hall  
Public Arbitrator

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

SEPTEMBER 16, 2005  
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION

Paul A. Merolla, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Gregory E. Sohns, Esq.	-	Public Arbitrator
Bennett A. Hall	-	Public Arbitrator

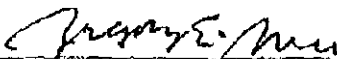
Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to the Rules, that I am the individual described herein and my award.

Article 7507 of the Civil Practice and Jurisdiction Law executed this instrument.

Paul A. Merolla, Esq.  
Non-Public Arbitrator, Presiding Chairperson

Signature Date

  
Gregory E. Sohns, Esq.  
Public Arbitrator

9/14/05  
Signature Date

Bennett A. Hall  
Public Arbitrator

Signature Date

SEPTEMBER 16, 2005  
Date of Service (For NASD Dispute Resolution)

**ARBITRATION PANEL**

Paul A. Merolla, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Gregory E. Sohns, Esq.	-	Public Arbitrator
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Paul A. Merolla, Esq.  
Non-Public Arbitrator, Presiding Chairperson

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Signature Date

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Gregory E. Sohns, Esq.

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Signature Date

  
Bennett A. Hall  
Public Arbitrator

9/13/05  
Signature Date

SEPTEMBER 16, 2005  
Date of Service (For NASD Dispute Resolution use only)