

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Fidelity Brokerage Services, LLC

v.

04-07235
Houston, Texas

Name of Respondent

Lin A. Johnson

NATURE OF THE DISPUTE

Member Firm v. Associated Person

REPRESENTATION OF PARTIES

Fidelity Brokerage Services, LLC ("**Claimant**") was represented by Jennifer A. Kenedy, Esq., of Lord Bissell Brook LLP, Chicago, Illinois.

Lin A. Johnson ("**Respondent**" or "**Johnson**") was represented by Cynthia Moulton, Esq., of Moulton & Meyer, Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about October 14, 2004. The Submission Agreement of Claimant, Fidelity Brokerage Services, LLC, was signed on or about October 1, 2004.

The Statement of Answer was filed by Respondent, Lin A. Johnson, on or about December 8, 2004. The Submission Agreement of Respondent, Lin A. Johnson, was signed on or about October 25, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: misappropriation of trade secrets; and breach of contract. Claimant alleged that Respondent unlawfully misappropriated Fidelity's trade secret customer data for the purpose of diverting accounts from Fidelity to Merrill Lynch. Claimant also asserted that Respondent breached her contractual obligations by soliciting Fidelity customer accounts.

Unless specifically admitted in her Answer, Respondent, Lin A. Johnson, denied the allegations made

in the Statement of Claim and affirmatives defenses including the following: Fidelity is precluded from any recovery because the damages it seeks are speculative and not recoverable as a matter of law; Fidelity's claims are barred in whole or in part by the doctrines of waiver and estoppel; Fidelity could have mitigated its alleged losses and damages and failed to do so; and Fidelity's claims are barred in whole or in part because intervening and/or superceding factors led to its alleged damages.

RELIEF REQUESTED

Claimant requested the panel award the following relief: enjoin Johnson and anyone acting in concert with her, for one year, beginning with the date of the Panel's order, from initiating any contact with any Fidelity customer, whose information became known to Johnson during her tenure at Fidelity, except for the purpose of managing any existing Merrill Lynch customer account; enjoin Johnson from disclosing, using, or transmitting any Fidelity information and require Johnson to return immediately all Fidelity information within her possession; require Johnson to pay compensatory damages based upon losses that Fidelity has incurred and gains that Johnson has enjoyed as a result of Johnson's wrongful conduct; require Johnson to pay exemplary damages for her willful misappropriation of trade secrets; and require Johnson to pay Fidelity's reasonable attorneys' fees incurred in bringing these proceedings.

Respondent requested that the claims asserted against her be denied in their entirety and that she be awarded her costs and forum fees be assessed against Fidelity and all other relief that the arbitration panel deemed reasonable and appropriate under the circumstances.

OTHER ISSUES CONSIDERED & DECIDED

On or about November 2, 2004, the panel issued an injunctive order.

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. Respondent, Lin A. Johnson, is liable for and shall pay to Claimant, Fidelity Brokerage Services, LLC, the sum of \$44,000.00 in compensatory damages;

2. Respondent, Lin A. Johnson, is liable for and shall pay to Claimant, Fidelity Brokerage Services, LLC, the sum of \$123,953.00 as attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code § 38.001 et. seq.;
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; and
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.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$500.00

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 person at the time of the event(s) giving rise to the dispute. In this matter, the member firms are Fidelity Brokerage Services, LLC and Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge	\$	1,500.00
Pre-hearing process fee	\$	750.00
<u>Hearing process fee</u>	\$	2,200.00
Total Member Fees	\$	<u>4,450.00</u>

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.

Fidelity Brokerage Services, LLC is assessed:

Injunctive relief surcharge	= \$2,500.00
Additional arbitrator honoraria	= \$ 312.50

Lin A. Johnson is assessed:

Additional arbitrator honoraria	= \$ 312.50
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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 arbitrators including a pre-hearing conference with the arbitrators that lasts four (4) hours or less. Fees associated with these proceedings are:

2	Pre-hearing sessions with a single arbitrator	x	\$450.00	\$	900.00
	October 28, 2004	1	session		
	December 21, 2004	1	session		
1	Pre-hearing session with Panel	x	1,000.00	\$	1,000.00
	November 9, 2004	1	session		
4	Hearing sessions	x	1,000.00	\$	4,000.00
	October 29, 2004	2	sessions		
	January 12, 2005	2	sessions		
	Total Forum Fees			\$	<u>5,900.00</u>

The Arbitration Panel has assessed \$5,900.00 of the forum fees to Lin A. Johnson.

Fee Summary

Claimant, Fidelity Brokerage Services, LLC is liable for:

Initial Filing Fee	= \$	500.00
Injunctive Fee	= \$	2,500.00
Member Fees	= \$	4,450.00
<u>Additional arbitrator honoraria</u>	= \$	<u>312.50</u>
Total Fees	= \$	7,762.50
<u>Less payments</u>	= \$	<u>-3,750.00</u>
Balance Due NASD Dispute Resolution	= \$	4,012.50

Respondent, Lin A. Johnson is liable for:

Forum Fees	= \$	5,900.00
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<u>Additional arbitrator honoraria</u>	= \$	312.50
<u>Total Fees</u>	= \$	6,212.50
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	6,212.50

Respondent, Merrill Lynch Pierce Fenner Smith, Inc, is liable for:

<u>Member Fees</u>	= \$	4,450.00
<u>Total Fees</u>	= \$	4,450.00
<u>Less payments</u>	= \$	-3,700.00
Balance Due to Respondent	= \$	750.00

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

ARBITRATION PANEL

David G. Beerbower, Esq. - Public Arbitrator, Presiding Chair
Juanita D. Ray, MBA - Public Arbitrator
J. Randle Henderson, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

<u>/s/ David G. Beerbower, Esq.</u>	<u>01/26/05</u>
David G. Beerbower, Esq.	Signature Date
Public Arbitrator, Presiding Chair	

<u>/s/ Juanita D. Ray, MBA</u>	<u>01/27/05</u>
Juanita D. Ray, MBA	Signature Date
Public Arbitrator	

<u>/s/ J. Randle Henderson, Esq.</u>	<u>01/26/05</u>
J. Randle Henderson, Esq.	Signature Date
Non-Public Arbitrator	

01/28/05
Date of service

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Arbitration No. 04-07235
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Concurring Arbitrators:



David G. Beerbower, Esq.
Public Arbitrator, Presiding Chair

1-26-05

Signature Date

Juanita D. Ray, MBA
Public Arbitrator

Signature Date

J. Randle Henderson, Esq.
Non-Public Arbitrator

Signature Date

Date of service

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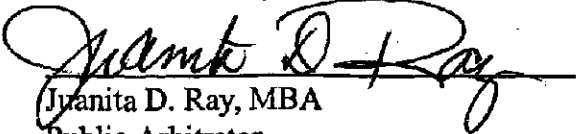
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Public Arbitrator, Presiding Chair

Signature Date



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Public Arbitrator

1-27-05

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Public Arbitrator, Presiding Chair

Signature Date

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J. Randle Henderson, Esq.
Non-Public Arbitrator



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