

COPY

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Phillip A. Baum, Claimant v. Fidelity Brokerage Services LLC, Respondent

Case Number: 04-08521

Hearing Site: San Francisco, California

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

For Claimant:

David M. Garrett
Garrett Law Office, P.C.
Tulsa, Oklahoma

For Respondent:

Robert B. Ericson
Bingham McCutchen LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: December 17, 2004

Claimant's First Amended Statement of Claim and Response to Respondent's Motion to Dismiss
filed: April 3, 2006

Claimant's Uniform Submission Agreement signed: December 6, 2004

Statement of Answer filed by Respondent Fidelity Brokerage Services LLC ("Fidelity"):
February 23, 2005

Respondent's Motion to Dismiss with Supporting Declarations filed: March 17, 2006

Respondent's Reply in Support of Motion to Dismiss filed: April 12, 2006

Respondent Fidelity's Uniform Submission Agreement signed: February 24, 2005

CASE SUMMARY

Claimant alleged that he purchased numerous equities via margin, relying upon Respondent's previous and continuous course of action regarding margin calls upon Claimant's account and further alleged that each time he purchased equities on margin, Respondent allowed him five days before submitting a call. Claimant further alleged that on or about April 15, 2000, Respondent compelled Claimant to sell his equities prematurely, causing Claimant to suffer losses in his account. Claimant also alleged the following claims: 1) Fidelity created a new contract with Dr. Baum by its previous actions; 2) Fidelity breached this contract by compelling Dr. Baum to sell his equities prematurely; 3) Fidelity's conduct violated the Securities Act of 1933; 4) Fidelity's conduct violated the Securities Exchange Act of 1934; 5) Respondent breached its fiduciary duty towards Dr. Baum; and 6) Respondent's conduct violated NASD Rules.

Respondent denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondent also asserted affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested rescissory damages in an amount in excess of \$4,000,000.00, punitive damages, interest, costs, attorneys' fees and such other damages deemed appropriate.

In the First Amended Statement of Claim, Claimant requested damages in an amount in excess of \$1,000,000.00, punitive damages, interest, costs, attorneys' fees and such other damages deemed appropriate.

Respondent requested dismissal with prejudice of all claims, assessment of all forum fees against Claimant and such other relief as may be just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel permitted the filing of Claimant's First Amended Statement of Claim in accordance with Rule 10328 of the NASD Dispute Resolution Code of Arbitration Procedure ("the Code").

The Panel 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, and positions of the parties relative to Respondent's Motion to Dismiss, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel has cancelled the hearing dates of June 6-9, 2006, and has granted Respondent's Motion to Dismiss. Accordingly, all claims by Claimant, including the claim for punitive damages, are dismissed.
2. Each party shall bear its own costs, including attorney's fees.
3. 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	= \$600.00
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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, Fidelity is a party and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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. Fees associated with these proceedings are:

(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$2,400.00
Pre-hearing conferences: August 30, 2005 1 session
April 20, 2006 1 session

Total Forum Fees = \$2,400.00

The Panel assessed \$1,200.00 of the forum fees to Claimant.

The Panel assessed \$1,200.00 of the forum fees to Respondent.

Fee Summary

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

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 1,200.00
Total Fees	= \$ 1,800.00
<u>Less Payments</u>	= \$(1,800.00)
Balance Due NASD Dispute Resolution	0.00

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

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 1,200.00
Total Fees	= \$ 9,750.00
<u>Less Payments</u>	= \$(8,550.00)
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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.

ARBITRATION PANEL

William W. Haskell, Esq.
Joseph M. O'Connor, P.E.
Mary Curran, Esq.

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


William W. Haskell, Esq.
Chair, Public Arbitrator

4/22/06
Signature Date

Joseph M. O'Connor, P.E.
Public Arbitrator

Signature Date

Mary Curran, Esq.
Non-Public Arbitrator

Signature Date

4/24/06
Date of Service

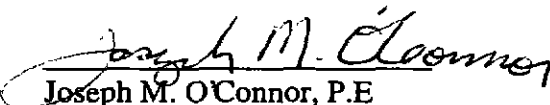
ARBITRATION PANEL

William W. Haskell, Esq.	-	Public Arbitrator, Presiding Chair
Joseph M. O'Connor, P.E	-	Public Arbitrator
Mary Curran, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

William W. Haskell, Esq.
Chair, Public Arbitrator

Signature Date


Joseph M. O'Connor, P.E
Public Arbitrator

4-25-06
Signature Date

Mary Curran, Esq.
Non-Public Arbitrator

Signature Date

4/28/06
Date of Service