

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Sherri Costello and Sharon Faye Costello, Claimants v. Fidelity Brokerage Services LLC and David K. Colbert, Respondents

Case Number: 05-00585

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimant Sherri Costello:

**Sherri Costello
In Propria Persona
Monrovia, California**

For Claimant Sharon Faye Costello:

**Sharon Faye Costello
In Propria Persona
West Hills, California**

**For Respondents Fidelity Brokerage Services LLC
and David K. Colbert:**

**John J. Leonard, Esq.
Jenkins & Gilchrist, LLP
Los Angeles, California**

**Nikole J. Crosby, Esq.
Ellen B. Sessions, Esq.
Jenkins & Gilchrist, PC
Dallas, Texas**

CASE INFORMATION

Statement of Claim filed: January 31, 2005

Claimants' Joint Uniform Submission Agreement signed: February 8, 2005

Joint Statement of Answer and Motion to Dismiss filed by Respondents: May 11, 2005

**Respondent Fidelity Brokerage Services LLC's Uniform Submission Agreement signed:
March 25, 2005**

CASE SUMMARY

Claimants alleged breach of fiduciary duty, failure to supervise, negligence, and omission of facts, involving securities in Internet America.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses. Respondents also filed a Motion to Dismiss alleging that the claim was ineligible for submission to arbitration under Rule 10304 of the *NASD Code of Arbitration Procedure*, that the claim is barred by the applicable statutes of limitation, that Claimants did not allege willful misconduct by Respondent David K. Colbert, and that Claimant Sherri Costello was not the registered owner of the accounts at issue.

RELIEF REQUESTED

Claimants requested \$283,600.00 in compensatory damages, unspecified punitive damages, \$200,000.00 in "other" damages, and \$141,800.00 in costs.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent David K. Colbert did not file with NASD Dispute Resolution a properly executed submission agreement, however, he is required to submit to arbitration and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On May 11, 2005, Respondents filed a Motion to Dismiss with their Answer. On August 23, 2005, Claimants filed an opposition to the Motion to Dismiss. On September 13, 2005, Respondents filed a Memorandum of Points and Authorities in Further Support of Their Motion to Dismiss Claimants' Statement of Claim. On September 19, 2005, Claimants filed a further opposition to the Motion to Dismiss. On September 26, 2005, Respondents filed a Second Memorandum of Points and Authorities in Further Support of Their Motion to Dismiss Claimants' Statement of Claim. On October 3, 2005, the Panel met and deliberated telephonically regarding Respondents' Motion to Dismiss. After considering all the written pleadings and exhibits filed, and after due deliberation, the Panel granted Respondents' Motion to Dismiss.

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, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents' Motion to Dismiss is granted and Claimants' claims are dismissed with prejudice.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and 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	= \$ 300.00
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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	= \$ 1,700.00
<u>Pre-Hearing Process Fee</u>	<u>= \$ 750.00</u>
Total Member Fees	= \$ 2,450.00

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 Panel. The following fees are assessed:

1 Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
<u>Pre-hearing conference: August 10, 2005 1 session</u>	<u></u>
Total Forum Fees	= \$ 1,125.00

1. The Panel assessed \$562.50 of the forum fees jointly and severally to Claimants
2. The Panel assessed \$562.50 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	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$(1,425.00)
Refund Due Claimants	= \$(562.50)

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

Member Fees	= \$ 2,450.00
Less payments	= \$(2,450.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are charged jointly and severally with the following fees and costs:


Forum Fees	= \$ 562.50
Less payments	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 562.50

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

Michael C. Doland	-	Public Arbitrator, Presiding Chair
Norman M. Garland	-	Public Arbitrator
Salvatore A. Sciortino	-	Non-Public Arbitrator

Consenting Arbitrators' Signatures



Michael C. Doland
Chair, Public Arbitrator

10/10/05

Signature Date

Norman M. Garland
Public Arbitrator

Signature Date

Salvatore A. Sciortino
Non-Public Arbitrator

Signature Date

October 11, 2005

Date of Service

ARBITRATION PANEL

Michael C. Doland	-	Public Arbitrator, Presiding Chair
Norman M. Garland	-	Public Arbitrator
Salvatore A. Sciortino	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Michael C. Doland
Chair, Public Arbitrator

Signature Date

Norman M. Garland
Public Arbitrator

Signature Date


Salvatore A. Sciortino
Non-Public Arbitrator

10/11/05
Signature Date

October 11, 2005
Date of Service

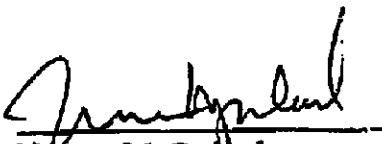
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Norman M. Garland	-	Public Arbitrator
Salvatore A. Sciortino	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Michael C. Doland
Chair, Public Arbitrator

Signature Date



Norman M. Garland
Public Arbitrator

10/19/05

Signature Date

Salvatore A. Sciortino
Non-Public Arbitrator

Signature Date

October 20, 2005

Date of Service