

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

---

In the Matter of the Arbitration Between:

Fidelity Brokerage Services, Inc. (Claimant) v. William A. Stockwell and Linsco/Private Ledger Corp. (Respondents)

Case Number: 05-00644

Hearing Site: Boston, Massachusetts

---

Nature of Dispute: Member v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Claimant, Fidelity Brokerage Services, Inc ("Fidelity") hereinafter referred to as "Claimant": P. Russell Perdew, Lord, Bissell & Brook, LLP, Chicago, Illinois.

Respondents, William A. Stockwell ("Stockwell") and Linsco/Private Ledger Corp. ("LPL"), hereinafter collectively referred to as "Respondents": Deborah Gale Evans, Michaels & Ward, LLP, Boston, Massachusetts.

**CASE INFORMATION**

Statement of Claim filed on or about: February 4, 2005

Amended Statement of Claim filed on or about February 11, 2005

Claimant Fidelity signed the Uniform Submission Agreement: February 4, 2005

Statement of Answer filed by Respondents: The parties entered into a settlement agreement ("Settlement Agreement") prior to the date on which Respondents' Statement of Answer was due. Accordingly, Respondents did not file a Statement of Answer.

Respondent Stockwell signed the Uniform Submission Agreement: April 19, 2005

Respondent LPL signed the Uniform Submission Agreement: April 13, 2005

**STIPULATED FACTS**

The causes of action arise out of the following stipulated facts. Stockwell is a former Fidelity employee. Stockwell signed an Employee Agreement at the beginning of his employment with Fidelity and a Severance Agreement at the end of his employment with Fidelity. In those two agreements, Stockwell agreed to, among other things, refrain from disclosing information regarding Fidelity customers to third-parties, refrain from using information regarding Fidelity

customers for any purpose other than his employment with Fidelity, and refrain (during and for a period of one year after his employment) from soliciting Fidelity customers to divert their business away from Fidelity. Stockwell stopped working for Fidelity effective October 15, 2004 and currently is working for LPL. After Stockwell began working for LPL, several Fidelity customers transferred their investment accounts from Fidelity to Stockwell at LPL.

### **CASE SUMMARY**

Claimant asserts the following causes of action: misappropriation of trade secrets, breach of contract, tortious interference with contract, unfair trade practices, and breach of the duty of loyalty.

Claimant alleges that Stockwell, both during and after his employment with Fidelity, improperly used Fidelity's trade secret customer information by improperly soliciting Fidelity customers to transfer their accounts from Fidelity to Stockwell at LPL. Fidelity alleges that this conduct constitutes misappropriation of Fidelity's trade secret customer information, breach of Stockwell's Employee Agreement and Severance Agreement with Fidelity, and breach of Stockwell's duty of loyalty to Fidelity. Fidelity further alleges that, by virtue of the above-described conduct, LPL misappropriated Fidelity's trade secret customer information, tortiously interfered with Stockwell's Employee Agreement and Severance Agreement with Fidelity, and committed unfair trade practices pursuant to MASS. GEN. LAWS c. 93A, §§ 2 and 11.

Respondents admit the stipulated facts set forth above, but deny all allegations of wrongdoing.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requests both monetary damages, including \$25,751.76 in compensatory damages and a one-year injunction against Respondents to prohibit Respondents from soliciting Fidelity customers and from otherwise misappropriating Fidelity's trade secrets.

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

As the Panel is aware, the parties have settled their dispute. The parties have resolved Fidelity's claim for monetary damages independently. Therefore, the Panel takes no action with respect to that claim. As part of the settlement agreement, the parties further agreed to a Consent Award to be entered by the Panel with respect to Claimant's request for injunctive relief.

The parties agreed that the Award may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the Statement of Claim and Amended Statement of Claim filed by Claimant, the Stipulated Facts set forth above, and the Consent Award proposed by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Consent Award agreed upon by the parties, which takes the form of the one-year injunction attached hereto as Exhibit A, is hereby adopted and entered by the Panel.
2. Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$1,000.00
--------------------------	--------------

#### **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(s) at the time of the events giving rise to the dispute. In this matter, the member firm Fidelity and LPL are members:

Member Surcharge	= \$ 600.00
Pre-Hearing Process Fee	= \$ 750.00

#### **Forum Fees and Assessments**

The Arbitrator/Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session(s) with Panel @ \$600.00/session	= \$ 600.00
Pre-hearing conference:                      Date: April 26, 2005 1 session	

<u>Total Forum Fees</u>	<u>= \$ 600.00</u>
-------------------------	--------------------

1. The Panel has assessed \$300.00 of the forum fees against Claimant.
2. The Panel has assessed \$300.00 of the forum fees (jointly and severally) against Respondents.

**Fee Summary**

1. Claimant Fidelity is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 1,350.00
Injunctive Fee	= \$ 2,500.00
Forum Fees	= \$ 300.00
Total Fees	= \$ 5,150.00
Less Payments	= \$ 5,500.00
Refund Due Fidelity	= \$ 350.00

2. Respondents LPL is solely liable for:

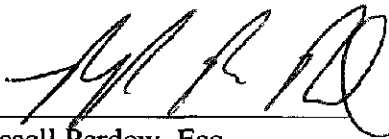
Member Fees	= \$1,350.00
Total Fees	= \$ 1,350.00
Less Payments	= \$1,650.00
Refund Due LPL	= \$ 300.00

3. Respondents Stockwell and LPL are jointly and severally liable for:

Forum Fees	= \$ 300.00
Total Fees	= \$ 300.00
Less Payments	= \$ 300.00
Total Due NASD Dispute Resolution	= \$ 0.00

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**



Russell Perdew, Esq.  
On behalf of Fidelity Brokerage Services, LLC

5-20-05

Signature Date

Deborah Gale Evans, Esq.  
On behalf of Respondents

Signature Date

**Parties' Signatures**

\_\_\_\_\_  
Russell Perdew, Esq.  
On behalf of Fidelity Brokerage Services, LLC

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

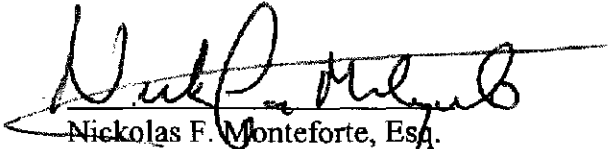
Deborah Gale Evans  
Deborah Gale Evans, Esq.  
On behalf of Respondents

5/19/05  
Signature Date

**ARBITRATION PANEL**

Nickolas F. Monteforte, Esq.	-	Public Arbitrator, Presiding Chair
Thomas W. Duffey, Esq.	-	Public Arbitrator
John A. Morin, Esq.	-	Industry Arbitrator

**Concurring Arbitrators' Signature(s)**

  
Nickolas F. Monteforte, Esq.  
Public Arbitrator, Presiding Chair

June 9, 2005  
Signature Date

\_\_\_\_\_  
Thomas W. Duffey, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
John A. Morin, Esq.  
Industry Arbitrator

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

June 28, 2005  
Date of Service (For NASD office use only)


**ARBITRATION PANEL**

Nickolas F. Monteforte, Esq.	-	Public Arbitrator, Presiding Chair
Thomas W. Duffey, Esq.	-	Public Arbitrator
John A. Morin, Esq.	-	Industry Arbitrator

**Concurring Arbitrators' Signature(s)**

\_\_\_\_\_  
Nickolas F. Monteforte, Esq.  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
Thomas W. Duffey, Esq.  
Public Arbitrator

6/17/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
John A. Morin, Esq.  
Industry Arbitrator

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

June 28, 2005  
\_\_\_\_\_  
Date of Service (For NASD office use only)

In the Matter of the Arbitration Between	)	
	)	
FIDELITY BROKERAGE SERVICES, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	NASD-DR Arbitration No. 05-00644
	)	
WILLIAM A. STOCKWELL and	)	
LINSCO/PRIVATE LEDGER CORP.,	)	
	)	
Defendants.	)	

---

**STIPULATED ATTACHMENT "A" TO**  
**ORDER ON REQUEST FOR PERMANENT INJUNCTION**

1. Defendant William Stockwell ("Stockwell") is hereby restrained and enjoined through and including February 10, 2006 from soliciting, whether directly or indirectly, and whether alone or in concert with others, including but not limited to his new employer Linsco/Private Ledger Corp. ("LPL"), any business from any Fidelity customer who Stockwell served or whose name became known to Stockwell in connection with his employment at Fidelity.
  
2. Stockwell is further hereby restrained and enjoined through and including February 10, 2006 from directly or indirectly, and whether alone or in concert with others, including but not limited to his new employer LPL, using, disclosing, transmitting or continuing to possess for any purpose, including contact with Fidelity customers, the information contained in the records of Fidelity, including, but not limited to, the names, addresses, and confidential financial information of the customers who Stockwell served or whose name became known to Stockwell in connection with his employment at Fidelity.

3. To the extent not already accomplished, Stockwell and anyone acting in concert with him, including but not limited to his new employer LPL, are further ordered to return to Fidelity any and all records and/or documents containing information pertaining to Fidelity customers who Stockwell served or whose names became known to Stockwell in connection with his employment at Fidelity, whether in computerized, handwritten or any other form, within three (3) days from the entry of this order, including any and all copies.

4. The injunctive relief does not preclude Stockwell, LPL, or anyone working in concert with them, from servicing those clients who have already transferred their accounts to LPL as of the date this agreement is executed, including but not limited to those customers described in correspondence dated February 10, 2005 from LPL Counsel Deborah Gale Evans to Fidelity counsel P. Russell Perdew, or such other clients who choose hereafter, without direct or indirect solicitation by Stockwell, to transfer their accounts to LPL.