

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

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In the Matter of the Arbitration Between:

Thomas A. Vacchino (Claimant) vs. Fidelity Investments (Respondent)

Case Number: 05-01046

Hearing Site: Boston, Massachusetts

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

Claimant Thomas A. Vacchino hereinafter referred to as "Claimant": David P. Brauer, Esq.,  
Brauer Law Offices, P.C., Medfield, MA.

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

**CASE INFORMATION**

Statement of Claim filed on or about: February 24, 2005.

Claimant signed the Uniform Submission Agreement: February 15, 2005.

Statement of Answer and Motion to Dismiss filed by Respondent on or about: May 31, 2005.

Respondent signed the Uniform Submission Agreement: July 13, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability and unauthorized trading. The  
causes of action relate to an unspecified variable annuity.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$30,604.94, punitive damages in the  
amount of \$15,000.00, attorneys' fees, and costs.

Respondent requested the Statement of Claim be dismissed in its entirety.

**OTHER ISSUES CONSIDERED AND DECIDED**

Claimant's Statement of Claim named Fidelity Investments as a Respondent. Fidelity Investments was served on a voluntary basis because it was not a member firm. An Answer was submitted by Fidelity Brokerage Services, LLC on behalf of Fidelity Investments and is referred to as Respondent herein.

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 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. Claimant's claims are denied in their entirety.
2. 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 = \$ 175.00

**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 persons at the time of the events giving rise to the dispute. Accordingly, Fidelity Brokerage Services LLC is a party.

Member surcharge = \$ 875.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 1,000.00

**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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Decision on discovery-related motions on the papers  
with one (1) arbitrator @ \$200.00 = \$ 200.00

Respondent submitted one (1) discovery-related motion

Two (2) Pre-hearing sessions with Panel @ \$600.00/session = \$ 1,200.00

Pre-hearing conferences: September 13, 2005 1 session

October 10, 2005 1 session

Two (2) Hearing sessions @ \$600.00/session	= \$ 1,200.00
<u>Hearing Dates:</u> January 19, 2006 2 sessions	
Total Forum Fees	= \$ 2,600.00

1. The Panel has assessed \$600.00 of the forum fees to Claimant.
2. The Panel has assessed \$2,000.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 775.00
<u>Less payments</u>	= \$ 775.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent is solely liable for:


Member Fees	= \$ 2,625.00
<u>Forum Fees</u>	= \$ 2,000.00
<u>Total Fees</u>	= \$ 4,625.00
<u>Less payments</u>	= \$ 2,625.00
Balance Due NASD Dispute Resolution	= \$ 2,000.00

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

**ARBITRATION PANEL**

Howard M. Miller, Esq.	-	Public Arbitrator, Presiding Chairperson
John A. Seiler	-	Public Arbitrator
William S. Tagerman	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Howard M. Miller, Esq.  
Public Arbitrator, Presiding Chairperson

  
Signature Date

John A. Seiler  
Public Arbitrator

Signature Date

William S. Tagerman  
Non-Public Arbitrator

Signature Date

February 3, 2006

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Howard M. Miller, Esq.	-	Public Arbitrator, Presiding Chairperson
John A. Seiler	-	Public Arbitrator
William S. Tagerman	-	Non-Public Arbitrator

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Signature Date

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Signature Date

  
William S. Tagerman  
Non-Public Arbitrator

2/2/06  
Signature Date

February 3, 2006

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