

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

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In the Matter of the Arbitration Between:

Fidelity Investments Life Insurance Company, Fidelity Insurance Agency, Inc., Fidelity Brokerage Services, LLC (Claimants) v. Dennis Rupp and TIAA-CREF Individual and Institutional Services, LLC (Manchester, NH) (Respondents)

Case Number: 05-01382

Hearing Site: Boston, Massachusetts

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Nature of the Dispute: Member and Non-members with Contract to Arbitrate v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Claimants, Fidelity Investments Life Insurance Company, Fidelity Insurance Agency, Inc. and Fidelity Brokerage Services, LLC, hereinafter collectively referred to as "Claimants": P. Russell Perdew, Esq., Lord, Bissell & Brook, Chicago, IL.

Respondents, Dennis Rupp ("Rupp") and TIAA-CREFF Individual and Institutional Services, LLC (Manchester, NH) ("TIAA-CREF"), hereinafter collectively referred to as "Respondents": Gary D. Friedman, Esq., Mayer, Brown, Rowe & Maw LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: March 16, 2005.

Claimant Fidelity Brokerage Services, LLC signed the Uniform Submission Agreement: March 22, 2005.

Claimants, Fidelity Investments Life Insurance Company and Fidelity Insurance Agency, Inc., did not sign the Uniform Submission Agreement.

Respondents did not submit a Statement of Answer and they did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: misappropriation of trade secrets; breach of contract; breach of the duty of loyalty; interference with contracts; computer fraud; and unfair trade practices.

### **RELIEF REQUESTED**

Claimants requested an unspecified amount of damages.

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

Claimants, Fidelity Investments Life Insurance Company and Fidelity Insurance Agency, Inc., did not file with NASD Dispute Resolution a properly executed submission agreement but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

Respondents did not file with NASD Dispute Resolution a properly executed submission agreement but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

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**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

The stipulation is annexed hereto as exhibit "A."

### **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	= \$ 500.00
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#### **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 events giving rise to the dispute. In this matter, the member firms Fidelity Brokerage Services, LLC and TIAA-CREF Individual and Institutional Services, LLC are parties to this arbitration.

#### **Fidelity Brokerage Services, Inc.**

Member Surcharge	= \$ 1,500.00
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Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,200.00

**TIAA-CREF**

Member Surcharge	= \$ 1,500.00
Pre-hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,200.00

**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.

1. Member firm Fidelity Brokerage Services, LLC is assessed:

Injunctive relief surcharge	= \$ 2,500.00
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**Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: April 21, 2005 1 session	

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Total Forum Fees	= \$ 450.00
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1. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Claimant Fidelity Investments Life Insurance Company has been assessed \$90.00 of the forum fees.
2. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Claimant Fidelity Insurance Agency, Inc. has been assessed \$90.00 of the forum fees.
3. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Claimant Fidelity Brokerage Services, LLC has been assessed \$90.00 of the forum fees.
4. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Rupp has been assessed \$90.00 of the forum fees.
5. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent TIAA-CREF has been assessed \$90.00 of the forum fees.

Fee Summary

1. Claimant Fidelity Brokerage Services, LLC is solely liable for:	
Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 4,450.00
Injunctive Relief Fee	= \$ 2,500.00
Forum Fees	= \$ 90.00
Total Fees	= \$ 7,540.00
Less payments	= \$ 7,540.00
Balance Due NASD Dispute Resolution	= \$ 0.00
2. Claimant Fidelity Investments Life Insurance Co. is solely liable for:	
Forum Fees	= \$ 90.00
Total Fees	= \$ 90.00
Less payments	= \$ 90.00
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Claimant Fidelity Insurance Agency, Inc. is solely liable for:	
Forum Fees	= \$ 90.00
Total Fees	= \$ 90.00
Less payments	= \$ 90.00
Balance Due NASD Dispute Resolution	= \$ 0.00
4. Respondent Rupp is solely liable for:	
Forum Fees	= \$ 90.00
Total Fees	= \$ 90.00
Less payments	= \$ 90.00
Balance Due NASD Dispute Resolution	= \$ 0.00
5. Respondent TIAA-CREF is solely liable for:	
Member Fees	= \$ 4,450.00
Forum Fees	= \$ 90.00
Total Fees	= \$ 4,540.00
Less payments	= \$ 4,540.00
Balance Due NASD Dispute Resolution	= \$ 0.00

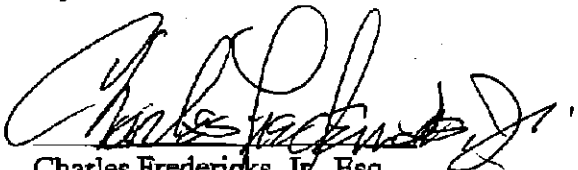
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Charles Fredericks, Jr., Esq.	-	Public Arbitrator, Presiding Chair
David Plimpton, Esq.	-	Public Arbitrator
Robert J. Reddy, Esq.	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

  
Charles Fredericks, Jr., Esq.  
Public Arbitrator, Presiding Chair

  
Signature Date

\_\_\_\_\_  
David Plimpton, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Robert J. Reddy, Esq.  
Industry Arbitrator

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

February 21, 2006  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**


Charles Fredericks, Jr., Esq.	-	Public Arbitrator, Presiding Chair
David Plimpton, Esq.	-	Public Arbitrator
Robert J. Reddy, Esq.	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

\_\_\_\_\_  
Charles Fredericks, Jr., Esq.  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
David Plimpton, Esq.  
Public Arbitrator

SEPTEMBER 2, 2005  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Robert J. Reddy, Esq.  
Industry Arbitrator

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

February 21, 2006  
\_\_\_\_\_  
Date of Service (For NASD office use only)

# **EXHIBIT**

**“A”**

**NASD Dispute Resolution, Inc.**

In the Matter of the Arbitration Between )

FIDELITY BROKERAGE SERVICES, LLC, )  
et al. )

Claimants, )

and )

DENNIS RUPP, et al. )

Respondents. )

NASD-DR Arbitration No. 05-01382

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

1. Effective immediately and through March 4, 2006, Rupp, and anyone acting in concert with Rupp, is hereby restrained and enjoined from soliciting, whether directly or indirectly: (a) any business from any Fidelity customer whom Rupp served, solicited, or about whom Rupp obtained Fidelity Confidential Information (as defined herein) while employed at Fidelity (hereinafter "Fidelity Customers"); or (b) any business from any Fidelity prospect about whom Rupp obtained Fidelity Confidential Information (as defined herein) and with whom Rupp had contact during his employment at Fidelity, including but not limited to, mail, telephone, email or in person (hereinafter "Fidelity Prospects").

2. Effective immediately, Rupp is hereby restrained and enjoined from using, disclosing, transmitting or continuing to possess, whether directly or indirectly, "Fidelity Confidential Information" (which is defined herein as confidential business information contained in the records of Fidelity, which includes but is not limited to the names, addresses and confidential financial information of Fidelity Prospects or of Fidelity Customers) for any purpose, including contact with Fidelity Customers or Fidelity Prospects.

3. Effective immediately, Rupp's current employer is hereby restrained and enjoined from using, disclosing, transmitting or continuing to possess, Fidelity Confidential Information



provided by Rupp, or by anyone acting in concert with Rupp, for any purpose, including contact with Fidelity Customers or Fidelity Prospects.

4. Subject to the restrictions in Paragraphs 1, 2 and 3 above, Rupp's current employer shall not be restrained from competing with Fidelity, or otherwise soliciting or attempting to solicit, or doing business or attempting to do business with, any Fidelity Customers or Fidelity Prospects, unless it has acted based on Fidelity Confidential Information, if any, provided by Rupp, whether directly or indirectly and/or whether acting alone or in concert with others.

5. This Stipulated Consent Award ("Consent Award") expressly supersedes and renders null and void the Stipulated Temporary Restraining Order, executed by the parties and so ordered by the United States District Court for the District of New Hampshire on March 21, 2005.

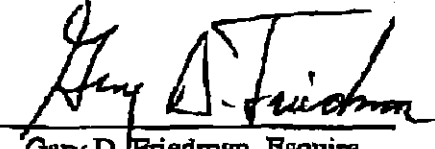
6. This Consent Award shall remain in full force and effect until March 4, 2006, after which it will automatically dissolve and no longer have any legal effect.

7. By entering into this Consent Award, Respondents make no admission of, and expressly deny, any liability or wrongdoing.


**SO STIPULATED AND AGREED:**

Dated: July 27, 2005

**RESPONDENTS DENNIS RUPP, et al.**

By:   
Gary D. Friedman, Esquire  
John P. Davis, Esquire  
Mayer, Brown, Rowe & Maw LLP  
1675 Broadway  
New York, NY 10019  
(212) 506-2574

**CLAIMANTS FIDELITY INVESTMENTS  
LIFE INSURANCE COMPANY, et al.**

By:   
Jennifer A. Kennedy, Esquire  
P. Russell Perdew, Esquire  
Lord Bissell & Brook LLP  
115 S. LaSalle Street  
Chicago, IL 60603-3901  
(312) 443-0700