

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Lyon Investments, Inc., Claimant v. Fidelity Brokerage Services LLC, Respondent

Case Number: 05-03292

Hearing Site: San Francisco, California

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

James A. Hughes, Esq.
Sullwold & Hughes
San Francisco, California

For Respondent:

Philip McLeod, Esq.
Julie A. Kole, Esq.
Keesal, Young & Logan
San Francisco, California

CASE INFORMATION

Statement of Claim filed: June 27, 2005

Claimant's Uniform Submission Agreement signed: June 2, 2005

Statement of Answer filed by Respondent: September 16, 2005

Respondent's Uniform Submission Agreement signed: September 15, 2005

CASE SUMMARY

Claimant alleged breach of contract, negligence, and conversion. Claimant's allegations involved the sale of shares of the Fidelity Value Strategies Fund.

Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$255,664.88 in compensatory damages, interest at the legal rate from May 26, 2004, to the date of the award, and costs.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

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

FINDINGS

1. Fidelity Brokerage Services LLC was negligent in either utilizing a system that allowed for multiple orders to share a single order number or in duplicate processing of a single order. For reasons that will be made clear in the rest of the award, the determination as to which occurred is not material.
2. Lyon Investments, Inc. without regard to whether Claimant placed a second sell order or not, was negligent in not following up and checking on the status of the order and its processing for a period of five days. Claimant should have checked on the status of the order at the end of the day, or at the latest, the next day. Had Claimant done so, Claimant should have discovered the second processed order and avoided all injury by either repurchasing the stock that had been sold contrary to Claimant's stated intent (one half of its position) or by working with Respondent to make appropriate adjustments to unwind the transaction. In fact, the evidence showed that if Claimant had timely checked the processing of the order and then repurchased, Claimant would have recovered a small profit.
3. The arbitrators conclude that it appears that since Claimant failed to check on the status of the order, Respondent's negligence did not directly cause injury to Claimant. Moreover, any damages that Claimant might have suffered as a result of Respondent's negligence were reduced to zero by Claimant's failure to mitigate.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety.
- 2) The forum fees in this matter are assessed to Respondent.
- 3) The parties, except as noted above, shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure, 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, and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

Forum Fees and Assessments

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion decided on the papers. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$ 1,125.00
Pre-hearing conference: November 14, 2005 1 session

(4) Hearing sessions @ \$1,125.00/session = \$ 4,500.00
Hearings: October 10, 2006 2 sessions
October 11, 2006 2 sessions

Total Forum Fees = **\$ 5,625.00**

1. The Panel assessed \$5,625.00 of the forum fees to Respondent.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	= \$(1,425.00)
Refund due Claimant	= \$(1,125.00)

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

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 5,625.00
Total Fees	= \$10,825.00
<u>Less payments</u>	= \$ (5,200.00)
Balance Due NASD Dispute Resolution	= \$ 5,625.00

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

Jeffrey M. Allen	-	Public Arbitrator, Presiding Chair
Sheldon Michaels	-	Public Arbitrator
Juleanne A. Thiebaut	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Jeffrey M. Allen
Chair, Public Arbitrator

10/24/06
Signature Date

Sheldon Michaels
Public Arbitrator

Signature Date

Juleanne A. Thiebaut
Non-Public Arbitrator

Signature Date

10/24/06
Date of Service
(NASD Use Only)

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Concurring Arbitrators' Signatures

Jeffrey M. Allen
Chair, Public Arbitrator

Signature Date



Sheldon Michaels
Public Arbitrator

10/22/06

Signature Date

Juleanne A. Thiebaut
Non-Public Arbitrator

Signature Date

10/24/06

Date of Service
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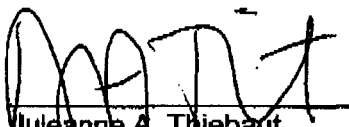
Concurring Arbitrators' Signatures

Jeffrey M. Allen
Chair, Public Arbitrator

Signature Date

Sheldon Michaels
Public Arbitrator

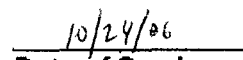
Signature Date



Juleanne A. Thiebaut
Non-Public Arbitrator



Signature Date



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