

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

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In the Matter of the Arbitration Between: \_\_\_\_\_

Rita Fisher (Claimant) vs. Fidelity Brokerage Services (Respondent)

Case Number: 05-04473

Hearing Site: New York, New York

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

Claimant Rita Fisher hereinafter referred to as "Claimant": Ralph A. Gant, Esq., Law Office of Ralph A. Gant, Portsmouth, NH.

Respondent Fidelity Brokerage Services hereinafter referred to as "Respondent": Matthew Farley, Esq., Drinker Biddle & Reath LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: August 25, 2005.  
Claimant signed an undated Uniform Submission Agreement.

Statement of Answer filed on or about: November 21, 2005.  
Respondent signed the Uniform Submission Agreement: November 21, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty and failure to supervise.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$500,000.00, interest, costs, punitive damages, attorneys' fees and all other relief that the Panel may award.

Respondent requested that Claimant's claims be dismissed in its entirety.

**OTHER ISSUES CONSIDERED AND DECIDED**

On April 25, 2006, the Panel and the parties participated in a telephonic conference to hear oral argument from the parties on Respondent's Motion to Dismiss on the basis of the Statute of Limitations. After due deliberation by the arbitrators, the Panel

unanimously determined to grant Respondent's Motion and to dismiss this arbitration with prejudice.

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 April 25, 2006 telephonic conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
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 will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, Fidelity Brokerage Services is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

#### **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:

Two (2) Pre-hearing conference sessions with Panel @ \$1,125.00 per session	= \$ 2,250.00
Pre-hearing conferences: March 14, 2006      1 session	
April 25, 2006      1 session	
<hr/> Total Forum Fees	<hr/> = \$ 2,250.00

1. The Panel has assessed \$1,687.50 of the forum fees against the Claimant.
2. The Panel has assessed \$562.50 of the forum fees against the Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	<u>1,687.50</u>
Total Fees	= \$	1,987.50
<u>Less payments</u>	= \$	<u>1,425.00</u>
Balance Due NASD Dispute Resolution	= \$	562.50

2. Respondent is solely liable for:

Member Fees	= \$	5,200.00
<u>Forum Fees</u>	= \$	<u>562.50</u>
Total Fees	= \$	5,762.50
<u>Less payments</u>	= \$	<u>7,450.00</u>
Refund Due Respondent	= \$	1,687.50

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

**ARBITRATION PANEL**

Lawrence D. McGovern	-	Public Arbitrator, Presiding Chairperson
David I. Goldblatt, Esq.	-	Public Arbitrator
Marc S. Brody	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

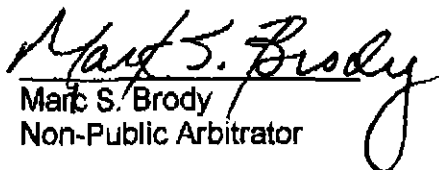
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

\_\_\_\_\_  
Lawrence D. McGovern  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
David I. Goldblatt, Esq.  
Public Arbitrator

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

  
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Marc S. Brody  
Non-Public Arbitrator

6/12/06  
\_\_\_\_\_  
Signature Date

June 14, 2006

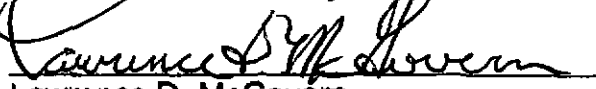
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Date of Service (For NASD Dispute Resolution use only)

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Lawrence D. McGovern  
Public Arbitrator, Presiding Chairperson

June 14, 2006  
Signature Date

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David I. Goldblatt, Esq.  
Public Arbitrator

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Signature Date

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Marc S. Brody  
Non-Public Arbitrator

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