

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Susan Schneider (Claimant) vs. Fidelity Brokerage Services, Inc. (Respondent)

Case Number: 05-05200

Hearing Site: Boston, Massachusetts

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

Claimant Susan Schneider hereinafter referred to as "Claimant": Kevin G. Diamond, Esq., Shea & Diamond LLP, Holliston, MA.

Respondent Fidelity Brokerage Services, Inc, hereinafter referred to as "Respondent": Daniel P. Tighe, Esq., Griesinger, Tighe & Maffei, LLP, Boston, MA.

CASE SUMMARY

Statement of Claim filed on or about: October 13, 2005.
Claimant signed the Uniform Submission Agreement: August 18, 2005.

Statement of Answer filed by Respondent on or about: January 3, 2006.
Respondent signed the Uniform Submission Agreement: January 3, 2006.

CASE SUMMARY

Claimant asserted the following causes of action: unauthorized transactions, violation of Massachusetts Securities Act, negligence, breach of contract, breach of fiduciary duty, respondeat superior, violation of NASD Conduct Rules, violation of New York Stock Exchange Rules and violation of Massachusetts Consumer Protection Statute. The causes of action relate to unspecified securities.

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 \$370,000.00 exclusive of legal interest for unauthorized withdrawals from the IRA account, legal interest of 6% from the dates of unauthorized withdrawals, per MGL Chapter 110A Section 410(a)(2), reasonable attorneys' fees, estimated to be \$92,500.00 as allowed by MGL Chapter 110A section 410(a)(2), costs related to the IRS's imposition of taxes, penalties,

interest, and CPA's expense directly related to the unauthorized withdrawal of \$370,000.00 from the IRA account, and for all other such relief as the arbitration Panel deems just and proper.

Respondent requested dismissal of the Statement of Claim, reasonable attorney's fees and costs, and all administrative costs and fees.

OTHER ISSUES CONSIDERED AND DECIDED

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

PANEL'S DETERMINATION

Claimant seeks to recover \$370,000.00 of alleged losses resulting from Respondent's negligence and breach of contract in allowing unauthorized disbursements from her IRA Account; and, in addition, under Massachusetts law, her costs, interest and reasonable attorney fees based upon Respondent's alleged bad faith in permitting such disbursements.

The essence of Respondent's defense is that in her Fidelity Brokerage Retirement Account Customer Agreement, Respondent Exhibit 3 in evidence, Claimant agreed Respondent would have no liability on account of the transfer from her IRA account made by a person providing Respondent with her PIN.

The testimony and evidence established a total of \$370,000.00 was transferred from Claimant's IRA account, \$290,000.00 through on-line requests to transfer in which the person contacting Fidelity on-line supplied Claimant's PIN. An additional \$80,000.00 was transferred pursuant to one telephone call in which the caller first identified himself with Claimant's PIN and then identified himself to Respondent's telephone representative as "Susan Schneider."

Under Respondent's Exhibit 3, the Fidelity Brokerage Retirement Account Customer Agreement, Electronic Services Customer Agreement Part, Paragraph 2, at page 4, Claimant in effect agreed Respondent would not be liable for any losses arising out of any instructions given to Respondent using Claimant's PIN. This Agreement, the Panel concludes, precludes Claimant's claims based upon these on-line transfers premised upon the use of Claimant's PIN by someone other than Claimant.

On February 3, 2003, Kenneth Kaplan, then a close friend of Claimant, called Fidelity (after going through the automated authorization procedure) and spoke with telephone Representative Roger Stewart, identifying himself as "Susan Schneider." Stewart agreed to Kaplan's request to transfer \$80,000.00 from the Claimant's IRA account to a joint Fidelity account Kaplan and Claimant held.

The Panel listened to the recording of this telephone call as well as read the written transcript of the call included in Claimant's Exhibit 8 in evidence. In the recording Kaplan plainly sounded like a male. Under the circumstances of a male calling Respondent requesting a transfer of monies from Claimant's IRA to a joint account

including a male owner, the Panel finds Respondent through Stewart was negligent in agreeing to transfer monies out of Claimant's IRA at the request of a male caller. At the very least, we find, the call should have been escalated to a management representative of Respondent. The Panel finds that negligence was 75% of the basis of the Claimant's loss of \$80,000.00. The balance of 25% being due to Claimant's negligence in making her PIN available to Kaplan. Respondent's negligence removes this telephonic transfer from a breach of contract claim to a negligence claim.

Therefore, the Panel concludes, \$60,000.00 is payable by Respondent to Claimant on account of this negligence. In addition, interest applies at 6% per year, not compounded. Interest runs from February 3, 2003 through February 2, 2007, 4 years, for a total interest of 24% or \$14,000.00.

The Panel finds no proof of bad faith by Respondent in these regards and therefore finds no basis for awarding Claimant her costs, attorneys' fees or other interest.

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. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$74,000.00.
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
--------------------------	-------------

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. Accordingly, Fidelity Brokerage Services, Inc. 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 session with single arbitrator @ \$450.00/session = \$ 900.00

Pre-hearing conferences: April 27, 2006 1 session
September 5, 2006 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,125.00/session = \$ 2,250.00

Pre-hearing conferences: March 8, 2006 1 session
August 22, 2006 1 session

Ten (10) Hearing sessions with Panel @ \$1,125.00/sesison = \$11,250.00

Hearing Dates: September 13, 2006 2 sessions
September 14, 2006 2 sessions
September 15, 2006 2 sessions
December 12, 2006 2 sessions
December 13, 2006 2 sessions

Total Forum Fees = \$14,400.00

1. The Panel has assessed \$7,200.00 of the forum fees to Claimant.
2. The Panel has assessed \$7,200.00 of the forum fees to Respondent.

FEE SUMMARY

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 7,200.00
Total Fees	= \$ 7,500.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 6,075.00

2. Respondent is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 7,200.00
Total Fees	= \$12,400.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 7,200.00

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

ARBITRATION PANEL

Robert S. Rosenfeld, Esq.	•	Public Arbitrator, Presiding Chairperson
Byron Alexander Menides	-	Public Arbitrator
Jeffrey L. Frankel	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Robert S. Rosenfeld, Esq.
Public Arbitrator, Presiding Chairperson

010407

Signature Date

Byron Alexander Menides
Public Arbitrator

Signature Date

Jeffrey L. Frankel
Non-Public Arbitrator

Signature Date

January 5, 2007

Date of Service (For NASD Dispute Resolution use only)


ARBITRATION PANEL

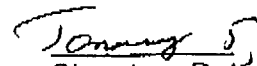
Robert S. Rosenfeld, Esq.	-	Public Arbitrator, Presiding Chairperson
Byron Alexander Menides	-	Public Arbitrator
Jeffrey L. Frankel	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robert S. Rosenfeld, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Byron Alexander Menides
Public Arbitrator

 2007
Signature Date

Jeffrey L. Frankel
Non-Public Arbitrator

Signature Date

January 5, 2007

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Robert S. Rosenfeld, Esq.	-	Public Arbitrator, Presiding Chairperson
Byron Alexander Menides	-	Public Arbitrator
Jeffrey L. Frankel	-	Non-Public Arbitrator

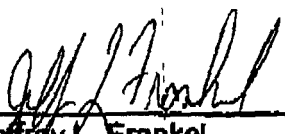
Concurring Arbitrators' Signatures

Robert S. Rosenfeld, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Byron Alexander Menides
Public Arbitrator

Signature Date



Jeffrey L. Frankel
Non-Public Arbitrator

1-5-2007
Signature Date

January 5, 2007

Date of Service (For NASD Dispute Resolution use only)