
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants
Fidelity Brokerage Services LLC
FMR Corp.

Case Number: 06-04279

Name of the Respondent
Philip A. Rousseaux, Jr.

Hearing Site: Baltimore, Maryland

Nature of the Dispute: Member and Non-Member vs. Associated Person.

REPRESENTATION OF PARTIES

For Fidelity Brokerage Services LLC and FMR Corp., hereinafter collectively referred to as "Claimants": Jennifer A. Kenedy, Esq., Lord Bissell & Brook LLP, Chicago, Illinois.

For Philip A. Rousseaux, Jr., hereinafter referred to as "Respondent": Sherry H. Flax, Esq., Saul Ewing LLP, Baltimore, Maryland.

CASE INFORMATION

Statement of Claim filed on or about: September 20, 2006.
Claimants signed the Uniform Submission Agreement: September 20, 2006.
Respondent did not file a Statement of Answer or a signed Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: 1) federal trademark infringement; 2) federal trademark counterfeiting; 3) federal false designation of origin and unfair competition; 4) federal trademark dilution; and, 5) common law unfair competition and trademark infringement. The causes of action relate to Respondent's use of Claimants' registered trademarks and logos in connection with marketing and advertising.

RELIEF REQUESTED

Claimants requested permanent injunction, an unspecified amount of compensatory damages, punitive/treble damages, specific performance, attorneys' fees and costs and such other and further relief as the Panel deemed appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the Panel on all issues submitted.

On or about October 10, 2006, the parties notified NASD Dispute Resolution that they had settled this matter and that they would be submitting a proposed Stipulated Award.

On October 20, 2006, the parties submitted to NASD Dispute Resolution a proposed Stipulated Award.

The parties have agreed that the Stipulated Award in this matter may be entered in counterpart copies or that a signed handwritten Stipulated 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:

Respondent agrees that he will be permanently restrained and enjoined from:

- a) using in any manner the trademarks and service marks of FMR Corp. or its affiliates ("Fidelity"), including but not limited to the mark Fidelity, as well as the Pyramid and Sunburst logo, and any other term(s) or mark(s) likely to cause confusion;
- b) using in any manner the trademark or service mark Fidelity Investments, and any other term or terms likely to cause confusion therewith, including specifically Fidelity Investments and the Pyramid and Sunburst logo, in a manner likely to create the erroneous belief that the goods or services of Rousseaux, Everest Financial Services, LLC or any other employer or entity with whom Rousseaux is affiliated or authorized by, sponsored by, licensed by or in any way associated with Fidelity;
- c) otherwise engaging in any other acts or conduct that would cause consumers erroneously to believe that the goods and services of Rousseaux, Everest Financial Services, LLC or any other employer or entity with whom Rousseaux is affiliated or authorized by, sponsored by, licensed by or in any way associated with Fidelity;

Respondent Rousseaux shall pay the total sum of \$35,000.00 via certified check or money order as follows:

- a) \$25,000.00 within seven days of the date of this Award;
- b) \$5,000.00 on or before November 12, 2006;
- c) \$5,000.00 on or before December 12, 2006.

If Respondent breaches the terms of this Award, Respondent shall pay all damages awarded to Fidelity as a result of violation of the Award as well as Fidelity's reasonable attorneys' fees and costs incurred as a result of taking any action necessary to enforce the terms of this Award and of collecting

or attempting to collect any sums due.

By virtue of this settlement, all claims involved in this case are hereby dismissed, with prejudice, with each party to bear his or its own attorneys' fees and costs.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive/treble damages, are 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	= \$ 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. Accordingly, Claimant Fidelity is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 2,200.00</u>
Total Member Fees	= \$ 4,450.00

H. Beck, Inc. is the member firm that employed the associated person at the time of the events giving rise to the dispute:

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 2,200.00</u>
Total Member Fees	= \$ 4,450.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter for which fees were assessed.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were assessed in this matter.

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.

Injunctive relief fees were incurred during this proceeding = \$2,500.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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:

No hearings were held for this matter.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
<u>Injunctive Relief Fee</u>	<u>= \$ 2,500.00</u>
Total Fees	= \$ 3,000.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,000.00

Claimant Fidelity is solely liable for:

Member Fees	= \$ 4,450.00
Total Fees	= \$ 4,450.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,450.00

H. Beck, Inc. is solely liable for:

Member Fees	= \$ 4,450.00
Total Fees	= \$ 4,450.00
<u>Less payments</u>	<u>= \$ 1,500.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,950.00

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

ARBITRATION PANEL

<i>Alan S. Carmel, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>M. Michael Cramer, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Richard Compisi</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Alan S. Carmel, Esq.
Public Arbitrator, Presiding Chairperson

10/25/06
Signature Date

/s/
M. Michael Cramer, Esq.
Public Arbitrator

10/26/06
Signature Date

/s/
Richard Compisi
Non-Public Arbitrator

10/25/06
Signature Date

10/30/06
Date of Service (For NASD Dispute Resolution office use only)


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Public Arbitrator, Presiding Chairperson

10/25/06
Signature Date

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Public Arbitrator

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Non-Public Arbitrator

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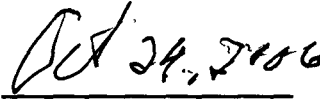
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M. Michael Cramer, Esq.
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Signature Date

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Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

Signature Date

M. Michael Cramer, Esq.
Public Arbitrator

Signature Date



Richard Compisi
Non-Public Arbitrator

10-25-06

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