

**NASD REGULATION, INC.
AWARD**

In the Matter of the Arbitration Between

Name of Claimants

Roselyn and Joseph Mochon

96-04720

Name of Respondents

**Fidelity Brokerage Services, Inc.
John Allen Wilson
Spartan Brokerage**

REPRESENTATION

For Claimants Roselyn and Joseph Mochon ("Claimants") appeared David E. Robbins, Esq., of the law offices of Kaufmann, Feiner, Yamin, Gildin & Robbins, LLP, located in New York, New York.

For Respondents Fidelity Brokerage Services, Inc. ("Fidelity") and Spartan Brokerage ("Spartan") appeared Matthew Farley, Esq. and Charles D. Donohue, Esq., of the law offices of Stanley & Fisher located in New York, New York.

For Respondent John Allen Wilson ("Wilson") appeared Theodore A. Krebsbach, Esq., a sole practitioner with offices located in New York, New York.

CASE INFORMATION

Claimants' Statement of Claim was filed on October 22, 1996.

Claimants' Statement of Answer to the Counterclaim was filed on May 8, 1997.

Claimants' Submission Agreement was signed on October 14, 1996.

A Joint Statement of Answer was filed by Fidelity and Spartan on February 26, 1997.

Fidelity's Submission Agreement was signed on January 9, 1997.

Spartan did not file a properly executed Submission Agreement.

Wilson's Statement of Answer and Counterclaim was filed on March 12, 1997.

Wilson's Submission Agreement was signed on February 26, 1997.

HEARING INFORMATION

Pre-Hearing Conferences:	July 30, 1997	One Session
	October 20, 1997	One Session
	December 19, 1997	One Session
Hearing Dates/Sessions:	December 2, 1997	One Session
	June 30, 1998	Two Sessions
	July 1, 1998	Two Sessions
	July 2, 1998	Two Sessions
	July 7, 1998	Two Sessions
	July 8, 1998	Two Sessions
	July 9, 1998	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimants alleged that they were customers of a discount brokerage firm which asserted it only entered unsolicited customer orders and never gave investment advice. Claimants maintained, however, that Wilson, a licensed broker working as a customer service representative in the computer support department of Fidelity, provided Claimants with option trading strategies and recommendations. Claimants contended that they had never traded options before and totally relied upon Wilson's expressed expertise and recommendations. In addition, Claimants contended that they lost more than \$500,000.00 from options trading and that such trading was unsuitable for them and based upon misrepresentations of fact and repeated failures to disclose the tremendous risks involved in Wilson's strategy. Claimants alleged that Fidelity and Spartan failed to supervise Wilson.

Fidelity and Spartan maintained that Fidelity was a national discount brokerage firm and that Spartan was a Fidelity division which provided enhanced service and greater discounts for active traders. Fidelity and Spartan also maintained that Wilson's duties were software support and assistance to Fidelity customers and that Wilson never accepted an order from Mochon and did not function as a broker. Fidelity and Spartan alleged that the objectives of the Claimants' accounts included trading profits, speculation and capital appreciation. Fidelity and Spartan contended that, in May of 1995, Claimants added options trading to their accounts and that, to obtain Fidelity's approval, Claimants overstated and misstated the nature of their prior experience in options investing. Fidelity and Spartan alleged that, in connection with the options accounts, Claimants received two copies of the OCC options disclosure book and that both a Spartan trader and Wilson cautioned Claimants about the risks of options trading. In addition, Fidelity and Spartan contended that the conversations regarding the stock market which took place between Claimants and Wilson were outside the scope of Wilson's role and were in violation of Fidelity's internal policy prohibiting advice to customers.

Wilson maintained that Claimants knew that he was a staff member in Fidelity's computer software technical support group and not a stockbroker. Wilson further maintained that he never accepted any options orders from Claimants and never transacted orders for Claimants' accounts.

Wilson contended that he advised Claimants that, as a Fidelity employee, he could not give market advice, that he was not employed as a broker, and that his job was to provide technical advice to clients using Fidelity's computer software. Wilson alleged that Claimants began to frequently call him at his home on evenings and weekends and that he believed they had developed a personal friendship. Wilson also alleged that, during these calls, they spoke of sports and other topics of interest and that Claimants gradually shifted the subject of the conversations to their primary interest in the stock market. Wilson contended that, in or about July-August 1995, Claimants' telephone conversations became abusive and Claimants began to blame him for their losses. Wilson maintained that, in January 1996, he was terminated by Fidelity for violating the company's policy against speaking to clients about their investments.

In his Counterclaim, Wilson asserted claims for slander, libel and abuse of process.

Claimants generally denied all allegations contained in Wilson's Counterclaim.

RELIEF REQUESTED

Claimants requested damages in the amount of \$852,046.00, plus interest and punitive damages in the amount of \$1,000,000.00.

Fidelity and Spartan requested that the Statement of Claim be dismissed in its entirety.

Wilson requested that the Statement of Claim be dismissed in its entirety and that he be awarded damages against Claimants in the amount of \$100,000.00.

Claimants requested that the Counterclaim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with NASD Regulation, Inc.

The panel made the following determinations concerning Spartan who did not file a Submission Agreement in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure ("Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel determined that, by filing a Statement of Answer and participating in the hearings in this matter, Spartan voluntarily submitted to the jurisdiction of the NASD. Accordingly, the panel found personal jurisdiction over Spartan pursuant to Rule 10301 of the Code.
3. The panel found that Spartan was required to file a Submission Agreement with NASD Regulation, Inc. pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Spartan

pursuant to Rule 10314(a) of the Code.

By letter dated October 3, 1997, Wilson withdrew his counterclaims against Claimants.

AWARD

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

1. Fidelity and Spartan be and hereby are jointly and severally liable for and shall pay to Claimants compensatory damages in the amount of **FORTY SIX THOUSAND NINE HUNDRED SIXTY SIX DOLLARS (\$46,966.00)**.
2. Claimants' request for interest is hereby denied.
3. Claimants' request for punitive damages is hereby denied.
4. All requests for attorneys' fees are hereby denied.
5. All other requests are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the ("Code"), Fidelity has paid to NASD Regulation, Inc. the \$500.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, the arbitrators have determined that NASD Regulation, Inc. will retain the \$250.00 non-refundable filing fee submitted by Claimants and the \$500.00 non-refundable filing fee submitted by Wilson, and have assessed the following forum fees:

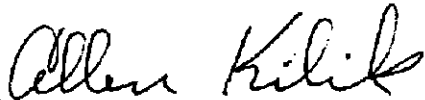
1 Pre-hearing conference x \$300.00	=	\$ 300.00
2 Pre-hearing conferences (with full panel)	=	\$ 2,000.00
13 Hearing sessions x \$1,000.00	=	\$13,000.00

Fidelity and Spartan be and hereby are jointly and severally liable for the sum of \$15,300.00, representing the total amount of forum fees assessed. Claimant previously deposited \$1,000.00 with NASD Regulation, Inc. and, therefore Fidelity and Spartan shall pay the balance of \$14,300.00 to NASD Regulation, Inc.

ARBITRATION PANEL

Allen Kilik, Esq.	-	Public Chairperson
Sharla D. Bailey	-	Public Arbitrator
Frank G. Piazza	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



Allen Kilik, Esq.
Chairperson - Public Arbitrator

Date of Decision: August 27, 1998

I, Allen Kilik, Esq., 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.

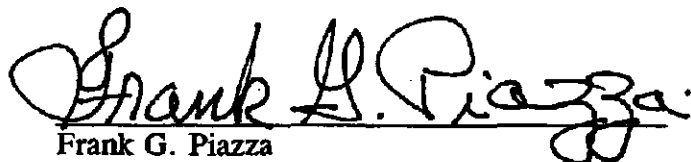


Allen Kilik, Esq.

ARBITRATION PANEL

Allen Kilik, Esq.	-	Public Chairperson
Sharla D. Bailey	-	Public Arbitrator
Frank G. Piazza	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



Frank G. Piazza
Industry Arbitrator

Date of Decision: August 27, 1998

I, **Frank G. Piazza**, 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.

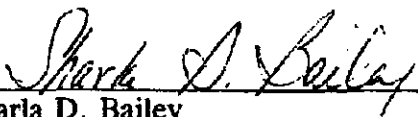


Frank G. Piazza

ARBITRATION PANEL

Allen Kilik, Esq.	-	Public Chairperson
Sharla D. Bailey	-	Public Arbitrator
Frank G. Piazza	-	Industry Arbitrator

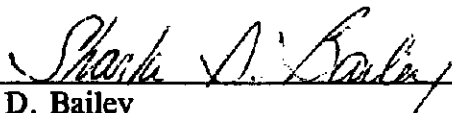
CONCURRING ARBITRATOR'S SIGNATURE



Sharla D. Bailey
Public Arbitrator

Date of Decision August 27, 1998

I, Sharla D. Bailey, 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.



Sharla D. Bailey