

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Ying M. Liu and Yu C. Bian, (Claimants) vs. Fidelity Brokerage Services, Inc.,
(Respondent).

Case Number: 99-02620

Hearing Site: Houston, Texas

REPRESENTATION OF PARTIES

Claimants, Ying M. Liu ("Liu") and Yu C. Bian ("Bian"), hereinafter collectively referred to as "Claimants": Michael M. Nguyen, Esq., Pham & Nguyen, Houston, Texas.

Respondent, Fidelity Brokerage Services, Inc., hereinafter referred to as "Respondent": Ellen B. Sessions, Esq., Jenkins & Gilchrist, Dallas, Texas.

CASE INFORMATION

Statement of Claim filed on or about: June 3, 1999
Claimants signed the Uniform Submission Agreement: June 4, 1999
Statement of Answer filed by Respondent on or about: September 24, 1999
Respondent signed the Uniform Submission Agreement: August 20, 1999
Amended Claim filed by Claimants on or about: January 17, 2000
Amended Answer filed by Respondent on or about: February 9, 2000
Addendum to the Amended Claim filed by Claimants on or about: April 5, 2000

CASE SUMMARY

Claimants submitted the following case summary:

Claimants have suffered significant financial losses beyond their affordability because Respondent (hereinafter Fidelity) intentionally violated the rules and regulations of the Federal

Reserve Board, the NASD, and the SEC, with regards to extending credit beyond margin requirements. In the alternative, Fidelity negligently violated the aforementioned margin requirements and caused Claimants to suffer significant financial losses. Furthermore, Fidelity breached its fiduciary duty to Claimants by creating immediate margin calls as Fidelity executed the buy order, placing their interests (commission) above their customers' well-being. Fidelity also breached their fiduciary duty to Claimants by using Claimants' UGMA and IRA accounts as collateral to buy on margin. Fidelity also violated their fiduciary duty to Claimants by using a single market maker, Knight Securities, and not using other venues to execute trades at better prices and speed. In addition, Claimants relied on the notion that Fidelity would abide by their Brokerage Service Handbook given to customers which explains procedures of trading on margin. Nevertheless, Fidelity strayed from these procedures and acted opposite to their direct examples in the handbook, causing damage to Claimants. Furthermore, Fidelity's inadequate on-line technology could not handle the volumes of trade. Therefore, executions of market orders were delayed causing losses. In addition, Fidelity's inadequate on-line technology could not differentiate between non-marginable securities and marginable securities, allowing Claimants to execute a buy order of non-marginable security in a margin account. In summary, Fidelity breached their contract with Claimants by allowing Claimants to buy non-marginable securities on margin. In addition, Fidelity either negligently or intentionally failed to provide price indications of the stock at issue even though large share volumes were displayed on Fidelity's web site before the opening of the market--violating NASD's "locks" and "cross" rules. Therefore, Claimants were misinformed and caused to make the wrong purchase decisions. Fidelity ran numerous deceptive advertisements of committing themselves to high technological advances even though their technology fails to limit risk. In addition, Fidelity ran deceptive ads of trading on-line to get rich quick, but failed to disseminate the involved risks. Furthermore, Claimants were not suitable for this buy order of 10,000 shares at \$6.00 per share, but Fidelity allowed the purchase to proceed. Lastly, Fidelity failed to place supervisory procedures to limit customer risk, and Fidelity failed to supervise Claimants' account allowing executions beyond Claimants' affordability.

Respondent filed a case summary as follows:

Claimants, Ying M. Liu and Yu C. Bian ("Claimants"), brought this action to recover losses allegedly sustained after they placed an unsolicited market order on-line in their brokerage account with Respondent Fidelity Brokerage Services, Inc. ("Fidelity"). They placed this order when the market was closed and the current quote was unavailable.

Claimants alleged that Fidelity should not have executed their market order because the price of the stock, Go Call, Inc. ("GOCA"), when the market opened had increased from the previous day's closing price, such that the cost of the trade exceeded the cash available in their account. Claimants claimed that this price increase made the GOCA stock unsuitable for their account. Claimants also asserted that they should not have been allowed to buy nonmarginable stock in their margin account. Claimants claimed that they suffered \$50,000 in actual damages and \$40,000 in lost investment opportunities. They also made a claim for \$100,000 in punitive damages.

Fidelity denied the allegations set for in the Amended Statement of Claim. Fidelity stated that the concept of suitability does not apply to an unsolicited order placed by the Claimants on-line. Fidelity further stated that Claimants must take responsibility for market orders they place on-line, even where the market price exceeds their expectations. Fidelity claimed that Claimants had the ability to place a limit order which would have limited the risk about which they complained. Fidelity also argued that the execution of the purchase order for a nonmarginable stock in Claimants' margin account was permissible and that no margin regulations were violated.

Fidelity made the following affirmative defenses: (1) Claimants failed to mitigate their damages; (2) Claimants assumed the risk of loss by placing an after hours market order; (3) Claimants' alleged damages were caused by market factors out of Fidelity's control; (4) waiver, laches and estoppel barred Claimants' recovery; (5) Claimants' claims failed due to their own negligence; and (6) Claimants' claims failed because Fidelity acted in good faith at all time.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$73,290.48
Punitive Damages	\$100,000
Attorneys' Fees	\$15,000
Other Costs	\$1,450

Respondent requested:

Dismissal of Claim

OTHER ISSUES CONSIDERED AND DECIDED

The Amended Claim and Addendum to the Amended Claim submitted by Claimants as well as the Amended Answer submitted by Respondent were allowed by the Panel without objection from the parties.

Upon completion of the Claimants' direct case at the merits hearing, Respondent made an oral Motion for a Directed Verdict. Following oral arguments, the Panel granted the Motion.

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. The Statement of Claim, Amended Claim and Addendum to the Amended Claim filed by Ying M. Liu and Yu C. Bian are denied in their entirety and dismissed with prejudice; and
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$300

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Fidelity brokerage Services, Inc.

Member surcharge	= \$1,000
Pre-hearing process fee	= \$600
Hearing process fee	= \$2,500

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,000	= \$1,125
Pre-hearing conference: February 28, 2000	1 session

Two (2) Hearing sessions x \$1,000	= \$2,250
Hearing Date: April 27, 2000	2 sessions

Total Forum Fees	= \$3,375
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1. The Panel has assessed \$1,687.50 of the forum fees jointly and severally to Ying M. Liu and Yu C. Bian.
2. The Panel has assessed \$1,687.50 of the forum fees to Fidelity Brokerage Services, Inc.

Fee Summary

1. Claimants, Ying M. Liu and Yu C. Bian, be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$300
Forum Fees	= \$1,687.50

Total Fees	= \$1,987.50
Less payments	= \$1,425
Balance Due NASD Regulation, Inc.	= \$562.50

2. Respondent, Fidelity Brokerage Services, Inc., be and hereby is solely liable for:

Member Fees	= \$4,100
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Forum Fees	= \$1,687.50
Total Fees	= \$5,787.50
Less payments	= \$4,100
Balance Due NASD Regulation, Inc.	= \$1,687.50

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Douglas F. Pierce
Douglas F. Pierce, Esq.
Public Arbitrator, Presiding Chair

MAY 5, 2000
Signature Date

John A. Irvine, Esq.
Public Arbitrator

Signature Date

Mary Ann Tunick
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Forum Fees	= \$1,687.50
Total Fees	= \$5,787.50
Less payments	= \$4,100
Balance Due NASD Regulation, Inc.	= \$1,687.50

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Douglas F. Pierce, Esq.
Public Arbitrator, Presiding Chair



John A. Irvine, Esq.
Public Arbitrator

Signature Date

5/5/00
Signature Date

Mary Ann Tunick
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

NATIONAL ASSOCIATION
OF SECURITIES DEALERS, INC.
RECEIVED
MAY 11 2000

Forum Fees

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Total Fees

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Less payments

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Balance Due NASD Regulation, Inc.

= \$1,687.50

All balances are due to NASD Regulation, Inc.

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Douglas F. Pierce, Esq.
Public Arbitrator, Presiding Chair

Signature Date

John A. Irvine, Esq.
Public Arbitrator

Signature Date

Mary Ann Tunick
Industry Arbitrator

Mary Ann Tunick
Signature Date 5-8-00

Date of Service (For NASD office use only)