

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Ines Muhlfield, (Claimant) vs. Fidelity Brokerage Services, Inc. (Respondent)

Case Number: 99-05296

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant Ines Muhlfield, hereinafter referred to as "Claimant": James Geist with Power of Attorney for Claimant, New York, NY.

Respondent Fidelity Brokerage Services, Inc., hereinafter referred to as "Respondent": Michael G. Shannon, Esq., Phillips, Lytle, Hitchcock, Blaine & Huber, LLP, New York, NY. Previously represented by: Richelle S. Kennedy, Esq., Senior Staff Attorney, Fidelity Investments, Boston, MA.

**CASE INFORMATION**

Statement of Claim filed on or about: November 20, 1999.

Claimant signed the Uniform Submission Agreement: December 13, 1999.

Statement of Answer filed by Respondent on or about: February 29, 2000.

Respondent signed the Uniform Submission Agreement: January 25, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: failure to execute a purchase order and violation of contractual duty.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant has failed to state a claim for which relief may be granted; Claimant has not suffered any damages as a result of any acts or failures to act by Respondent; Claimant's alleged damages are the result of market actions beyond the control of Respondent; and Claimant failed to take action to mitigate the damages she claims to have suffered.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$19,753.12, plus costs and

attorneys' fees.

Respondent requested that the claim be dismissed in its entirety.

### **OTHER ISSUES CONSIDERED AND DECIDED**

During the hearing in this matter, Claimant made a motion to sequester potential witness, Leo Burns, who was introduced as the corporate representative of Respondent. The Arbitrator denied this motion.

### **AWARD**

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

1. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$2,718.75 as compensatory damages, plus interest at the rate of 5% accruing from September 1, 1999 until October 5, 2000.
2. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 125.00
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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. In this matter, Fidelity Brokerage Services, Inc. is a party.

Member surcharge	= \$ 400.00
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#### **Forum Fees and Assessments**

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

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
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Pre-hearing conference:	August 1, 2000	1 session	
One (1) Hearing session x \$450.00			= \$ 450.00
Hearing Date:	October 5, 2000	1 session	
Total Forum Fees			= \$ 900.00

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The Arbitrator has assessed all of the forum fees against Respondent.

**Fee Summary**

1. Claimant be and hereby is solely liable for:


<u>Initial Filing Fee</u>	= \$ 125.00
Total Fees	= \$ 125.00
<u>Less payments</u>	= \$ 575.00
Refund Due Claimant	= \$ 450.00
2. Respondent be and hereby is solely liable for:

Member Fees	= \$ 400.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$1,300.00
<u>Less payments</u>	= \$ 400.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 900.00

All balances are due and payable to NASD Dispute Resolution, Inc.

**Arbitrator's Signature**

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.

  
Catherine Tinker, Esq.  
Public Arbitrator

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Signature Date

November 17, 2000  
Date of Service (For NASD office use only)