

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimants

Estate of Graham M. Polonsky  
Susan P. Cable

Case Number: 19-00007

vs.

Respondent

Fidelity Brokerage Services LLC

Hearing Site: Boston, Massachusetts

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Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants Estate of Graham M. Polonsky, and Susan P. Cable: Alexander Aron Flig, Esq., Law Office of Alexander A. Flig, Canton, Massachusetts.

For Respondent Fidelity Brokerage Services LLC: Joel M. Everest, Esq., Bressler, Amery & Ross P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: January 1, 2019.

Estate of Graham M. Polonsky signed the Submission Agreement: November 25, 2018.

Susan P. Cable signed the Submission Agreement: November 25, 2018.

Statement of Answer filed by Respondent on or about: March 8, 2019.

Fidelity Brokerage Services LLC signed the Submission Agreement: March 8, 2019.

**CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: suitability; violations of FINRA Rules 2090, 2111 and 3110; and failure to supervise. The causes of action relate to investments in Fidelity Select Biotechnology Fund (FBIOX) and Fidelity Select Health Care Fund (FSPHX).

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested: unspecified compensatory damages; restitution; consequential damages, including interest and fees associated with Claimant's mortgage of his primary residence; interest at the legal rate; punitive damages; attorney's fees; costs; and for all such other and additional relief as deemed just and proper.

In the Statement of Answer, Respondent requested that; the Statement of Claim be dismissed in its entirety; deny any recovery by Claimants against Respondent; assess all forum fees and costs solely against Claimants; and costs.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

The Award in this matter may be executed in counterpart copies.

### **AWARD**

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

1. Claimants' claims are denied in their entirety.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, consequential damages, restitution, and attorneys' fees, are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution Services assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$ 1,575.00
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*\*The filing fee is made up of a non-refundable and a refundable portion.*

#### **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 event giving rise to the dispute. Accordingly, as a party Respondent Fidelity Brokerage Services LLC is assessed the following:

Member Surcharge = \$ 1,900.00  
Member Process Fee = \$ 3,750.00

**Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision = \$ 200.00

Respondent submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees = \$ 200.00

The Panel has assessed the total discovery-related motion fees jointly and severally to Claimants.

**Hearing Session Fees and Assessments**

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

Four (4) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 4,500.00

Pre-Hearing Conferences: April 30, 2019 1 session  
March 5, 2020 1 session  
June 25, 2020 1 session  
December 10, 2020 1 session

Four (4) hearing sessions @ \$1,125.00/session = \$ 4,500.00

Hearings: February 9, 2021 2 sessions  
February 10, 2021 2 sessions

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Total Hearing Session Fees = \$ 9,000.00

The Panel has assessed \$6,750.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$2,250.00 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

**ARBITRATION PANEL**

Samuel H. Chorches	-	Public Arbitrator, Presiding Chairperson
Robert E. Anderson	-	Public Arbitrator
Denise L. Presley	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

**Concurring Arbitrators' Signatures**

***Samuel H. Chorches***

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Samuel H. Chorches  
Public Arbitrator, Presiding Chairperson

**03/08/2021**

\_\_\_\_\_  
Signature Date

***Robert E. Anderson***

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Robert E. Anderson  
Public Arbitrator

**03/08/2021**

\_\_\_\_\_  
Signature Date

***Denise L. Presley***

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Denise L. Presley  
Public Arbitrator

**03/09/2021**

\_\_\_\_\_  
Signature Date

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March 09, 2021

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Date of Service (For FINRA Dispute Resolution Services use only)