

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Martin David Gerstenbluth

Case Number: 19-00913

vs.

Respondent

Fidelity Brokerage Services LLC

Hearing Site: Jersey City, New Jersey

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: Customer vs. Member.

This case was administered under the Special Proceeding option for simplified cases.

REPRESENTATION OF PARTIES

For Claimant Martin David Gerstenbluth: James Thomas McCarthy, Esq., McCarthy Galfy & Marx, LLC, Rahway, New Jersey.

For Respondent Fidelity Brokerage Services LLC: Erin B. Sinclair, Esq., and Noah D. Sorkin, Esq., FMR LLC Legal Department, Boston, Massachusetts.

CASE INFORMATION

Amended Statement of Claim filed on or about: April 15, 2019.

Second Amended Statement of Claim filed on or about: June 10, 2019.

Martin David Gerstenbluth signed the Submission Agreement: June 10, 2019.

Statement of Answer to the Amended Statement of Claim filed by Respondent on or about: June 10, 2019.

Fidelity Brokerage Services LLC signed the Submission Agreement: June 6, 2019.

CASE SUMMARY

Claimant asserted the following causes of action: excessive margin call, and improper sale of stocks. The causes of action relate to the sale of Goldman Sachs common stock.

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

RELIEF REQUESTED

In the Amended Statement of Claim and Second Amended Statement of Claim, Claimant requested compensatory damages in the amount of \$50,000.00, attorneys' fees, costs, interest, and other monetary relief.

In the Statement of Answer to the Amended Statement of Claim, Respondent requested that the Arbitrator dismiss the Statement of Claim in its entirety, deny any recovery by Claimant against Respondent, assess all forum fees and costs solely against Claimant, and award Respondent its reasonable fees and costs incurred in this matter.

By correspondence dated November 24, 2020, Claimant requested \$40,000.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

The original Statement of Claim was filed on April 3, 2019. An Amended Statement of Claim was filed on April 15, 2019, and a Second Amended Statement of Claim was filed on June 10, 2019. The Statement of Claim filed on April 3, 2019 was not served on the Respondent and therefore was not considered by the Arbitrator.

In the Amended Statement of Claim filed on April 15, 2019, Claimant erroneously named Fidelity Investments Institutional Services Company, Inc as Respondent. In the Second Amended Statement of Claim filed on June 10, 2019, Claimant corrected the name of the Respondent to Fidelity Brokerage Services LLC.

The Arbitrator has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

AWARD

After considering the pleadings, and 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. Claimant's claims are denied in their entirety.
2. Any and all claims for relief not specifically addressed herein, including attorneys' fees, are denied.

ARBITRATOR'S REPORT

Claimant brought this action to recover damages of \$40,000.00, as a result of a margin call, which the Claimant alleges was excessive, on his margin account maintained with Respondent.

Witness testimony and exhibits demonstrated that in 2006, the Claimant executed a Customer Agreement and Margin Call Agreement with Respondent prior to opening his account. The Margin Agreement indicated that the Respondent could act on the account with or without notice. For the period concerning this arbitration, Claimant's portfolio was concentrated 100% in one stock.

The evidence established that in December 2018, U.S. stocks experienced volatile market movements culminating in December 26, 2018 being the third lowest market day for that year. As a result of market volatility, previous trading in the period just before December 26, 2018, and Claimant's portfolio concentration, the margin rate on the Claimant's account for December 26th 2018 moved from 40% to 60%, based upon algorithms which Respondent uses in ascertaining a margin rate.

Just prior to this latter event, Claimant had been given seven (7) margin calls beginning on December 1, 2018 through December 23, 2018. The testimony from Respondent's witness advised that the Claimant did not respond to any of these calls. Because the margin debt balance on the Claimant's account was over \$215,000 on December 26, 2018, Respondent issued another margin call for December 26, 2018. The Claimant did not respond. At this point the equity in Claimant's account was approximately \$110,000.00. The Respondent, therefore, had to act quickly to prevent further loss and sold 870 shares in that account. That sale is the subject of this arbitration.

Testimony clearly demonstrated that as a result of the volatility of the market on that day and the Claimant's portfolio concentration, as well as the heavy trading of stocks on that day, the value of Claimant's stock was dropping significantly. This impacted the Claimant's equity in the account. The Respondent properly concluded that a sale of Claimant's stocks needed to be effectuated immediately.

The Arbitrator found that Respondent, pursuant to the authorization given to it under both the Customer and Margin Account Agreements, acted reasonably in issuing the margin call on December 26, 2018 and, after considering all relevant factors affecting the market on that day, acted reasonably in making a determination to sell 870 shares from the Claimant's margin account.

Based upon the foregoing, including the testimony presented at the hearing, as well as the documents admitted into evidence, the Arbitrator found that there was insufficient evidence submitted to sustain any claim, including that of an excessive margin call, against the Respondent. Accordingly, the Statement of Claim is 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	= \$	600.00
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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 events giving rise to the dispute. Accordingly, as a party, Respondent Fidelity Brokerage Services LLC is assessed the following:

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

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

February 5, 2020, postponement requested by Claimant	= \$	450.00
June 17, 2020, postponement requested by the parties		WAIVED
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Total Postponement Fees	= \$	450.00

The Arbitrator has assessed the total postponement fees to Claimant.

Hearing Session Fees and Assessments

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

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-hearing Conference: August 13, 2019	1 session	
One (1) hearing session @ \$450.00/session		
Hearing Date: December 14, 2020	1 session	= \$ 450.00
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Total Hearing Session Fees	= \$	900.00

The Arbitrator has assessed \$585.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$315.00 of the hearing session fees to Respondent.

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

ARBITRATOR

Paul Allan Massaro

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Sole 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.

Arbitrator's Signature

Paul Allan Massaro

Paul Allan Massaro
Sole Public Arbitrator

01/12/2021

Signature Date

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.

January 12, 2021

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