

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

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In the Matter of the Arbitration Between:

Claimant  
Daniel P. Freebery

Case Number: 20-01948

vs.

Respondents  
Fidelity Brokerage Services LLC  
Jeffery Paytas  
Nathaniel J. Wright

Hearing Site: Wilmington, Delaware

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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: Customer vs. Member and Associated Persons.

This matter proceeded pursuant to Rule 12800 of the Code of Arbitration Procedure (“Code”).

**REPRESENTATION OF PARTIES**

Claimant Daniel P. Freebery appeared pro se.

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

For Respondents Jeffery Paytas and Nathaniel J. Wright: Joel M. Everest, Esq. Bressler, Amery & Ross, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: June 19, 2020.

Daniel P. Freebery signed the Submission Agreement: June 19, 2020.

Joint Statement of Answer filed by Respondents on or about: September 14, 2020.

Fidelity Brokerage Services LLC signed the Submission Agreement: September 8, 2020.

Jeffery Paytas signed the Submission Agreement: September 22, 2020.

Nathaniel J. Wright signed the Submission Agreement: September 21, 2020.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, negligence, and trade execution error. The causes of action relate to unspecified securities.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested \$50,000.00 in compensatory damages.

In the Joint Statement of Answer, Respondents requested that the Claimant's claims be dismissed in their entirety, with prejudice; that all forum fees, costs, and expenses be assessed against Claimant; and expungement of all references to the above-captioned arbitration from the registration records of Jeffery Paytas and Nathaniel J. Wright maintained by the Central Registration Depository ("CRD").

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

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

The Arbitrator conducted a recorded telephonic hearing on March 12, 2021 so the parties could present oral argument and evidence on Respondents Jeffery Paytas and Nathaniel J. Wright's request for expungement.

The Arbitrator reviewed Respondents Jeffery Paytas and Nathaniel J. Wright's BrokerCheck® Reports. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrences in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; the parties' submissions including account records, correspondence, and telephone call transcript; and Respondents Jeffery Paytas and Nathaniel J. Wright's BrokerCheck® Reports and testimony.

### **AWARD**

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

1. Claimant's claims are denied in their entirety.
2. The Arbitrator recommends the expungement of all references to the above captioned arbitration (Occurrence Number 2083099) from registration records maintained by the CRD for Respondent Jeffery Paytas (CRD Number 5874660) with the understanding that, pursuant to Notice to Members 04-16, Respondent Jeffery Paytas must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Arbitrator recommends the expungement of all references to the above captioned arbitration (Occurrence Number 2082959) from registration records maintained by the CRD for Respondent Nathaniel J. Wright (CRD Number 5530889) with the understanding that, pursuant to Notice to Members 04-16, Respondent Nathaniel J. Wright must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

Claimant filed this simplified arbitration to recover the sum of \$50,000.00. According to his filing, this was half of what he stated was the loss in his portfolio attributable to the individual brokers' failure to heed his instructions to protect his portfolio from a market decline from \$480,000 to below \$430,000 during the COVID related precipitous break of March 2020.

While all involved acknowledge Claimant's concern about limiting potential losses and had discussions about taking a more defensive posture starting early in March of 2020 (at which time his account was at \$450,000), what Claimant is essentially arguing is that the equivalent to an automatic stop loss order should have been placed in his portfolio to preserve this \$430,000 'floor.' Since Claimant had a managed account containing mutual funds, the managers could not make any adjustments outside a very narrow band and did not have the discretion to make wholesale changes without authorization. The account only marginally dropped below \$430,000.00 on March 11, 2020. On March 13, 2020, a Friday, Claimant's account was valued at some \$420,000.00. On Monday March 16, 2020, Claimant had a long conversation with Respondents Jeffery Paytas and Nathaniel J. Wright to discuss specific steps to implement a more conservative strategy, which was in process when he transferred the account away on March 23, 2020. At that time, the account had a value of some \$380,000.00.

As stated above, there was no cognizable 'stop loss' or other liquidation instruction on the account at the time of the market drop in March 2020. At best, the client's interest was to re-balance it if it fell below the level discussed with his account managers.

By reason of the foregoing, these occurrences should be expunged on the ground that they are clearly erroneous. A 'stop loss' order is not possible in a managed account, and Claimant's advisors made every effort to discuss with him, on multiple occasions, various strategies to minimize his portfolio loss in a very difficult and turbulent market.

- 3. FINRA Dispute Resolution Services shall retain the \$600.00 filing fee that Claimant deposited previously.
- 4. Respondent Fidelity Brokerage Services LLC is liable for and shall pay to Claimant \$300.00 to reimburse Claimant for one-half of the filing fee previously paid to FINRA Dispute Resolution Services.
- 5. Any and all claims for relief not specifically addressed herein are denied.

**FEES**

Pursuant to the Code:

- 1. Respondent Fidelity Brokerage Services LLC has paid to FINRA Dispute Resolution Services the \$750.00 Member Surcharge and \$1,750.00 Member Process Fee previously invoiced.
- 2. 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) hearing session on expungement request @ \$450.00/session	= \$	450.00
Hearing: March 12, 2021 1 session		
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Total Hearing Session Fees	= \$	450.00

The Arbitrator has assessed the total hearing session fees jointly and severally to Respondents Fidelity Brokerage Services LLC, Jeffery Paytas, and Nathaniel J. Wright.

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

**ARBITRATOR**

Robert E. Anderson

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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**

***Robert E. Anderson***

Robert E. Anderson  
Sole Public Arbitrator

**04/12/2021**

Signature Date

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April 13, 2021

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