

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

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In the Matter of the Arbitration Between:

Claimants

James and Donna Gallagher  
James Gallagher Rollover IRA

Case Number: 20-02349

vs.

Respondent

Fidelity Brokerage Services LLC

Hearing Site: Jersey City, New Jersey

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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**

Claimant James and Donna Gallagher appeared pro se.

For Claimant James Gallagher Rollover IRA: James J. Gallagher.

For Respondent Fidelity Brokerage Services LLC: Frank J. Cuccio, Esq., Bressler Amery & Ross, P.C., Florham Park, New Jersey.

**CASE INFORMATION**

Amended Statement of Claim filed on or about: August 17, 2020.

Claimants signed the Submission Agreement: August 17, 2020.

Statement of Answer filed by Respondent on or about: October 6, 2020.

Fidelity Brokerage Services LLC signed the Submission Agreement: October 5, 2020.

**CASE SUMMARY**

In the Amended Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; failure to supervise; and respondeat superior. The causes of action relate to IRA account withdrawals.

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 Amended Statement of Claim, Claimants requested: at least \$493, 687.00 in compensatory damages; consequential damages; interest; costs; and such other relief as the Panel may deem appropriate.

In the Statement of Answer, Respondent requested that the relief request in the Statement of Claim be denied.

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

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

A Statement of Claim was filed on July 24, 2020. It was not served on Respondent and not considered by the Arbitrator.

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 consequential damages, interest, costs, 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	= \$ 1,425.00
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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

**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:

One (1) pre-hearing session with the Panel @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: December 9, 2020	1 session	
Four (4) hearing sessions @ \$1,125.00/session	= \$	4,500.00
Hearings: June 7, 2021	2 sessions	
June 8, 2021	2 sessions	

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Total Hearing Session Fees	= \$	5,625.00
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The Panel has assessed \$2,812.50 of the hearing session fees to Claimants.

The Panel has assessed \$2,812.50 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Veronica Ann Williams	-	Public Arbitrator, Presiding Chairperson
Howard Alan Grinsberg	-	Public Arbitrator
Phillip Michael Brown	-	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**

***Veronica Ann Williams***

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Veronica Ann Williams  
Public Arbitrator, Presiding Chairperson

**06/11/2021**

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

***Howard Alan Grinsberg***

\_\_\_\_\_  
Howard Alan Grinsberg  
Public Arbitrator

**06/11/2021**

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

***Phillip Michael Brown***

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Phillip Michael Brown  
Public Arbitrator

**06/12/2021**

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

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June 14, 2021

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