

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

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In the Matter of the Arbitration Between:

Claimant

Adoracion Estanislao, M.D.

Case Number: 21-00134

vs.

Respondents

Fidelity Brokerage Services LLC  
Steven James Boschert

Hearing Site: New York, New York

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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 Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Adoracion Estanislao, M.D.: Kevin P. Conway, Esq., Conway & Conway, New York, New York.

For Respondents Fidelity Brokerage Services LLC (“Fidelity”) and Steven James Boschert (“Boschert”): Joseph L. Calabrese, Esq., Bressler Amery & Ross, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: January 20, 2021.

Adoracion Estanislao, MD signed the Submission Agreement: February 4, 2021.

Joint Statement of Answer filed by Respondents on or about: April 2, 2021.

Fidelity Brokerage Services LLC signed the Submission Agreement: March 31, 2021.

Steven James Boschert signed the Submission Agreement: April 1, 2021.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: unsuitability; breach of fiduciary duty; breach of contract; breach of the duty of good faith and fair dealing; negligence; misrepresentation; omission; fraud; and failure to supervise. 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 compensatory damages in an amount in excess of \$206,719.50 plus interest; costs; attorneys' fees; punitive damages; and such other and further relief as the Arbitrators deem just and fair.

In the Statement of Answer, Respondents requested that the Statement of Claim be dismissed in its entirety. Respondent Boschert also requested for an Order pursuant to FINRA Rule 2080(b)(1)(A)(B) and (C) expunging any reference to this claim from his Central Registration Depository ("CRD") records.

At the hearing, Claimant requested damages in the amount of \$131,597.00.

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

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

At the conclusion of Claimant's case-in-chief, Respondents made a Motion to Dismiss and Claimant opposed the motion. After due deliberation, the Panel denied the Motion to Dismiss.

The Panel reviewed Respondent Boschert's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings; the entire case record including testimonies and evidence; and Respondent Boschert's BrokerCheck® Report and exhibits.

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. Claimant's claims are denied in their entirety.
2. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2112870) from registration records maintained by the CRD for Respondent Steven James Boschert (CRD Number 2723574) with the understanding that, pursuant to Notice to Members 04-16, Respondent Steven James Boschert 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 Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

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

The Statement of Claim accused Respondents of making unsuitable recommendations to Claimant for investments in her managed accounts. Evidence adduced at the hearing showed that Respondent Boschert played no role in the management of Claimant’s Managed accounts which were handled by a separate team of Fidelity employees. The Panel notes that Claimant consented to Respondent Boschert’s request for expungement of this matter from his CRD records.

3. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages; 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
Expungement Filing Fee	= \$ 1,575.00

*\*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	= \$ 1,700.00
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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-Hearing Conferences: June 1, 2021	1 session

	November 19, 2021	1 session	
Six (6) hearing sessions @ \$1,125.00/session			= \$ 6,750.00
Hearings:	December 13, 2021	2 sessions	
	December 14, 2021	2 sessions	
	December 15, 2021	2 sessions	
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Total Hearing Session Fees			= \$ 9,000.00

The Panel has assessed \$4,500.00 of the hearing session fees to Claimant.

The Panel has assessed \$1,125.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$3,375.00 of the hearing session fees to Respondent Fidelity Brokerage Services, LLC.

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

**ARBITRATION PANEL**

Martin Mushkin	-	Public Arbitrator, Presiding Chairperson
Charles F. Titterton	-	Public Arbitrator
Howard Alan Grinsberg	-	Public Arbitrator

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.

**Concurring Arbitrators' Signatures**

***Martin Mushkin***

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Martin Mushkin  
Public Arbitrator, Presiding Chairperson

**12/30/2021**

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Signature Date

***Charles F. Titterton***

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Charles F. Titterton  
Public Arbitrator

**12/30/2021**

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

***Howard Alan Grinsberg***

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Howard Alan Grinsberg  
Public Arbitrator

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January 03, 2022

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