

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Nicholas Kevin Barnes

Case Number: 14-00401

vs.

Respondent  
Fidelity Brokerage Services LLC

Hearing Site: Newark, New Jersey

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant Nicholas Kevin Barnes: Adam Weinstein, Esq., and Daniel Gwertzman, Esq., Gana LLP, New York, New York.

For Respondent Fidelity Brokerage Services LLC: Mark D. Knoll, Esq., and Susan George, Esq., Bressler, Amery & Ross, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: February 10, 2014.  
Claimant signed the Submission Agreement: February 10, 2014.

Statement of Answer filed by Respondent on or about: May 23, 2014.  
Respondent signed the Submission Agreement: May 23, 2014.

**CASE SUMMARY**

Claimant asserted the following causes of action: common law negligence, common law misrepresentation, breach of contract, wrongful termination, and failure to supervise.

Unless specifically admitted in its Answer, Respondent 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 the amount of \$1,000,000.00, attorneys' fees, interest, expert fees, forum fees, punitive damages, and such other relief as the Panel deems appropriate.

At the close of the hearing, Claimant requested compensatory damages in the amount of \$685,547.00.

Respondent requested dismissal of the Statement of Claim in its entirety.

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

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

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

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

1. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$400,000.00 plus interest at the rate of 3% per annum from the date of the award until payment.
2. Respondent is liable for and shall pay to Claimant \$240.00 as reimbursement of 80% of the non-refundable filing fee.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim 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 events giving rise to the dispute. Accordingly, as a party, Fidelity Brokerage Services LLC is assessed the following:

Member Surcharge	= \$2,250.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$4,000.00

### **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, that 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: January 20, 2015	1 session

One (1) Pre-hearing session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: July 15, 2014	1 session

Six (6) Hearing sessions @ \$1,200.00/session	= \$7,200.00
Hearing Dates: April 7, 2015	2 sessions
April 8, 2015	2 sessions
April 9, 2015	2 sessions

Total Hearing Session Fees	= \$8,850.00
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1. The Panel has assessed \$1,770.00 of the hearing session fees to Claimant.
2. The Panel has assessed \$7,080.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Robert E. Anderson	-	Public Arbitrator, Presiding Chairperson
Margaret Leggett Tarver	-	Public Arbitrator
Richard V. Adams	-	Non-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**



Robert E. Anderson  
Public Arbitrator, Presiding Chairperson

5/4/15  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Margaret Leggett Tarver  
Public Arbitrator

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

\_\_\_\_\_  
Richard V. Adams  
Non-Public Arbitrator

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

May 7, 2015

\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution office use only)

**ARBITRATION PANEL**

Robert E. Anderson	-	Public Arbitrator, Presiding Chairperson
Margaret Leggett Tarver	-	Public Arbitrator
Richard V. Adams	-	Non-Public Arbitrator

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\_\_\_\_\_  
Robert E. Anderson  
Public Arbitrator, Presiding Chairperson

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

Margaret Leggett Tarver  
Margaret Leggett Tarver  
Public Arbitrator

May 4, 2015  
Signature Date

\_\_\_\_\_  
Richard V. Adams  
Non-Public Arbitrator

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

May 7, 2015

\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution office use only)