

**BEFORE
FINRA DISPUTE RESOLUTION SERVICES**

**JUDITH BARKER, JASON CAYER,
RICHARD BATES, and
MAURA BATES**

Claimants,

vs.

**FIDELITY BROKERAGE SERVICES, LLC
CRD#: 7784**

Respondent.

STATEMENT OF CLAIM

Claimants Judith Barker, Jason Cayer, Richard Bates, and Maura Bates, in accordance with the provisions of the Federal Arbitration Act (“FAA”), 9 U.S.C. §1, *et. seq*, and pursuant to the Rules of the Financial Industry Regulatory Authority (“FINRA”), file this Statement of Claim against Respondent Fidelity Brokerage Services, LLC (“Fidelity” or “Respondent”), on the grounds and facts as detailed below.

INTRODUCTION

This arbitration claim is about a brokerage firm, Fidelity, that repeatedly failed to fulfill its contractual, legal and regulatory duties thereby causing Claimants to suffer massive and avoidable losses in their Fidelity brokerage accounts. As a FINRA registered brokerage firm Fidelity should have a reasonable system in place to protect investors and the markets from fraud, deceit, and other manipulative devices.

Despite its obligations as a FINRA member, Fidelity gave registered investment adviser Chadwick & D’Amato, LLC and its owner and now-barred investment adviser representative Thomas Chadwick (“Chadwick”) free and unfettered reign to manage Claimants’ accounts on its platform. As such, Fidelity provided a safe haven for Chadwick and Chadwick’s misconduct and mismanagement of Claimants’ Fidelity accounts, thereby causing Claimants’ catastrophic losses. Chadwick could not have operated without the assistance and approval of Fidelity, and had

Respondent properly fulfilled all of its supervisory and regulatory duties as a licensed brokerage firm, Claimants would not have suffered their devastating losses.

As set forth in more detail below, the Claimants lost hundreds of thousands of dollars through the reckless trading strategies run by Chadwick on Fidelity's platform. The first trading strategy involved speculative options transactions and the second an extremely risky product called "Credit Suisse X-Links Monthly Pay 2xLeveraged Mortgage REIT Exchange Traded Notes due July 11, 2036" a/k/a "REML." This occurred over a number of years until recently made public by state regulators.

During the relationship between Fidelity, Chadwick & D'Amato, and Claimants, Respondent had a regulatory obligation to know its customers (both Chadwick & D'Amato and Claimants), supervise its business activities such as its advisory platform, supervise the employees who assisted Chadwick & D'Amato, supervise options activities, detect and act upon suspicious, manipulative and/or unusual trading activity in the Claimants accounts, and act with commercial honor. It failed in each of these duties and obligations.

Importantly, Chadwick recently entered into Consent Orders with the New Hampshire Bureau of Securities Regulation and Vermont's Department of Financial Regulation where the state regulators barred him from operating as an investment adviser in connection with his wrongful conduct with the Claimants and other customers. The state regulators found that Chadwick had engaged in dishonest or unethical practices, breached his fiduciary duties, and committed fraud. All of this occurred on Fidelity's platform and would not have been possible but for Fidelity's decision to give Chadwick unfettered access to the markets, their customers (Claimants), and its failure to adhere to its regulatory obligations.

Accordingly, as a direct and proximate result of the misconduct described herein, Fidelity

is liable to Claimants for the investment losses that they collectively incurred in their Fidelity accounts.

PARTIES

Claimant Judith Barker (“Judy”) is a resident of West Lebanon, New Hampshire. Judy is currently 76 years old. Judy suffered approximately \$180,000 in out-of-pocket losses in her account from REML losses due to Fidelity’s actions and failures.

Claimant Jason Cayer is 54 years old, married, and has two children. Jason is a resident of Barnard, Vermont. Jason suffered approximately \$80,000 in REML losses. As detailed later below, Claimant was one of many former customers for whom Chadwick inappropriately logged into the Claimants’ accounts in violation of policies and procedures, industry custom, and FINRA rules/guidance. Chadwick also traded options and invested in Ethereum and Bitcoin for Claimant in his role as an investment adviser while working in conjunction with Fidelity.

Claimants Richard and Maura Bates are married, and are 73 and 68 years old, respectively. They are residents of Enfield, New Hampshire. Richard and Maura suffered hundreds of thousands of dollars in out-of-pocket losses in their account from REML. Chadwick managed Richard’s company’s employee pension plan for several years, and Fidelity’s actions and failures have forced the couple back to work in order to pay our bills, shattering their retirement dreams.

Respondent Fidelity Brokerage Services, LLC (CRD# 7784) is registered with the United States Securities and Exchange Commission (“SEC”) and FINRA as a securities broker-dealer, with headquarters in Smithfield, RI. The firm primarily provides self-directed online brokerage services, and has approximately 850 branch offices and 31,000 registered representatives. Pursuant to FINRA rules, Fidelity is required to arbitrate any disputes with customers, such as Claimants, before FINRA Dispute Resolution Services.

JURISDICTION AND HEARING VENUE

Claimants have properly executed Uniform Submission Agreements in this matter. FINRA has jurisdiction to hear and decide this controversy and, pursuant to FINRA rules, Respondent is bound to arbitrate this matter. Pursuant to FINRA Rule 12213, Claimants request that the arbitration hearing be in Montpelier, Vermont because it is the hearing location closest to most of the Claimants' residences at the time of the events giving rise to the dispute.

FACTUAL BACKGROUND

Beginning in or around 2001, Thomas Chadwick opened his investment advisory firm, Chadwick & D'Amato. The firm was based out of New London, New Hampshire. During all relevant times, Chadwick serviced his clients, many of whom were aging customers or retirees based out of New Hampshire and Vermont.

According to Chadwick & D'Amato's most recently filed Form ADV, Chadwick managed investments for nearly 100 individuals, and the firm's assets under management exceeded \$60,000,000. Chadwick & D'Amato's Form ADV displays Chadwick as the firm's managing member and Chief Compliance Officer. Chadwick's business partner, Anthony James D'Amato, also appears on the firm's Form ADV as a managing member. Chadwick & D'Amato is not currently registered with the Securities and Exchange Commission ("SEC") or with any state. The firm's registration with the SEC and Vermont terminated on December 31, 2021. Claimants were longtime customers of Chadwick prior to the investment adviser's concentration of REML in his customer accounts.

A. Claimants Invest with Chadwick.

Prior to 2019, Chadwick invested most of his clients' assets in an SEC-registered mutual fund called "The Chadwick & D'Amato Fund," (the "C&D Fund") which was managed by

Chadwick and his business partner, Anthony D’Amato. During this time period, Chadwick engaged in a discretionary options trading strategy, essentially gambling with Claimants’ and his customers’ money, leaving the losses to fall squarely at the feet of his customers. Chadwick also recommended and managed cryptocurrency investments for his customers, including Bitcoin and altcoins, such as Ethereum. In 2019, Chadwick & D’Amato announced that it was closing the C&D Fund. As the fund wound down, Chadwick transferred most of his clients’ assets into money market accounts and began looking for new investment opportunities for his clients.

Next, throughout mid-2019 to early 2020, Chadwick invested a substantial portion of his clients’ assets into a complex, leveraged securities product known as “Credit Suisse XLinks Monthly Pay 2xLeveraged Mortgage REIT Exchange Traded Notes due July 11, 2036” also known as “REML.” REML was a senior, unsecured debt security structured as an exchange traded note (“ETN”), that provided a monthly compounded interest of two-times leveraged long exposure to the price return of the FTSE NAREIT All Mortgage Capped Index (“FNMRC”). The FNMRC was comprised of Mortgage Real Estate Investment Trusts (“REITS”). Unlike a traditional REIT, which uses its capital to purchase multiple pieces of real estate, a Mortgage REIT uses its capital to issue mortgage loans to owners of real estate. The FNMRC index measured the performance of tax-qualified U.S. Mortgage REITs with more than 50% of their total assets invested in mortgage loans or mortgage-backed securities.

As a leveraged product, REML was a risky product designed only for those willing to potentially lose their entire investment. As noted in the REML pricing supplement, which accompanied the prospectus and prospectus supplement: “Because the ETNs will be two times leveraged with respect to the Index, the ETNs may benefit from two times any positive, but will be exposed to two times any negative, monthly compounded performance of the Index. . . . You

should not purchase ETNs unless you are willing to risk the loss of up to 100% of your investment.”

The REML “fact sheet” warned that REML was not appropriate for “buy-and-hold” investors and encouraged investors to “regularly monitor” their holdings “to ensure that they remain consistent with their investment strategies.” The REML pricing supplement warned, however, that “[t]he amount of any monthly Coupon Amount is uncertain and could be zero. Therefore, you should not purchase the ETNs if you require fixed or periodic income payments.”

In late 2019 and early 2020, REML typically traded for between \$23 to \$28 per share. In March 2020, the price of REML fell precipitously. On March 2, 2020, REML had a closing price of \$24.40; on March 9, the closing price was \$18.75; and on March 16, the closing price fell to \$8.71. On March 18, 2020, REML reached its lowest value of just \$0.52 and had a closing price of \$1.65. On March 30, 2020, REML closed at \$2.96. After the March 2020 crash, the price of REML slowly climbed, but never fully recovered.

In December 2021, Credit Suisse prematurely called REML at a price of \$5.98 per share. REML ceased trading that same day, which locked in Chadwick’s customer losses in the speculative security, including for the Claimants.

B. Fidelity’s Crucial Role in Providing Chadwick Unfettered Access to Trade Claimants’ Accounts.

Importantly, Claimants and other Chadwick & D’Amato customers were all required to open Fidelity brokerage accounts in order to give Chadwick & D’Amato and Chadwick access to their portfolios and the ability to trade them. Chadwick & D’Amato and Chadwick could not have made a single trade in Claimants’ accounts had Fidelity not given them access to its platform.

Fidelity began conducting business in 1979. Respondent is a multi-billion-dollar business that is one of the largest electronic brokerage firms in the world. Fidelity prides itself on its broker-

dealer functions and its services, especially in light of its focus on self-directed services as a discount broker, including its advisor platform. However, to deliver these services, Fidelity improperly abandoned its legal and regulatory-mandated supervisory role and permitted fraudsters, such as Chadwick, to have unfettered access to innocent investors, such as Claimants.

Fidelity has continuously failed in its role as broker, having been the subject of 145 disclosures, 22 of which were regulatory actions. The allegations in the disclosures include failure to supervise, failure to maintain a supervisory system, negligence, breach of fiduciary duty, breach of contract, account activity manipulation, churning, unauthorized trading, inadequate disclosures, issues of suitability, and misrepresentations and omissions of fact. Fidelity has paid millions in fines, sanctions, and awards since its inception.

In recent years, Fidelity has grown in an unmanageable fashion, causing it to be derelict in its duties to investors, such as Claimants. FINRA AWC 2021071987001 details Fidelity's supervisory deficiencies for its options trading business, an important component relevant for Claimants' case. Specifically, FINRA censured Fidelity and imposed a \$900,000 fine for failing to maintain a reasonable supervisory system for the firm's customer options trading. Specifically, from May 2017 through April 2022, the same time period relevant at issue in this case for Chadwick's management of his customer accounts, Fidelity did not exercise reasonable due diligence before approving customers to trade options. During this period, the firm used an automated, electronic system to screen customers' online applications to trade options, after which a principal at the firm reviewed and then approved or disapproved customer accounts for options trading. Flaws in the firm's system for reviewing options trading applications resulted in customers being approved for options trading who did not satisfy the firm's eligibility criteria or who submitted successive applications with materially different information concerning their finances

and/or investment experience that raised red flags that the level of options trading the customer sought was inappropriate for them. As a result, FINRA found that the firm violated FINRA Rules 3110, 2360, and 2010.

Moreover, Fidelity's advisory account structure, which Claimants were a part of, is particularly problematic. In short, Fidelity has created a platform that allows unscrupulous financial advisors, investment advisors, and unlicensed individuals to defraud Fidelity's customers with impunity. Fidelity had a duty to properly tailor its supervisory systems to closely scrutinize Advisory Client accounts and all persons trading in these accounts, given the numerous complaints and regulatory matters involving "financial advisors," investment advisors and others utilizing Fidelity's Advisory Client account structure. Yet, Fidelity has continuously failed to fulfill its supervisory duties with respect to Advisory Client account clients, including Claimants in this matter.

Fidelity has a substantial financial incentive to permit the frauds that Chadwick and other unscrupulous "financial advisors" have committed in their Advisor Client accounts, as the collection of fees and commissions in these accounts is substantial. Fidelity's failure to properly fulfill its supervisory duties enabled Chadwick and his firm to commit their misconduct and mismanagement of Claimants' Fidelity accounts and ultimately caused Claimants to sustain the substantial losses that they did.

If Fidelity had appropriate supervisory systems in place, tailored to the actual activity taking place on their platform, Chadwick's history would have raised serious "red flags," which would have caused Fidelity to deny Chadwick and his firm access to their platform. Fidelity never should have allowed Chadwick unfettered access to Claimants' accounts. Fidelity either overlooked or did not have the proper system in place to flag advisors like Chadwick. Even a

cursory examination of Chadwick's client account information and Chadwick & D'Amato's purported investment strategy would have uncovered numerous red flags that would have given a reasonable brokerage firm cause for concern. A reasonable brokerage firm properly fulfilling its supervisory duties and operating under the same circumstances, would not have allowed Chadwick access to the platform to prey on the portfolios of its clients and therefore would have prevented all of the substantial losses that Claimants sustained.

C. In Late 2021, Chadwick's Registration Terminated.

In late 2021, Chadwick informed several of his clients that he was ending his business partnership with Anthony D'Amato and starting his own investment advisory firm. He told his clients that he was in the process of registering his new firm. In November 2021, Chadwick formed Chadwick Consulting, a new investment advisory firm with a principal place of business located at 195 Main Street, New London, NH 03257.

In December 2021, Chadwick Consulting submitted an application to register as an investment adviser with the State of Vermont. Chadwick Consulting subsequently withdrew that application in February 2022. On December 31, 2021, Chadwick & D'Amato's Vermont and New Hampshire registrations were terminated. At no point after December 31, 2021, was Chadwick registered as an investment adviser representative in Vermont.

D. Chadwick Continued to Illegally Give Clients Investment Advice in 2022 While Fidelity Turned a Blind Eye.

After Chadwick's Vermont registration ended on December 31, 2021, he met with some of his clients, discussed their accounts, and sent numerous emails to clients that contained investment advice. Specifically, he informed several clients via email that he expected to be registered in the near future and that he intended to resume his investment adviser business as soon as Chadwick Consulting was registered in New Hampshire and Vermont.

In early January 2022, Chadwick sent his clients an email memorandum explaining that Chadwick & D’Amato was closing on December 31, 2021, and indicating that all client accounts would be transferred to Chadwick Consulting on January 3, 2022. He noted that Chadwick Consulting could not be registered until an open regulatory review was completed for Chadwick & D’Amato. Chadwick informed clients that their accounts would enter the New Year in fully updated status and wrote that “no action” was required in the “short term.” In an email to one customer, Chadwick wrote “[w]e can always log into your Fidelity accounts together . . . should anything need to be done in the short-term.” As detailed further below, Chadwick’s pattern of inappropriately accessing customer accounts occurred with many of his customers, including, at a minimum, Claimant Jason Cayer.

In early 2022, Chadwick met with two customers, and gave them advice on investing in cryptocurrencies. He also requested access to their Fidelity accounts. At the time, these two customers were unaware that Chadwick was no longer registered to give them investment advice and they believed that they would be charged eventually for Chadwick’s services.

As of December 31, 2021, Fidelity terminated its relationship with Chadwick and Chadwick & D’Amato and removed them from Fidelity’s custodian platform. At that point, Chadwick and Chadwick Consulting no longer had lawful access to their clients’ retail customer accounts held at Fidelity. Fidelity then sent a letter to Chadwick & D’Amato’s former clients explaining the termination of the relationship and indicating that Chadwick could no longer access or manage the Fidelity Accounts.

It was not until April 2022 that Fidelity informed state securities regulators that a device that Fidelity believed belonged to Chadwick and Chadwick Consulting had accessed nearly 40 of the Fidelity customer Accounts since January 1, 2022 and that he was using the client log-in

credentials to access each account. Specifically, Fidelity determined that the IP address associated with those log-ins matched the IP address for Chadwick & D'Amato's former custody platform. Fidelity further indicated that various securities were purchased in the accounts and that there was a "pattern of trading" conducted in several accounts. As a result, Fidelity indicated to the State of Vermont that it had locked those accounts, forced password and log-in resets, and reassigned accounts numbers for the nearly 40 Fidelity Accounts.

Claimants contend that Fidelity failed, among other ways, in its obligation to supervise its brokerage business, including its design, implementation, and monitoring of its AML system, with regards to failing to detect suspicious activities in connection with Chadwick's handling of customer accounts. Moreover, Fidelity had an obligation to supervise for the presence of forging or falsification of customer signatures and account-log ins. For instance, in FINRA Regulatory Notice 22-18 entitled "FINRA Reminds Firms of Their Obligation to Supervise for Digital Signature Forgery and Falsification" the self-regulatory organization reminded member firms like Fidelity of their duty to supervise for issues relating with digital platforms, including the need to monitor and act upon red flag instances involving IP address locations, discrepancies between the location of the user and the customer's residence, among other issues. Fidelity failed to supervise for these activities, and only detected these matters after responding to investigations by state regulators. Had Fidelity detected Chadwick's improper conduct pursuant to its supervisory duties, Claimants and customer losses could have been lessened or prevented.

CAUSES OF ACTION¹

A. BREACH OF FIDUCIARY DUTY

Respondent Fidelity owed a fiduciary duty to Claimants, including, but not limited to the duty of loyalty, the duty to deal fairly and honestly with Claimants and the duty to act in the utmost good faith and in the best interests of Claimants.

It is well-settled that the fiduciary responsibilities of a broker-dealer include:

- The duty to recommend a security only after studying it sufficiently to become informed as to its nature, price and financial prognosis;
- The duty to carry out the customer's orders promptly and in a manner best suited to serve the customer's interests;
- The duty to inform the customer of the risks involved in purchasing or selling a particular security;
- The duty to refrain from self-dealing;
- The duty not to misrepresent any material fact or omit to disclose any material fact; and
- The duty to transact business only after receiving authorization from the customer.

As detailed above, Respondent's conduct in continuously misrepresenting and omitting material facts concerning the investments in Claimants' accounts and its own conduct, duties and capabilities; and generally placing its own self-interest above that of Claimants violated the trust and confidence that Claimants placed in Respondent, thereby breaching the fiduciary duty that Respondent Fidelity owed to Claimants. Further, Fidelity failed to adequately inform Claimants

¹ In accordance with the legal principle of *respondeat superior*, Fidelity is vicariously liable for the torts of its employees and agents, including but not limited to Chadwick and Chadwick & D'Amato, committed within the scope or implied scope of their employment and authority. As such, references to Fidelity in this section include all actions by its employees and agents as well.

of the risks of their investments and acted in its own interests, rather than in Claimants' interest.

As a proximate result of Fidelity's breach of fiduciary duty, individually and through Chadwick and Chadwick & D'Amato, Claimants were damaged in an amount to be determined at hearing.

B. NEGLIGENCE

Fidelity failed to exercise the degree of care as similarly situated broker-dealers would with regard to the (i) approval and maintenance of Chadwick and Chadwick & D'Amato as an adviser on the Fidelity platform; (ii) its supervision and review of Chadwick & D'Amato and Chadwick and his activity while he managed the Claimants accounts; and (iii); having a reasonable system of supervision designed to prevent and detect violations of securities laws. Moreover, Fidelity was required to follow all applicable FINRA Rules, which inform the standard of care which it must always meet and failed to do so.

Fidelity failed to exercise the same degree of care that an ordinary, reasonably prudent broker-dealer would exercise under like circumstances and failed to act in a manner reasonably required and with sufficient care to prevent damage to Claimants. But for the negligent conduct of Fidelity, Claimants would have not suffered such significant investment losses. The conduct of Fidelity breached the applicable standard of care.² To the extent that Fidelity negligently violated and/or disregarded its own internal compliance guidelines or FINRA regulations, it is liable to Claimants for their losses resulting from such negligence.³

2. In *Mihara*, the court addressed the issue of whether the lower court properly admitted testimony regarding the broker's adherence to the NYSE and NASD rules. 619 F.2d at 824. The *Mihara* court stated that NYSE Rule 405, "has been recognized as the standard to which all brokers using the exchange must be held." *Id.* The *Mihara* court concluded that both SRO and exchange rules are the professional standard that brokers must abide by in her dealings with customers. *Id.*

3. In *Thropp v. Bache Halsey Stuart Shields, Inc.*, 650 F.2d 817 (6th Cir. 1981), the court stated that, "when a defendant has disregarded rules that it has established to govern conduct of its own employees, evidence of those rules may be

As a direct and proximate result of the negligent conduct of Fidelity as herein alleged, Claimants were damaged in an amount to be determined at the arbitration hearing in this matter.

C. NEGLIGENT MISREPRESENTATION

Fidelity made numerous representations and omissions of material fact to Claimants regarding the true nature of the investments complained of and in regards to Fidelity's capabilities, duties and responsibilities as a licensed and regulated brokerage firm. These material representations and omissions were false, deceptive and misleading. Fidelity was negligent and failed to exercise ordinary care in making these misrepresentations and omissions.

Claimants relied upon these representations and omissions in deciding to invest with Chadwick and Fidelity. As a result of Fidelity's misrepresentations and omissions, Claimants have suffered substantial damages in an amount to be proven at hearing.

D. BREACH OF CONTRACT

Respondent breached the terms and conditions of its agreements and contracts with Claimants, written and oral, express and implied, and is liable to Claimants for the damages caused by all such breaches. As a licensed brokerage firm, Respondent contracted with regulators, including FINRA, to follow the regulations set forth to protect the public, including Claimants. However, Fidelity breached those agreements causing harm to Claimants, the intended beneficiaries of such agreements. Respondent was bound to comply with FINRA rules and regulations, including, but not limited to, FINRA Rules 2010, 2090 and 3110 and failed to do so.

Fidelity breached its contract with Claimants by violating Rule 2110, now FINRA Rule 2010, which mandates that broker-dealers, in the conduct of their business, "observe high

used against the defendant to establish the correct standard of care." *Id.* at 619. The *Throop* court further stated that, "the content of such rules may also indicate knowledge of the risks involved and the precautions that may be necessary to prevent the risks." *Id.*

standards of commercial honor and just and equitable principles of trade.” NASD Rule 2110.

FINRA has stated that broker-dealers:

have an obligation of fair dealing in actions under the general anti-fraud provisions of the federal securities laws. The Commission bases this obligation on the principle that when a securities dealer opens his business he is, in effect, representing that he will deal fairly with the public ... Usually, any breach of the obligation of fair dealing as determined by the Commission under the anti-fraud provisions of the securities laws could be considered a violation of the Association’s Rules.

IM-2310-2(d) (Fair Dealing with Customers).

Securities industry regulators have warned that violations by broker-dealers of SEC or NASD rules or regulations are inconsistent with the just and equitable principles of trade and have found that such violations also constitute violations of NASD Conduct Rule 2110. *See Alvin W. Gebhart*, Exch. Act Rel. No. 53136, 2006 SEC LEXIS 93, at *54 n.75 (2006), *rev’d and remanded in part on other grounds sub. nom Gebhart v. SEC*, 2007 U.S. App. LEXIS 27183 (9th Cir. 2007).

Ignoring FINRA and SEC rules, Respondent allowed for Claimants’ portfolios to be traded in a way incompatible with Claimants’ wants and needs for their portfolios’ future. Respondent failed to review the suitability of the trading strategies utilized in Claimants’ accounts by Chadwick and Chadwick & D’Amato and Fidelity allowed for Chadwick to operate an obviously risky strategy that would almost certainly result in loss for the Claimants.

Fidelity has long provided a haven for a multitude of brokers and investment advisers (both unregistered and registered) to engage in highly speculative trading strategies underneath its umbrella – which would not otherwise be permitted at legitimate firms. As part of its offering to investment adviser clients like Chadwick & D’Amato and Chadwick, Fidelity allows advisers to use their platform and tools to trade client accounts.

Despite this precarious arrangement, brokerage firms like Fidelity still have a duty to “know the customer” under FINRA Rule 2090, and when failing to properly apply Rule 2090,

further breach the duties owed to Claimants, agreed upon by contract. Specifically, as FINRA requires under Rule 2090, regarding the opening and maintenance of every account, brokerage firms like Fidelity must know the “essential facts” concerning every customer. These “essential facts” are those required to (a) effectively service the customer’s account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations, and rules.” Under FINRA Rule 2360 (which applies to options transactions), not only must Fidelity know its customers, but it must affirmatively “exercise diligence” in understanding these essential facts.

It is also important to note that the “know-your-customer” obligation for brokerage firms like Fidelity arises at the beginning of the customer-broker relationship and is not dependent on whether the brokerage firm has made a recommendation. As with a customer’s investment profile under the suitability rule, brokerage firms like Fidelity should verify the “essential facts” about a customer at intervals reasonably calculated to prevent and detect any mishandling of a customer’s account.

In this matter, Fidelity failed to properly vet Chadwick and Chadwick & D’Amato failed to properly vet the “trading strategies at issue,” and failed to properly obtain the correct “know your customer” information from Claimants. A reasonably prudent brokerage firm under the same or similar circumstances would have learned the essential facts under FINRA Rule 2090 – and would have not opened the accounts, nor allowed Chadwick’s speculative trading to continue unabated, given what Fidelity knew about Chadwick and the risks of his trading strategy.

As a direct and proximate result of Respondent’s conduct, Claimants have been damaged in an amount to be determined at the hearing of this case and are entitled to compensation.

E. FAILURE TO SUPERVISE

As an SEC-registered brokerage firm and FINRA member, Fidelity has clear-cut supervisory and regulatory duties that it consistently tries to disclaim and/or confuse arbitration panels into mistakenly believing do not apply to it.

FINRA Rule 3110 requires all member firms, such as Respondent, have a supervisory system in place “reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.” Fidelity was in the business of establishing and servicing Advisor Client accounts, such as the ones maintained by Claimants here, whereby individual clients permitted investment advisors to trade their brokerage accounts on a discretionary basis. Accordingly, pursuant to basic FINRA rules and its duties to its individual customers, Fidelity was required to supervise these accounts and to have an appropriate supervisory system in place to supervise the activities of the Investment Advisors trading Fidelity customers’ accounts on Fidelity’s platform. Fidelity completely and utterly failed to fulfil these duties.

Fidelity’s failure to supervise lies squarely at the feet of its supervisory and managerial personnel for the supervision of the business lines at issue and those responsible for designing and implementing Fidelity’s failed supervisory systems. As a direct and proximate result of Respondent’s conduct, Claimants have been damaged in an amount to be determined at the hearing of this case.

F. AIDING AND ABETTING FRAUD

Fidelity knew that a fraud was being committed by Chadwick on Claimants. Not only did Fidelity not stop Chadwick or alert the appropriate regulatory agencies, it also facilitated Chadwick’s fraud by giving him the means and opportunity to perpetrate the Fraud. Fidelity did

this by granting Chadwick access to the Fidelity platform and granting him near-carte blanche to handle Claimants' portfolios. Fidelity's conduct was a substantial factor in causing harm to Claimants. Without Fidelity, Chadwick could not have accessed Claimants' funds.

As a direct and proximate result of Respondent's conduct, Claimants have been damaged in an amount to be determined at the hearing of this case.

G. AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

Fidelity knew or should have known that Chadwick was breaching his fiduciary duty to his clients through his reckless trading activity. Chadwick could not have conducted his unlawful conduct without access to the securities markets, and even more so considering Chadwick was an approved investment adviser vetted to be on Fidelity's adviser platform. Fidelity's conduct was a substantial factor in causing harm to Claimants. Without Fidelity, Chadwick could not have accessed Claimants' funds. As a direct and proximate result of Respondent's conduct, Claimants have been damaged in an amount to be determined at the hearing of this case.

H. VIOLATIONS OF FEDERAL AND STATE LAWS

Respondent Fidelity's wrongful conduct, as alleged above, constituted the violation of the federal securities law including, but not limited to, Sections 10 and 20 of the Securities and Exchange Act of 1934. Additionally, the rules of the self-regulatory organizations, such as the FINRA and NYSE, "set out general standards of industry conduct" and are evidence of the standard of care by which broker-dealers must abide in dealing with their clients. Fidelity, as a member of FINRA, was subject to the Conduct Rules of FINRA and, as such, was obligated to provide services to Claimants in accordance with these rules and was also contractually obligated to abide by industry rules, standards and practices.

By its conduct outlined above, Fidelity failed to abide by many of these rules including, but not limited to, FINRA Rule 2010 (members shall observe high standards of commercial honor and just and equitable principles of trade); FINRA Rule 2090 (know your customer); FINRA Rule 3110 (supervision); and NYSE Rule 2010 (members, in the conduct of [their] business, shall observe high standards of commercial honor and just and equitable principles of trade), among other FINRA Rules.

Moreover, both Vermont and New Hampshire have enacted state securities laws that are designed to prevent their citizens from being victimized by the entities and persons handling their money and investments. Fidelity violated the standards set forth by both states.

As a result of Respondent Fidelity's violation of the federal securities laws, state laws, and the rules and regulations of both FINRA, Claimants have suffered damages in an amount determined at hearing in this matter.

RELIEF REQUESTED

As a result of the course of conduct outlined above, Respondent is liable to Claimants as follows:

- a) For all losses of principal suffered by Claimants;
- b) Compensatory damages;
- c) Punitive damages;
- d) For rescission and full refund of all of Claimants' purchases made in their Fidelity accounts, together with statutory interest, expenses and fees;
- e) Disgorgement of any commission revenue derived from the misconduct described herein;
- f) Emotional damages;
- g) For interest, both pre-judgment and post-judgment;
- h) An award of attorneys' fees, costs and other expenses; and
- i) All such other relief as is just and equitable.

Dated: January 29, 2025

Respectfully submitted,

(s) Jason J. Kane

Jason J. Kane

PEIFFER WOLF CARR KANE CONWAY &
WISE, LLP

95 Allens Creek Road, Bldg. 1, Ste. 1150,

Rochester, NY 14618

T (585) 310-5140

F (585) 397-3745

jkane@peifferwolf.com