

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Arbitration Matter Between	}	Case No. 88-02629
GAMBLERS' FIVE		
Claimant		
v.		
FIDELITY BROKERAGE SERVICES, INC.		
Respondent		

CASE SUMMARY

Claimant placed a sell order for 5,000 shares of CXR that had experienced a reverse split of one for twenty-five. Respondent actually sold 5,000 shares, therefore creating a short sale in Claimant's account. Respondents retained the proceeds of other sales to cover the short sale. Claimants allege that Respondents negligently failed to execute the sale consistent with the reverse split and negligently caused the short sale and debit in the Claimant's account.

Respondents replied that a discount broker, they accepted a sell order for 5,000 shares of CXR, that the Claimant held the securities at the time that the order was placed and therefore Claimant was under a duty to inform Respondent of any reverse split and the status of the stock. Respondent mailed an open order confirmation prior to the execution. Respondent alleges that had Claimant reviewed and timely reacted to the information provided, the order could have been changed or cancelled prior to the execution. Additionally, Respondent alleges that the sale confirmation was marked "with due bills" indicating a debit balance. Respondent alleges that it did not act improperly.

RELIEF REQUESTED

Claimants request actual damages in the amount of \$4,256.86, exemplary damages, interest, costs and attorney's fees. Respondent requests dismissal of the action.

AWARD


On July 13, 1989 in Denver, Colorado, in a hearing lasting one session, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant Gamblers' Five by Robert C. McGrath on October 30, 1988 and by Jeffrey R. Larson on behalf of Respondent Fidelity Brokerage Services, Inc. on March 13, 1989.

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

1. The claim shall be and is hereby dismissed in its entirety;
2. The parties shall each bear their own costs and expenses including any attorney's fees incurred in this matter; and
3. Pursuant to Section 43(b) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain, as forum fees, the \$100.00 filing fee initially deposited with the NASD by the Claimant.

Dated: 7-22-89

Concurring Arbitrator


William D. Scheid, Esq.

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Date served: July 31, 1989