

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

James Curtis Beachum II

Claimant

vs.

Fidelity Brokerage, Inc
Anthony Messina

Respondents

AWARD
#89-02349

CASE SUMMARY

Claimant James Curtis Beachum, II (hereinafter "Claimant") alleged that Respondents Fidelity Brokerage, Inc. and Anthony Messina (hereinafter "Respondents") negligently handled Claimant's account held with Respondent and delayed the executing of a trade placed by the Claimant.

Respondents denied Claimant's allegations. Respondent Fidelity Brokerage counterclaimed for the debit balance that remains due and owing in Claimant's account as well as costs and attorneys' fees expensed by Respondent Fidelity Brokerage in collecting the debit balance. Claimant has not responded to Respondent Fidelity Brokerage's counterclaim.

RELIEF REQUESTED

Claimant requested damages in the amount of \$10,000.00 for Claimant's lost time, efforts and physical and emotional distress.

Respondents Fidelity Brokerage requested that Claimant's claim be dismissed in its entirety. Respondent requested damages on its counterclaim for the debit balance of \$1,324.20 which remains due and owing in Claimant's account. Respondent also requested reasonable costs and attorneys fees as provided in Fidelity Brokerage Services, Inc. New Account application agreement signed by the Claimant. Respondent requested damages for attorneys fees and costs in the amount of \$4000.00.

Claimant did not reply to the counterclaim.

AWARD

On July 10, 1990, the undersigned arbitrator heard the controversy between the parties as set forth in submission to arbitration as signed by the Claimant on August 7, 1989 and by Respondent Fidelity Brokerage Services, Inc. on November 10, 1989 and by Respondent Anthony Messina on April 16, 1990. The hearing was held in Dearborn, Michigan and consisted of one hearing session. The Claimant did submit his claim and on February 2, 1990 had requested a hearing, but did not attend the hearing. Claimant was sent notice of the

hearing on May 3, 1990 and again on May 23, 1990. The presiding arbitrator, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. That Claimant's claim is denied in its entirety.
2. That Claimant is hereby liable to Respondent Fidelity Brokerage Services, Inc. in the amount of One Thousand Three Hundred Twenty-Four and 20/100 Dollars (\$1,324.20) plus seven percent simple interest per annum from April 24, 1989 to the date the award is paid.
3. That pursuant to Section 6 of the Fidelity Brokerage Services, Inc. New Account Agreement signed by the Claimant that is liable to Respondent Fidelity Brokerage for costs and attorneys fees in the amount of \$4,000.00; no interest is awarded on this amount.
4. Pursuant to Section 43 of the Code of Arbitration Procedure forum fees are assessed against the Claimant in the amount of \$200.00 because Claimant did not submit a filing fee in this matter, this amount shall be made payable to the NASD, Inc. through its staff counsel.

PRESIDING ARBITRATOR

/s/

Verne C. Hampton II, Esq.

Dated: July 27, 1990