

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Peter M. de Bakker

90-00652

Name of Respondent(s)

Fidelity Investments

CASE SUMMARY

Claimant alleged that the Respondent did not invest his IRA funds as he instructed and did not correct the situation for him after giving further instructions to do so. Respondent maintained that the Claimant failed to follow the correct instructions in establishing his investment and failed to timely react to non-receipt of transaction confirmations.

RELIEF REQUESTED

Claimant requested damages of \$3,713.00. Respondent requested that the claim of the Claimant be dismissed.

AWARD

On November 27, 1990 in Boston, Massachusetts, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant Peter M. de Bakker on March 30, 1990 and signed by the Respondent Fidelity Investments on April 26, 1990. The initial Statement of Claim was filed on March 5, 1990. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of all issues submitted for determination as follows:

(1) Respondent Fidelity Investments is liable and shall pay to the Claimant Peter M. de Bakker the sum of Eight Hundred Thirteen Dollars and Fifty Six Cents (\$813.56).

(2) The parties shall each bear their respective costs including attorneys fees.

(3) Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$100.00 filing fee previously deposited by the Claimant as costs of the one hearing session conducted in this matter.

Arbitrator(s) Signature


Cornelius J. McAuliffe, Esq.

Dated: February 6, 1991

REPORT OF THE ARBITRATOR

In the Matter of the Arbitration Between

Peter M. de Baldcar


Claimant

vs.

#90-00652

Fidelity Investments

The Respondents accepted the Claimant's money and, despite the terms of its application form, made an inadequate attempt to clarify the Claimant's incomplete order. However, the Claimant failed to mitigate his losses once he learned of them on April 29, 1989. Consequently, the Respondent's liability is measured by the difference in purchase price in zero coupons between early April and a reasonable time following Claimant's discovery (\$716.00 as of May 8th) plus the difference in interest rates between zero coupons and the cash reserves fund over that 35 day period (approximately $9.4\% - 8\% = 1.4\%$; therefore, $\$4,528.43 \times .014 \times 35/365 = \6.08), for a liability of \$722.08 plus ~~8% interest on that amount~~ since then ($\$722.08 \times .08 \times 19/12$ months = \$91.48), that is, a Total Liability of \$813.56.


Cornelius McLaughlin, Esq.
Arbitrator

Dated: February 6, 1991