

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Richard Nabinger :

Claimant :

VS. :

First Fidelity Capital Corporation :

John Piscopo :

Randall Gudme :

Respondents :

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CASE

CASE SUMMARY

Pro Se Claimant, Richard Nabinger, in a claim filed with the National Association of Securities Dealers, Inc. on October 1, 1990, alleged that Respondent John Piscopo while an agent at First Fidelity Capital Corporation, New York, NY, failed to execute a sell order for 5,000 shares of Grudge Music Group. He continues that Randall Gudme, his broker in Michigan, tried to intercede on his behalf but when the sell order remained unexecuted, Claimant requested that the stock be sent to him. Claimant states that one month later Mr. Gudme filed for a stock transfer which resulted in receipt of only 4,931 shares of stock.

Respondent, John Piscopo by his attorney, Jeffrey S. Amerman of Kelley Drye & Warren, New York, NY, maintained that he informed Claimant at the time the sell order for Grudge Music Group was placed that the bid price was \$2 1/32 and that there would be a commission charged on the sale. He states that Claimant requested that his stock be sold at the asking price of \$2 1/16 and when advised that this could not be done, Claimant cancelled the sell order. Respondent affirms that Mr. Nabinger never asked him to send him the stock certificate and that Mr. Gudme eventually transferred Claimant's account to Roney & Co. He replies that Mr. Nabinger only had 4,931 shares of Grudge Music stock because 69 shares had been sold to cover a debit balance in the account arising from the failure to pay for 2000 shares of Grudge Music stock purchased previously.

John Piscopo issued a Third-Party Claim against Randall Gudme for failing to timely transfer Claimant's account before the price of the stock declined on June 20, 1990.

Third Party Respondent Randall Gudme, by his attorney Raymond W. Henney, Honigman Miller Schwartz and Cohn, Detroit, MI, maintained that Mr. Piscopo wrongly assumes that Mr. Gudme had the authorization to transfer Claimant's account on or about May 10, 1990 and that this was not the case. He states that, as Claimant states, Mr. Piscopo failed and refused to execute the sell order and is responsible for the entire loss.

~~Respondent~~ First Fidelity Capital Corporation, Ted L. [REDACTED] party designated for service, failed to answer the Statement of Claim sent on January 15, 1991. The Claim was reserved on Mr. Rubin by certified mail on July 3, 1991 and returned, after three attempts at service, marked "unclaimed". The Statement of Claim was again served on Mr. Rubin on behalf of First Fidelity Capital Corporation by regular mail on July 30, 1991 and not returned. First Fidelity Capital Corporation failed to Answer the Claim.

Randall Gudme supplemented his answer with a certified copy of the records of Michigan Department of Commerce regarding Mr. Piscopo's registration in Michigan.

John Piscopo submitted an affidavit in rebuttal.

RELIEF REQUESTED

Claimant requests Nine Thousand Seventy-Nine Dollars and Seventy-Five Cents (\$9,079.75) in damages.

Respondent John Piscopo in accordance with the common law principles of indemnification and contribution issues a Third Party indemnification claim against Randall Gudme for any award rendered plus costs, expenses and attorney's fees if his request for complete dismissal of the claim against him is not upheld.

Third Party Respondent Randall Gudme requests dismissal of the Third Party Claim, costs, expenses and attorney's fees.

AWARD

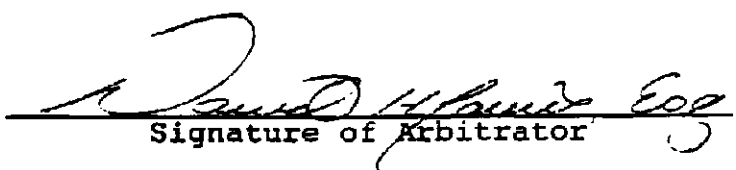
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, David Jarvis, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 15, 1990 and by John Piscopo on April 26, 1991, and Randall Gudme on June 17, 1991, but not by First Fidelity Capital Corporation as required by Section 13(d) of the Code of Arbitration Procedure.

And, that the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. That Respondent John Piscopo's third party claim against Randall Gudme be, and hereby is, ~~dismissed~~.
2. ~~That~~ Third Party Respondent Randall Gudme's requests for costs and expenses be, and hereby are, denied.
3. That Respondents First Fidelity Capital Corporation and John Piscopo are jointly and severally liable and shall pay to the Claimant Richard Nabinger the sum of Seven Thousand Five Hundred Forty-Four Dollars and Forty-Three Cents (\$7,544.43).
4. The parties shall bear their respective costs including attorney's fees.
5. The One Hundred Fifty Dollars and No Cents (\$150.00) filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. and is assessed jointly and severally against First Fidelity Capital Corporation and John Piscopo who shall pay One Hundred Fifty Dollars and No Cents (\$150.00) to Richard Nabinger.

AFFIRMATION

I, DAVID JARVIS, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Signature of Arbitrator

DATED: 9/19/91