

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)  
Michael J. Connolly

91-00768

Name of Respondent(s)  
Fidelity Brokerage Services, Inc.  
Fidelity Investments

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REPRESENTATION

For Claimant: Stephen M. Vernon, Esq., Knapp & Vernon, 525 University Avenue, Suite 702, Palo Alto, CA 94301

For Respondent: Bruce W. Belding, Esq., Graham & James, One Maritime Plaza, Third Floor, San Francisco, CA 94111

CASE INFORMATION

Statement of Claim filed: March 11, 1991

Claimant's Submission Agreement signed on: May 6, 1991

Statement of Answer filed by Respondents on: June 21, 1991

Respondent's Submission Agreement signed on: June 13, 1991

HEARING INFORMATION

Prehearing Conference(s) Date(s)/Sessions (in parentheses): January 24, 1992 (1)

Hearing Date(s)/Sessions (in parentheses): December 5, 1991 (2), December 6, 1991 (2), January 29, 1992 (1), and January 30, 1992 (2)

Hearing Location: San Francisco, California

### CASE SUMMARY

Claimant alleged: Misrepresentation and lack of disclosure or warning in the use of respondents' electronic trading service in conducting an options transaction. Misrepresentations included current market information, warnings and limits on trading, cash availability of trade value. Lack of disclosure included the differences between a live broker and the electronic trading service. Claimant also alleged, under the same set of facts, breach of fiduciary obligations, violation of licensure laws, fraud, securities law violations, defects in the system, oppressive subsequent conduct conversion, breach of contract, violation of the Racketeer Influenced and Corrupt Organization Act (RICO) and emotional distress.

Respondents denied liability and each and every material allegation in claimant's Statement of Claim and alleged that claimant was an educated investor, interested in growth and speculation and controlling and directing his own securities and options trading. Respondents also alleged that claimant's losses were a result of market activity and affirmative defenses including assumption of risk, estoppel, waiver, lack of causation and failure to mitigate damages.

### RELIEF REQUESTED

Claimant requested:

That respondents restore claimant's portfolio to its original condition, including subsequent dividends, or to pay him for the following:

1. \$106,767.00 in instant out of pocket losses;
2. \$1,515.35 in commissions on ostensible margin calls that followed;
3. Income of \$36,560.91 per year, (based on historical return) the net annual yield on the \$151,534.85 liquidated on October 17 and 26, 1989 to satisfy those calls;
4. About \$3,500.00 per year in portfolio losses on subsequent liquidation to raise cash;
5. Compensatory damages according to proof;
6. Treble damages;
7. Interest;
8. Costs; and
9. Legal fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims are dismissed.
2. The claim for treble damages is dismissed.
3. The parties shall each bear their respective costs including attorneys' fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall refund the \$750.00 filing fee previously deposited by the claimant. Forum fees assessed against: Respondents in the amount of \$5,550.00, calculated by multiplying number of regular hearing sessions times the hearing deposit and adding \$300.00 for the one prehearing session (i.e., 7 X \$750.00 = \$ 5,250.00 + \$300.00 = \$5,550.00.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

<u>Name</u>	<u>Public/Industry</u>
William Zierring, Esq.	Public
Nancy Butt, Esq.	Public
Anne Hennegar	Public

Concurring Arbitrators' Signature

William Zierring

DATE SERVED: 02/19/92