

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

 In the Matter of the Arbitration Between :

Robert W. & Pamela E. Hanson :

Claimants :

CASE #91-00851
 AWARD

vs. :

First Fidelity Capital Corp. :

Robert Catoggio :

Otra Clearing Corp. :

Respondents :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 15, 1991, Claimants, Robert W. & Pamela E. Hanson, who appeared Pro Se, alleged that Respondents, First Fidelity Capital Corp., through it's registered representative, Robert Catoggio, solicited the Claimants' purchase of Resource Network International stock, and that this stock was worthless just a few days later. The Claimants further alleged that Otra Clearing House finally informed them about the worthless stock after they were unable to contact First Fidelity Capital Corp. and that Otra Clearing Corp. failed to follow their instructions to close their account when it was transferred to them and instead used aggressive tactics in trying to collect account maintenance fees. The Claimants believe that Otra Clearing Corp. has assumed the debts of First Fidelity Capital Corp. and should be held liable for their actions.

Respondent, Otra Clearing Corp., through it's in-house counsel, Scott G. Monson, maintained that as First Fidelity Capital Corp.'s clearing broker, it was required to continue maintenance on the Claimant's account once First Fidelity Capital Corp. ceased its business operations and made no arrangements to transfer the account to another firm, and that it did not act as Claimants' broker. Otra Clearing Corp. further maintained that it was unable to close the account because a debit balance existed, and that since the Hansons did not take action to close the account, the maintenance fee was assessed. Otra Clearing Corp. also maintained that it did not take over First Fidelity's accounts, nor did it act in any way contrary to normal business practice or outside of its contractual commitments, and should, therefore be dismissed.

Respondent, Robert Catoggio, through his counsel, Darren Lampert, Esq. of Lampert & Lampert, New York, NY maintained that the stock was not worthless, but that it was not available, and that the Claimants reviewed materials he forwarded to them prior to the purchase. Respondent, Catoggio maintained that he is not responsible for the Claimants' losses.

Respondent, First Fidelity Capital Corp. failed to file an answer to the Statement of Claim.

RELIEF REQUESTED

Claimants, Robert W. & Pamela E. Hanson requested \$3,760.00 in actual damages plus \$5,000.00 in punitive damages.

Respondent, Otra Clearing Corp. requested they be dismissed from this proceeding and be awarded their costs.

Respondent, Robert Catoggio requested the claims of the Claimants be dismissed.

Respondent, First Fidelity Capital Corp. failed to file an Answer to the Statement of Claim.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Glenn K. Siedenfeld, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on March 2, 1991 and by the Respondent, Otra Clearing Corp. on November 17, 1991, but not signed by Respondents, Robert Catoggio or First Fidelity Capital Corp. as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

1. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent, First Fidelity Capital Corp. was served a copy of the Statement of Claim by certified mail and given an opportunity to respond, which it failed to do. Service was effected as evidenced by the return receipt card dated December 17, 1991. Notification of the arbitrator's identity was also effected as evidenced by the return receipt card dated March 5, 1992. Respondent, First Fidelity Capital Corp. did not file an answer to the Statement of Claim.

2. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent, First Fidelity Capital Corp. was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

And, 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. Respondents, First Fidelity Capital Corp. and Robert Catoggio are jointly and severally liable and shall pay to Claimants, Robert W. & Pamela E. Hanson \$3,760.00 in actual damages.
2. The claims against Respondent, Otrra Clearing Corp. are dismissed in their entirety.
3. The Claimant's request for punitive damages is denied.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondents, First Fidelity Capital Corp. and Robert Catoggio shall pay \$150.00 to the Claimants as reimbursement.

AFFIRMATION

I, ~~GLENN~~ K. SIEDENFELD, 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

DATE OF DECISION: June 24, 1992