

N.A.S.D. ~~AWARD~~

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Jay Kopf
George Levien

91-01747 consolidated
w/91-01825

Name of Respondents

Otra Securities Group Inc.
First Fidelity Capital Corporation
Ted Rubin

REPRESENTATION

Claimants Jay Kopf and George Levien ("Claimants") were represented by Jacob Zamansky, Esq. of Hinckley & Silbert, P.C.

Respondent Otra Securities Group, Inc. ("Otra") was represented by Scott Monson, Esq. of Otra Securities Group, Inc.

Ted Rubin ("Rubin") and First Fidelity Capital Corporation ("First") did not appear.

CASE INFORMATION

Statement of Claim filed by Claimant Jay Kopf on: June 6, 1991.

Claimant Jay Kopf's Submission Agreement signed on: June 6, 1991.

Statement of Claim filed by George Levien on: June 11, 1991.

Respondent George Levien's Submission Agreement signed on: August 7, 1991.

Statement of Answer filed by Respondent Otra Securities Group, Inc. to Claimant Jay Kopf's Statement of Claim on: August 9, 1991.

Statement of Answer filed by Respondent Otra Securities Group, Inc. to Claimant George Levien's Statement of Claim on: August 9, 1991.

Statement of Answer filed by Respondent Ted Rubin to Claimant Jay Kopf's Statement of Claim on: August 8, 1991.

Statement of Answer filed by Respondent Ted Rubin to Claimant George Levien's Statement of Claim on: August 8, 1991.

Respondent Ted Rubin's Submission Agreement signed on: August 7, 1991.

Page 2.

Award 91-01747 & 91-01825

Respondent Otra Securities Group, Inc.'s Submission Agreement signed on: August 8, 1991.

Notice of Motion to Amend Statement of Claim and Amended Statement of Claim of Jay Kopf and George Levien filed on: March 25, 1992.

Amended Response of Otra Securities Group, Inc. to Amended Statement of Claim filed on: April 29, 1992.

Respondent Ted Rubin's Response to Amended Statement of Claim filed on: April 22, 1992.

Respondent First Fidelity Capital Corporation did not file an answer as required pursuant to Section 25 of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Dates/Sessions: June 2, 1992, two sessions
June 3, 1992, two sessions

Hearing Location: NASD offices located in New York City, New York.

CASE SUMMARY

Claimants alleged that they opened securities trading accounts at Respondent First Fidelity, pursuant to which Respondent Ted Rubin was to buy and sell securities on Claimants' behalf on a discretionary basis. Claimants further alleged Respondent First Fidelity Capital Corporation underwrote an initial public offering for Resource Network International, Inc. and Respondent Rubin recommended to Claimants to purchase shares of Resource, and in the exercise of his discretion under the discretionary account on Claimants' behalf Respondent Rubin purchased shares. Claimants further alleged they instructed Respondent Rubin and Fidelity to sell their shares and Respondent Rubin through Respondent Fidelity through Respondent Otra, placed a "sell" order on behalf of Claimants, which Otra executed but Respondent Otra, without authorization of Claimants, Respondent Rubin or Fidelity, entered a buy order of the same shares. Claimants further alleged that Respondent Otra by purporting to reverse the trade, engaged in deceptive practice which violate NASD Rules of Fair Practice, constitutes fraud and that Respondents Fidelity and Rubin violated NASD Rules of Fair Practice, the Securities Exchange Act of 1934 and various SEC Rules, and breached their fiduciary duties owed to Claimants.

Respondent Otra maintained that on or about June 18, 1990, Respondent First Fidelity entered a trade in Claimants' account to sell shares of Resource Network International at \$2 per share and on June 19 the sale of this stock was cancelled for compliance review pursuant to the "Fully Disclosed Correspondent Agreement". Respondent Otra further maintained that this trade had been entered at an arbitrary and highly inflated price and the trade was potentially detrimental to Respondent Otra. Respondent Otra maintained it

had no responsibilities or obligations to investigate the validity, authorization or suitability of any trade placed on Claimants behalf by Fidelity. Respondent Ted Rubin maintained that the cause of action failed to allege facts showing the cause of action is timely under the applicable statute of limitations.

RELIEF REQUESTED

Claimant Jay Kopf requested:

- 1) compensatory damages of \$26,000 with interest;
- 2) punitive damages;
- 3) attorneys fees and costs.

Claimant Levien requested:

- 1) compensatory damages of \$80,000 with interest;
- 2) punitive damages;
- 3) attorneys fees and costs.

Respondent Otra requested all claims be dismissed and Claimants reimburse Otra its costs, expenses and reasonable attorneys fees.

Respondent Ted Rubin requested all claims be dismissed.

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. The claims by Claimants' against Respondent Otra Clearing be and hereby are dismissed in their entirety.
2. Claimants' request for punitive damages be and hereby is denied.
3. The counterclaims by Respondent Otra Clearing against Claimants be and hereby are dismissed in their entirety.
4. The claims by Claimants against Respondents Ted Rubin and First Fidelity Capital Corporation cannot be ruled upon because they are in bankruptcy.
5. The parties shall each bear their respective costs.

Page 4.

Award #91-01747 & 91-01825

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions x \$750 = \$3000 minus hearing session deposit of
\$1250 = \$1750

Claimants' are jointly and severally liable and shall pay to the NASD the sum of \$250 to represent forum fees.

Respondents' are jointly and severally liable and shall pay to the NASD the sum of \$1500 to represent forum fees.

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

Concurring Arbitrator's Signature:

Name

Public/Industry


David Fogel, Esq.

Public Arbitrator

Date of Decision: July 15th, 1992

Page 4.
Award #91-01747 & 91-01825

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions x \$750 = \$3000 minus hearing session deposit of
\$1250 = \$1750

Claimants' are jointly and severally liable and shall pay to the NASD the sum of \$250 to represent forum fees.

Respondents' are jointly and severally liable and shall pay to the NASD the sum of \$1500 to represent forum fees.

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

Concurring Arbitrator's Signature:

Name

Public/Industry

Stuart M. Fischman, Esq.

✓
Public Arbitrator

Date of Decision: July 15th, 1992

STATE OF: New York
COUNTY OF: ~~New York~~ Kings

S.S.:

On this 7th day of July, 1992, before me personally appeared David Fogel, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Herbert Schonhaut

HERBERT SCHONHAUT
Notary Public, State of New York
No. 24-4739593
Qualified in Kings County
Commission Expires March 30, 1993
Nov 30, 1993

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 6 day of July, 1992, before me personally appeared Stuart M. Fischman, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Mark O. Glut

MARK O. GLUT
Notary Public, State of New York
No. 4035188
Qualified in Queens County
Commission Expires April 20, 1994