

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Zvi Geitheim

No. 91-03362

Name of Respondents

Fidelity Investors Centers and  
Brokerage Service, Inc.  
Barbara Gross  
Stephen Gorman

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REPRESENTATION OF PARTIES

For Claimant: Michael L. Maduff, Esq. and Reed Millsaps, Esq.

For Respondents: Thomas Fitzgerald, Esq. of Altheimer & Gray,  
Chicago, Illinois

CASE INFORMATION

Statement of Claim filed: October 25, 1991.

Claimant's Submission Agreement signed on: August 6, 1990.

Joint Statement of Answer & Motion to Dismiss filed by  
Respondents, on or about: March 10, 1992.

Respondent Fidelity's Submission Agreement signed on:  
February 20, 1992.

Respondent Barbara Gross' Submission Agreement signed on: March  
31, 1992.

Respondent Stephen Gorman's Submission Agreement signed on:  
February 14, 1992.

Claimant's more definite Statement of Claim filed: October 15,  
1992.

Claimant's response to Respondents' Motion filed: April 21,  
1992.

Claimant's Motion for Sanctions filed: April 20, 1992.

Respondents reply to Request for dismissal and response to Claimant's Motion for Sanctions filed: October 26, 1992.

#### HEARING INFORMATION

Hearing date: December 18, 1992. One (1) session.

Hearing Location: Chicago, Illinois.

#### CASE SUMMARY

On March 10, 1992, Respondents filed a Motion to dismiss pursuant to Section 16 of The Code of Arbitration Procedure (the "Code") asserting that all claims alleged by the Claimant are time-barred by applicable federal and state statutes of limitation. Respondents cited Mass. Gen. L. Ann. Ch. 110A, Section 410 (West 1990), Lampf et al v. Gilbertson, et al., 111 S.ct. 2773, 115 L. Ed. 2d 321, June 20, 1991, and Mass. Gen. L. Ann. Ch. 260, Section 2A (West 1991). Respondents further asserted that Claimant filed his claim over three (3) years after any events which could, if proved, give rise to any liability that had been alleged in the Statement of Claim.

In Claimant's response to Respondents' Motion to Dismiss, which had been filed on April 21, 1992, Claimant asserted that he had filed this action in a timely fashion. Claimant stated that the Massachusetts law cited by Respondents had been amended in March of 1992 to give 4 years within which to file suit after discovery of a violation. Claimant further cited Massachusetts statutes Chapter 260, Sections 1, 2012 in support of his position. Lastly, Claimant requested that Respondents' Motion be denied. Contemporaneous with Claimant's having filed his response to the Motion to Dismiss, Claimant also filed a Motion for Sanctions.

Claimant's Motion requested that sanctions be applied to Respondents for their failure to inform the arbitrators of the fact that the Statute relied on in their Motion to Dismiss had been amended, and approved in December of 1991, and became effective in March of 1992. Claimant cited 28 U.S.C.A. Rule 11, Mass. Gen. L. Ann., and Massachusetts Rules of Civil Procedure, Rule 11. Claimant asserted that Respondents' failure to inform the panel of the amendment was a sanctionable event. On October 26, 1992, Respondents replied to the Motion for Sanctions, and also replied to the request for dismissal. Respondents set forth the following factual assertions:

Claimant opened his account in April of 1987, and his account had been placed on "liquidation only" status in February of 1989. On August 6, 1990, Claimant had signed a Uniform Submission Agreement, and his Claim

had been filed with the NASD on October 25, 1991.

The more definite Statement of Claim, filed by Claimant on October 15, 1992, admitted that the transactions involved in this dispute occurred between March of 1987 and February, 1989.

Respondents went on to assert all supporting arguments for dismissal as found in the original Motion to Dismiss. In addition, Respondents asserted that the amendment had been approved and became effective after the Statute of Limitations had already expired on any claims arising out of the Claimants account. On December 10, 1992, for the record, Claimant withdrew his Motion for Sanctions.

#### AWARD

After considering the Motion, Response & pleadings, the arguments, and the evidence presented at the hearing held pursuant to Section 14 of the Code and without making a finding on the merits of the Statement of Claim, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant, Zvi Geitheim, withdrew his Motion for Sanctions at the hearing held on December 18, 1992.
2. All Claims inherent in the Statement of Claim that could be made under Massachusetts statutes are time-barred, and dismissed with prejudice pursuant to Section 16 of the Code.
3. Similarly, all claims inherent in the Statement of Claim that could be made under Federal Law are similarly time-barred and dismissed with prejudice pursuant to Section 16 of the Code.

**FORUM FEES**

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

1 hearing sessions X \$ 750.00 = \$ 750.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200, and shall retain the hearing session deposit in the amount of \$750 previously paid to the NASD by the Claimant.

Dated:

December 28, 1992

/s/Arthur Medow  
Arthur Medow  
Presiding Chair

December 24, 1992

/s/Stephen J. Nagy  
Stephen J. Nagy  
Public Arbitrator

December 24, 1992

/s/Richard E. Ascher  
Richard E. Ascher  
Industry Arbitrator