



Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

James F. Butterworth

91-03520

Name of Respondent

Fidelity Brokerage Services, Inc.

REPRESENTATION

Claimant James F. Butterworth appeared pro se.

For Respondent Fidelity Brokerage Services, Inc. Michael G. Shannon, Esq. of the law firm of Summit Solomon & Feldesman.

CASE INFORMATION

Statement of Claim filed on November 6, 1991.

Claimant's Submission Agreement signed on October 21, 1991.

Statement of Answer filed by Respondent on February 14, 1992.

Respondent's Submission Agreement signed on February 12, 1992.

HEARING INFORMATION

Pre-Hearing Conference: July 16, 1992, 1 Session.

Hearing Dates/Sessions: July 21, 1992, 2 Sessions.

Hearing Location: National Association of Securities Dealers, Inc.  
offices located in New York, NY.

CASE SUMMARY

Claimant alleged that on October 20, 1987 Respondent provided him with false and misleading information regarding his margin account upon which Claimant relied in making an options purchase and that Respondent failed to give timely notice of trade confirmations and margin requirements. Claimant further alleged that on Friday October 23, 1987 Respondent notified him over the phone of a \$500.00 margin call due at 5:00 p.m. that day and that

Claimant deposited \$500.00 at 3:40 p.m. on October 23, 1987 in his margin account to meet the margin call. Claimant further alleged that during the October 23, 1987 phone call the Respondent informed him that the exact terms for settlement of the amount due would be sent to him in an overnight letter. Claimant further alleged that on Monday October 26, 1987 at 11:40 a.m. Respondent phoned him at work and informed him that he had to meet a margin call by 12:00 noon or his account would be sold out. Claimant further alleged that due to the short notice it was not possible for him to make the deposit by 12:00 noon. Claimant further alleged that later in the evening of October 26, 1987 he received Respondent's overnight letter which stated that he had until 2:00 p.m. Tuesday, October 27, 1987 to deposit \$575.00 to return Claimant's account status to good standing. Claimant further alleged that he satisfied the terms of the letter by depositing \$77.00 in his account at 11:22 a.m. on October 27, 1987 which when added to his October 23, 1987 deposit of \$500.00 exceeded the required deposit by \$2.00. Claimant further alleged that on October 30, 1987 he was informed that on October 27, 1987 his account was totally liquidated to cover the margin call.

Respondent maintained that it acted properly in liquidating Claimant's account under the standard margin application and agreement executed in June, 1987 by Claimant which provided that Respondent could liquidate without notice any and all positions in Claimant's margin account to meet margin requirements and that all transactions must be paid for, or required margin deposited, by settlement date. Respondent further maintained that due to unprecedented volume during the time following October 19, 1987 customers were notified of the status of their accounts by telephone and that it was Respondent's policy to inform customers that all information communicated by phone superseded any prior written mailing. Respondent further maintained that its actions were not the proximate cause of Claimant's alleged damages, that Claimant exaggerated his alleged losses, and that Claimant failed to mitigate his damages.

RELIEF REQUESTED

Claimant requested an award in the sum of \$19,311.91 consisting of:

1. \$15,159.25 for actual damages.
2. \$3,77.90 for interest.
3. \$2,378.70 for expenses.

Respondent requested that Claimant's claim be denied in all respects and that all fees and costs be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Respondent in a motion to dismiss, maintained that Claimant's claim was barred by the applicable statutes of limitation for actions in tort, and for claims under the state securities laws and the anti-fraud provisions of the federal securities laws.

Claimant, in his response to Respondent's motion to dismiss, maintained that his cause of action primarily sounded in breach of contract and, therefore, his claim was within the applicable statute of limitations for claims in contract.

The arbitrator denied Respondent's motion to dismiss the claim.

AWARD

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

1. All claims against Respondent are dismissed.
2. Each party shall bear its respective costs including attorneys' fees.

FORUM FEES

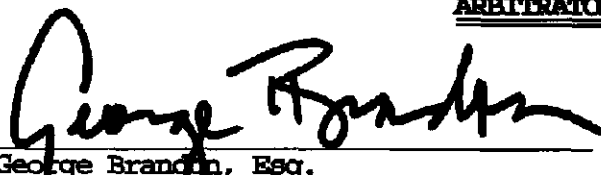
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

2 sessions X \$300 = \$600 plus a pre-hearing conference (\$300.00)  
minus Claimant's hearing session deposit of \$400.00 = net \$500 due.

The Claimant be and hereby is liable and shall pay to the NASD the sum of \$50.00 to represent forum fees and the Respondent be and hereby is liable and shall pay to the NASD the sum of \$450.00 to represent forum fees.

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

ARBITRATOR SIGNATURE

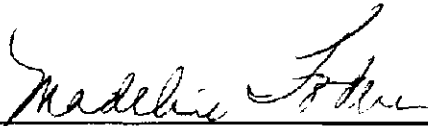
  
George Brandon, Esq.  
Public Arbitrator

Date of Decision: July 30, 1992

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 29<sup>th</sup> day of July, 1992, before me personally appeared **George Brandon, 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.

  
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**MADELINE FODERA**  
Notary Public, State of New York  
No. 4732870  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires: December 31, 1992