

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Nicholas Segina
Daniel Nick Segina

vs.

91-03587

Name of Respondent(s)

Fidelity Brokerage Services, Inc.

REPRESENTATION

For Claimants: William R. Wams, Esq., Downey Brand Seymour & Robner, San Francisco, California

For Respondent: Joan M. Cambray, Esq., Graham & James, San Francisco, California

CASE INFORMATION

Statement of Claim filed: November 14, 1991

Claimants' Submission Agreements signed as follows:

Nicholas Segina: August 21, 1991

Daniel Nick Segina: October 31, 1991

Statement of Answer filed by Respondent: March 26, 1992

Amended Statement of Answer filed by Respondent: June 9, 1992

Respondent's Submission Agreement signed on: March 18, 1992

HEARING INFORMATION

Prehearing Conference(s) Date(s) Sessions: None

Hearing Date/Sessions: July 30, 1992 (two sessions)

Hearing Location: San Francisco, California

CASE SUMMARY

Claimants alleged violation of National Association of Securities Dealers, Inc. (NASD) Rules of Fair Practice, violation of Securities and Exchange Commission Rule 17a-3(9) of the 1934 Securities Exchange Act, unsuitability, breach of fiduciary duty, unfair sales practices, negligence, and breach of contract with respect to Claimants' margin account and regarding Claimants' investments in Biospheric, Inc.

Respondent denied Claimants allegations and also disputed the relevance, accuracy and propriety of Claimants' assertions in their statement of claim of the general legal authorities asserted.

RELIEF REQUESTED

Claimants requested:

1. For general damages and/or rescission and restitution in the amount of \$62,851.90;
2. For consequential damages according to proof at trial;
3. For interest at the legal rate through judgment;
4. For punitive damages in an amount as determined by the arbitrators to be appropriate;
5. For reasonable attorneys fees as determined by the arbitrators to be appropriate; and
6. For the costs associated with this arbitration.

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. Respondent Fidelity Brokerage Services, Inc. is liable for and shall pay to Claimants the sum of \$17,015.00, inclusive of interest.
2. Respondent Fidelity Brokerage Services, Inc. is liable for and shall pay to Claimants the sum of \$650.00 as reimbursement for Claimants' filing fee and hearing session deposit.
3. Claimants' claim for punitive damages is dismissed.

4. The parties shall each bear their respective costs including attorney's fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$500.00 hearing session deposit previously deposited by the Claimants as an assessment of forum fees for one session. Forum fees assessed against:

Fidelity Brokerage Services, Inc. in the amount of \$500.00 calculated as follows: Two hearing sessions times \$500.00/session minus the \$500.00 to be reimbursed to Claimants.

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

ARBITRATION PANEL

Public/Industry

Public Arbitrator

Public Arbitrator

Industry Arbitrator

Signature

/s/ John B. Railley Esq.
John B. Railley Esq.

DATE SERVED: 09/11/92

Date of Decision: _____