

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Herbert W. Morgan

NASD Arbitration
No. 92-00812

Name of Respondent

Fidelity Investments

REPRESENTATION

For Claimant: Kyle Kennelly, Esq. - Greenbaum & Ferentz - Newport Beach, Ca.

For Respondent: Michael A. Firestein, Esq. - McCambridge, Deixler, Marmaro
& Goldberg - Los Angeles, Ca.

CASE INFORMATION

Statement of Claim filed: March 6, 1992

Claimant's Submission Agreement signed: March 1, 1992

Statement of Answer filed by Respondent: May 6, 1992

Respondent's Submission Agreement signed: May 22, 1992

HEARING INFORMATION

Pre-Hearing Conference: None

Hearing Date/Sessions: January 15, 1993 - Two Sessions

Hearing Location: San Diego, California

CASE SUMMARY

Claimant, Herbert W. Morgan (Morgan) alleged that except for misinformation provided to him by a Fidelity representative in November 1991, he would not have sold his Biotech Fund. That information indicated that he was subject to both a front and back end load in negotiating trades of the fund, when, in fact, because of his status in the retirement fund of Eastman Kodak, he was subject to "no load". Mr. Morgan contended that because of this erroneous information he sold his fund and later bought it back at a substantial loss.

Respondents alleged that the losses allegedly sustained by Mr. Morgan were caused substantially by his failure to buy back the fund in a timely fashion as he had indicated it was his intention to do. Respondent further contended that except for the unexplained delay by Mr. Morgan to buy back the fund his losses would have been minimal.

RELIEF REQUESTED

Claimant seeks damages in the sum of \$25,913.92.

Respondent seeks dismissal of the claim in its entirety.

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 original 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 Investments (AKA Fidelity Distributors Corporation), is liable and shall pay to Claimant, Herbert W. Morgan, the sum of Twenty One Thousand, Ninety Five Dollars and No Cents (\$21,095.00). Said sum includes interest.
2. The parties shall each bear their respective costs and fees.
3. The NASD shall retain fees deposited by the Claimant.

FORUM FEES

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

Respondent is assessed and shall pay to the NASD the sum of \$800.00 representing assessments for two hearing sessions at \$400.00 each.

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

ARBITRATORS

Public/Industry
Public Chairperson
Public Panelist
Industry Panelist

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Joan B. McGowan

Date of Decision: _____

1/15/93

Served 3/26/93

ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
William Newsome	Public Chairperson Public Panelist Industry Panelist

Concurring Arbitrators' Signatures

William L. Newsome


Date of Decision: Jan 15 1993

Served 3/26/93

ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
William Newsome	Public Chairperson
Dawn M. Spears	Public Panelist
Joan McGilvray	Industry Panelist

Concurring Arbitrators' Signatures

 (DAWN M. SPEARS)

Date of Decision: _____

Served 3/26/93