

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Stephen P. Julien

Case No. 92-01811

Name of Respondent(s)

Fidelity Brokerage Services, Inc. d/b/a Fidelity
Investments

REPRESENTATION

For Claimant, Stephen P. Julien ("Julien"): Michael Casey, Esq. of Casey & Molchan.

For Respondent, Fidelity Brokerage Services, Inc. d/b/a fidelity Investments ("Fidelity"): Michael Wolensky, Esq.

CASE INFORMATION

Statement of Claim filed: May 29, 1992. Claimant's Submission agreement signed: May 22, 1992.

Respondent's Statement of Answer and Counterclaim filed: July 17, 1992. Respondent's Submission Agreement signed: July 16, 1992 by Kenneth McDonald on behalf of Fidelity.

Claimant's Answer to Counterclaim filed: August 7, 1992.

HEARING INFORMATION

On March 16 and September 9, 1993, in Fort Lauderdale, Florida, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondent was liable for: negligence and breach of contract. Claimant alleged that: sometime in 1991, Institute for Laboratory Medicine ("ILM") stock, which Claimant owned, underwent a four-to-one reverse stock split; Claimant ignored the notice of the split and did not exchange his stock certificates for a new certificate which would represent the "new" ILM shares. Claimant deposited his certificates with Respondent with instructions to sell those securities and, instead of entering and executing an order to sell the ILM stock deposited by Claimant, respondent executed a sale of the "new" ILM stock to cover what was, in effect, a short sale and sought to shift the loss to Claimant by debiting his account.

Respondent denied all allegations of wrongdoing and alleged that: Claimant possessed actual knowledge of the reverse split; his certificates did not represent shares in the currently trading stock and Claimant failed to bring the discrepancy to Respondent's attention; the cause of the loss was Claimant's own negligence; and, Claimant misrepresented to Respondent the correct number of shares available for sale.

Respondent alleged the affirmative defense of failure to mitigate damages.

Respondent asserted a Counterclaim, and alleged that Claimant is liable for the debit balance in his account.

Claimant answered the Counterclaim and denied liability.

RELIEF REQUESTED

Claimant requested damages in the amount of \$7,902.05, plus interest at the rate of 12% from February 20, 1992, costs, attorney's fees, and an order that Fidelity delete the debit balance in Claimant's account.

Respondent requested damages in the amount of \$9,891.04, plus interest, attorney's fees, costs, and that it be discharged from any other obligation to Claimant.

OTHER ISSUES CONSIDERED & DECIDED

None.

AWARD

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

1. Respondent, Fidelity, is found liable and shall pay to the Claimant the amount of \$7,902.05, plus interest at the legal rate of 12% per annum in the amount of \$1,499.01 for a total due to the Claimant of \$9,401.06.
2. Respondent is also found liable and shall pay to the Claimant the further amount of \$9,585 for attorney's fees pursuant to Section 57.105, Florida Statutes. The Arbitrator bases his authority to award attorney's fees on the Federal Arbitration Act and the case law interpreting that Act.
3. Claimant's request for other costs is denied.
4. Respondent's request for attorney's fees and costs is denied.
5. Claimant, Julien, is found not liable to Fidelity and, therefore, all Counterclaims against him are hereby dismissed.
6. Respondent, Fidelity is hereby ordered to cancel the \$9,910 debit balance in Claimant, Julien's account.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES


1. Pursuant to Section 43c of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$800 (four sessions x \$200 per session).
2. Respondent, Fidelity, is hereby assessed \$800, \$200 of which shall be paid directly to the Claimant, and \$600 of which shall be paid to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fees of \$75 paid by the Claimant and \$75 paid by Counter-Claimant, Fidelity.

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4. Respondent, Fidelity, shall reimburse the Claimant \$75 for the non-refundable filing fee.

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

Concurring Arbitrator's Signature



Steven D. Elias, Esq.

Public

Date of Decision: 7/17/93