

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Fidelity Brokerage Services, Inc.  
National Financial Services, Corp.

Case #  
92-03264

vs.

Name of Respondent

Hussain Y. Siam

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**REPRESENTATION**

For Claimants, Fidelity Brokerage Services, Inc. ("FBSI") and National Financial Services, Corp. ("NFSC") ("Claimants"), John McCardle, Esq., from the law firm of Smith, Levenson, Smith & Collen, P.C.

Respondent, Hussain Y. Siam, ("Respondent") was not represented by counsel.

**CASE INFORMATION**

Statement of Claim filed: September 25, 1992.

Claimant's Submission Agreement signed on: October 5, 1992.

Respondent did not file an answer or execute a Submission Agreement.

**HEARING INFORMATION**

Hearing Date/Session: September 20, 1993 - One session

**CASE SUMMARY**

Claimants allege that Respondent opened brokerage and option accounts with

FBSI on September 9, 1988. Claimants allege that Respondent had a credit balance of \$184.78 on October 18, 1988 and deposited a check in the amount of \$10,000 on October 19, 1988. On October 19, 1988, FBSI executed option contract trades as instructed by Claimant totalling \$11,443.50.

Claimants state that the \$10,000.00 check which Respondent deposited in his account was returned on October 26, 1988. Claimants contend that Respondent's claim that he instructed FBSI to liquidate his portfolio on or about October 20, 1988 is without merit because all phone calls are recorded for clients' protection and trading logs are kept for all transactions and the tapes from October 20, 1988 for all three trading centers (Boston, Dallas and Salt Lake City) show no record of such phone call.

Claimants further allege that under Respondent's account agreement, Respondent is obligated to pay FBSI \$9,427.07 plus interest, costs and expenses of collection including attorney's fees.

Respondent did not file an answer but appeared at the hearing and defended the allegations asserted against him.

Respondent alleges that Claimants improperly handled his account by failing to timely execute sell orders which he had placed. Respondent contends that with respect to the buy orders he placed on October 19, 1988, he called FBSI and ordered them to "liquidate all [his] portfolio" on October 20, 1988 and had FBSI done so he would have made a profit. Instead he sustained a loss.

Respondent maintains that when he wrote the check for \$10,000 he was expecting funds from overseas. When he was advised that his check did not clear, he immediately transferred funds from his certificate of deposit in order to make good on the check. Respondent contends that when he realized that FBSI was not treating him fairly, he refused to make good on the check.

### **RELIEF REQUESTED**

Claimants request an award in the amount of \$9,427.07 together with interest and FBSI's costs, expenses and attorney's fees.

Respondent requests that the claim be denied.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

Prior to the commencement of the hearing, the NASD advised this Arbitrator that Respondent was seeking a postponement of the hearing scheduled for September 20, 1993. The NASD staff read aloud to this Arbitrator the contents of Respondent's September 2, 1993, September 9, 1993, and two September 15, 1993 letters in addition to Claimants' letter dated September 15, 1993 opposing the postponement. After obtaining the history of hearing notices sent to Respondent, his responses and requests, this Arbitrator denied Respondent's request to postpone hearing.

On September 20, 1993 Respondent filed a motion seeking: 1) a pre-hearing conference to review problems with NASD; 2) an extension of time to submit the remainder of his defense and reply to the NASD until February 24, 1993; 3) removal of FBSI as a party to this arbitration since FBSI was not a party to the court action wherein the court ordered NFSC and Respondent to arbitrate; and 4) exclusion of Claimants' witness and attorney because they were not disclosed 10 days prior to the hearing. After hearing both parties, this Arbitrator denied Respondent's requests and proceeded with the hearing. Respondent withdrew his request that this Arbitrator be disqualified and for an appointment of three new arbitrators.

### **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. Respondent is hereby liable and shall pay Claimants *NINE THOUSAND FOUR HUNDRED AND TWENTY SEVEN DOLLARS AND SEVEN CENTS (\$9,427.07)*.
2. Respondent is further liable and shall pay Claimants interest at the legal rate, twelve percent (12%) per annum from the date of this award until paid.
3. The claim for costs and expenses is denied.
4. The claim for attorney's fees is denied.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed and shall be borne equally by the parties.

Non-refundable Filing Fee: \$500.00

Hearing Session Fees: \$300.00 x 1 session = \$300.00

Total Fees: \$800.00

- 1) Claimants are assessed \$400.00. Claimants paid \$800.00 and are entitled to a refund of \$400.00 which shall be paid in accordance with paragraph 2 below.
- 2) Respondent is assessed \$400.00 and shall satisfy this assessment by reimbursing Claimants \$400.00.

Concurring Arbitrator's Signature



S. Lawrence Gwin, Jr., Esq.  
Sole Public Arbitrator

October 12, 1993

Date of Decision:

~~October 12, 1993~~