

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

William David & Derenda Marie Arrington

92-04061

Name of Respondent(s)

Fidelity Brokerage Services, Inc.

REPRESENTATION

Claimants William David and Derenda Marie Arrington appeared pro se.

Respondent Fidelity Brokerage Services, Inc. was represented by Angela M. Gottsche, Esq., of the law firm of Kutak Rock.

CASE INFORMATION

Statement of Claim filed: December 1, 1992.

Claimant William David Arrington's Submission Agreement signed on: November 30, 1992.

Claimant Derenda Marie Arrington's Submission Agreement signed on: August 3, 1993.

Statement of Answer filed by Respondent Fidelity Brokerage Services, Inc. on: January 29, 1993.

Respondent Fidelity Brokerage Services, Inc.'s Submission Agreement signed on: January 28, 1993.

HEARING INFORMATION

Hearing Date/Sessions: July 19, 1993 / Two Sessions.

Hearing Location: NASD offices located in Atlanta, GA.

CASE SUMMARY

Claimants alleged that Respondents wrongfully debited their account for the value of 10,000 shares of Pan Am Corp. Del. ("Pan Am") stock, and while attempting to correct the error, Claimants suffered losses when the stock became worthless. According to the Claimants, on August 22, 1991 at approximately 6:50 a.m., Claimant William David Arrington placed a buy order for 10,000 shares ("Order #1"); then at approximately 11:00 a.m., he called Respondent Fidelity to determine the status of order #1, but was informed that it had not been filled. Claimants further alleged that upon Fidelity's suggestion, Claimant canceled order #1 and placed a new order for 10,000 shares in two lots of 5,000 shares each ("Order #2"); and that at approximately 12:00 p.m., he telephoned Fidelity and canceled order #2. Claimants further alleged that on August 28, 1991, they were notified by Fidelity that an order for 10,000 shares had been filled on August 22, 1991 and that their account would be debited for the purchase amount; and that Claimant also received a canceled order slip on August 28, 1991, evidencing the cancellation of order #2. Claimants further maintained that they, at a later date, received a confirmation slip for order #2, placed dozens of phone calls, wrote numerous letters, and made several in-person visits attempting to resolve the dispute, and that Fidelity refused to credit the account and never suggested selling the stock as an alternative and Pan Am stock stopped trading during this time and became worthless. Claimants alleged that as result of the actions by Respondents Fidelity, they suffered out-of-pocket losses of \$7,081.25.

Respondent maintained that an order to purchase 10,000 shares in two lots of 5,000 shares was entered at 12:37 p.m. on August 21, 1991 and that an order to cancel the buy order was entered on August 22, 1991, generating the cancellation confirmation. Respondents maintained that the buy order had, in fact, been filled on August 21, 1991 before the order to cancel could be effected and, as soon as they became aware of this, notified Claimants on August 28, 1991 of such and further notified them that they would be responsible for payment. Respondents further maintained that once Claimants were advised that their order had been executed, it was solely their investment decision to hold onto the shares, and Respondents further denied any liability or obligation to pay any damages in any form.

RELIEF REQUESTED

Claimants requested damages of \$7,081.25 for out-of-pocket losses, costs of arbitration, expenses, and interest on the out-of-pocket losses.

Respondents requested dismissal of 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. The Respondent Fidelity Brokerage Services, Inc. be and hereby is liable and shall pay to the Claimants the sum of \$7,081.25 less \$60.00 for a credit received by Claimants from Respondent at a prior time for a total sum of \$7,021.25 interest specifically excluded.
2. The Respondent be and hereby is liable and shall pay to the Claimants the sum of \$275.00 to reimburse them the fees paid.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

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

2 sessions x \$200.00 = \$400.00 less Claimant's hearing session deposit of \$200.00 = net \$200.00 due.

The Respondent be and hereby is liable and shall pay to the NASD the sum of \$200.00 to represent forum fees.

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

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Arbitrator's Signature
Name

A handwritten signature in cursive script, appearing to read "Daniel E. Gulden", written over a horizontal line.

Daniel E. Gulden, Esq.
Public Arbitrator

Date of Decision: August 25, 1993