

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Alan N. Pressman

92-04215

Name of Respondent(s)

Fidelity Brokerage Services, Inc.
National Financial Services Corporation

REPRESENTATION

For Claimant Alan N. Pressman (Claimant): Robert J. Poulson, Jr., Esq. located in New York City, New York.

For Respondents Fidelity Brokerage Services, Inc. and National Financial Services Corporation (Respondents): Michael G. Shannon, Esq with the law firm of Phillips, Lytle, Hitchcock, Blain & Huber located in New York City, New York.

CASE INFORMATION

Statement of Claim filed on: November 17, 1992.

Claimant's Submission Agreement signed on: November 17, 1992.

Statement of Answer and Counterclaim filed by Respondents on: February 16, 1993.

Respondent Fidelity Brokerage Services Submission Agreement signed on: February 3, 1993.

Respondent National Services Corporation Submission Agreement signed on: February 3, 1993.

Statement of reply to Counterclaim filed on: April 29, 1993.

HEARING INFORMATION

Hearing Date/Sessions: January 12, 1994 - Two Sessions

March 3, 1994 - One Session
May 13, 1994 - One Session

Hearing Location: The hearing was conducted at the National Association of Securities Dealers, Inc.'s offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that sometime in 1987 he opened his first and only stock brokerage account with Respondent Fidelity Brokerage Services, Inc. ("Fidelity"). Claimant also alleged that until January of 1991, his only stock transaction had been his initial purchase of 600 shares of common stock which were purchased when he first opened the account. Claimant further alleged that he was an inexperienced investor, and but for the 600 shares of common stock, his entire life savings were deposited in a pass book account at a credit union.

Claimant alleged that sometime in 1991 he contacted Fidelity to inquire about a trading vehicle called scores which he had learned of the previous year. Claimant further alleged that Fidelity failed to warn him of the highly speculative nature of scores and that he was induced to upgrade his existing account to a "Fidelity Plus", thus permitting him to trade on margin. Claimant also alleged that Fidelity persuaded him to transfer \$31,000.00, over 90% of his life savings, into this high-risk fidelity account.

Claimant alleged that between January 29, 1992 and June 1992 Fidelity processed a series of ruinous transactions for him in risky and unsuitable securities. Claimant further alleged that although he initiated these trades, Fidelity advised him with regards to quantity, price, and method of payment.

Claimant further alleged that in July of 1991, in desperation, he made of \$13,000.00 purchase that was clearly beyond his means and that was accepted by Fidelity over the phone without question. Claimant alleged that after he informed a Fidelity representative that he could not pay for the trade, Fidelity then explained the advantages of trading on margin. Claimant further alleged that after he told Fidelity he was unable to pay the 50% margin requirement and that he intended to borrow the money from a bank and his family to pay the margin requirement, Fidelity granted him illegal extensions until he produced the requisite funds.

Claimant alleged that following the illegal extension, a Fidelity representative told him that a manager must approve all future trades and that he must have the funds to support the trade. Claimant further alleged that he was desperate to reclaim his losses and that a manager lifted the restrictions upon request.

Claimant alleged that in June of 1992, with an existing debit balance of \$12,000.00, Fidelity executed the purchase of a \$23,025.00 score component for

him. Claimant further alleged that Fidelity processed this transaction with the knowledge that Claimant could not pay for the order and that Claimant no longer understood what he was doing. Thereafter, Claimant alleged that Fidelity liquidated his entire account.

Claimant alleged that due to Fidelity's reckless and negligent management of his account, he lost over \$90,000.00. Claimant also alleged that due to Fidelity's reckless disregard and wanton misconduct, he became suicidal and was eventually hospitalized for his depression.

Respondents maintained that as a discount brokerage firm, Fidelity does not engage in discretionary trading on its customers accounts and does not solicit trades or make recommendations to its customers. Similarly, Respondents maintained that all of the Claimant's trades were unsolicited, not prompted by any recommendations, and were executed entirely upon Claimant's own investment decisions.

Respondents further maintained that when Claimant opened his account, he agreed and understood that Fidelity would not provide any advice or recommendations with respect to purchases or sales of any securities. Respondents maintained that Claimant also agreed to pay any debit balance on demand. Similarly, Respondents maintained that Fidelity never granted Claimant any "illegal extensions" to make payments or breached any rules.

Respondents maintained that sometime in January of 1991, Claimant began trading primarily in scores. Respondent also maintained that despite Claimant's assertions that he was "inexperienced" in securities trade, unknowledgeable about scores, and that such investments were unsuitable for him, Claimant initially profited from a series of score trades. Respondents maintained that Claimant never advised Fidelity of his personal problems or his financial difficulties.

Respondents further maintained that when Claimant was unable to pay for the 12,000 shares of ARCO Scores he ordered, valued at \$23,025.00, Fidelity liquidated his account resulting in a debit balance of \$27,804.87, accrued interest included through January 21, 1993. Respondents denied any negligent, reckless, or unlawful conduct, and asserted a counterclaim for \$27,804.87, the debit balance in Claimant's account.

As for his reply to the Counterclaim, Claimant denied all allegations set forth in the Counterclaim and asserted that his account debit balance was the direct and proximate result of Respondent's reckless and negligent conduct.

RELIEF REQUESTED

Claimant requested the following damages against Respondents: (1) Compensatory damages totaling \$90,000.00; (2) Punitive damages; and (3)

Attorneys' fees and interest.

Respondent requested that the claim be dismissed and that Respondent be awarded: (1) \$27,804.87 plus interest from January 21, 1993; and (2) Costs and attorneys' fees.

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 remains on file with the NASD.

AWARD

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

1. All claims against the Respondents be and hereby are dismissed.
2. All claims against the Respondents for attorney fees be and hereby are dismissed.
3. All claims against the Respondents for punitive damages be and hereby are dismissed.
4. Claimant Alan N. Pressman be and hereby is liable and shall pay to the Respondents the sum of \$30,083.61, interest specifically included.
5. All claims against Claimant for attorney fees be and hereby are dismissed.
6. Each party shall bear their respective costs.

FORUM FEES

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

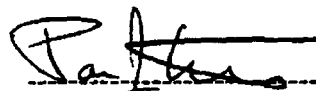
4 sessions x \$600.00 = \$2,400.00 minus hearing session deposits of \$1,100.00
= \$1,300.00 due.

1. Claimant Alan N. Pressman be and hereby is liable and shall pay to the NASD the sum of \$650.00 representing one-half of outstanding forum fees.
2. Respondents Fidelity Brokerage Services, Inc. and National Financial Services Corporation be and hereby are liable and shall pay to the NASD the sum of \$650.00 representing one-half of outstanding forum fees.

ARBITRATION PANEL

George Brandon, Esq.	-	Chairperson - Public Arbitrator
Paul J. Contillo	-	Public Arbitrator
Joseph F. Keenan, Esq.	-	Industry Arbitrator

George Brandon, Esq.
Chairperson - Public Arbitrator



Paul J. Contillo
Public Arbitrator

Joseph F. Keenan, Esq.
Industry Arbitrator

Date of decision: July 8, 1994

STATE OF *new york*
COUNTY OF *new york*

On this 22nd day of JUNE, 1994, before me personally appeared
Paul J. Contino known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.

Elaine Naccache

ELAINE NACCACHE
Notary Public, State of New York
No. 41-4772422
Qualified in Queens County
Certificate Filed in New York County
Commission Expires 10/31/94

4 sessions x \$600.00 = \$2,400.00 minus hearing session deposits of \$1,100.00
= \$1,300.00 due.

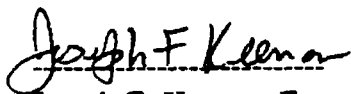
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ARBITRATION PANEL

George Brandon, Esq.	-	Chairperson - Public Arbitrator
Paul J. Contillo	-	Public Arbitrator
Joseph F. Keenan, Esq.	-	Industry Arbitrator

George Brandon, Esq.
Chairperson - Public Arbitrator

Paul J. Contillo
Public Arbitrator



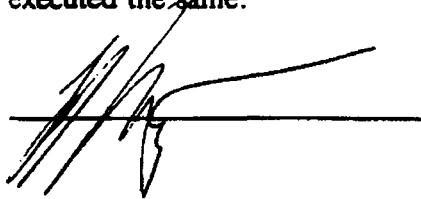
Joseph F. Keenan, Esq.
Industry Arbitrator

Executed on:
Date of decision: ~~xxxxxx~~ 6/12/94

Date of Decision. July 8, 1994

STATE OF New York
COUNTY OF Nassau

On this 17 day of June, 1994, before me personally appeared Joseph F. Keenan known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

A handwritten signature in dark ink, appearing to read 'L. Bochhat', is written over a horizontal line.

LAWRENCE J. BOCHAT
NOTARY PUBLIC, State of New York
No. 4656975
Qualified in Suffolk County
Term Expires 12-31-98

4 sessions x \$600.00 = \$2,400.00 minus hearing session deposits of \$1,100.00
= \$1,300.00 due.

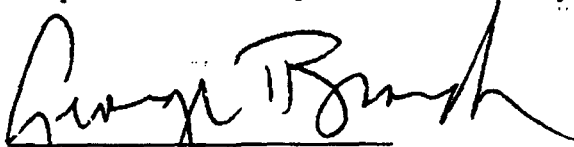
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ARBITRATION PANEL

George Brandon, Esq. - Chairperson - Public Arbitrator

Paul J. Contillo - Public Arbitrator

Joseph F. Keenan, Esq. - Industry Arbitrator



George Brandon, Esq.
Chairperson - Public Arbitrator

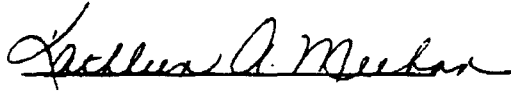
Paul J. Contillo
Public Arbitrator

Joseph F. Keenan, Esq.
Industry Arbitrator

Date of decision: July 8, 1994

STATE OF NEW YORK
COUNTY OF NEW YORK

On this 5th day of JULY, 1994, before me personally appeared
GEORGE BRANDON known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.



KATHLEEN A. MEEHAN
Notary Public, State of New York
No. 31-4795800
Qualified in New York County
Commission Expires: March 31, 1998