

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration BetweenName of Claimant

Robert E. Bernard

93-00484

Name of Respondent

Fidelity Brokerage Services, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 9, 1993 Claimant Robert E. Bernard, who appeared Pro Se, alleged that at approximately 12:40 p.m. on Tuesday, January 19, 1993 he placed a buy order on Respondent's Fidelity Brokerage Services, Inc. Telephone Touch-Tone Trader System for 1,000 shares of Peoples Westchester Savings Bank ("PWSB") executed at the market price of 25 1/4. Claimant further alleged that the price of 25 1/4 was confirmed by the Touch-Tone Trader System and subsequently, a few moments later, Respondent's Touch-Tone Trader System reported the bid price for PWSB shares had risen to 28 3/4, at which time, based on the price information Claimant had received, Claimant placed an order to sell 1,000 shares of PWSB at the market price. Claimant contended that his order was executed at a price of 27 3/4 was reported and confirmed to him by Respondent's Touch-Tone Trader System. Claimant further contended that an instant later PWSB was halted for trading and when PWSB reopened for trading, it reopened at the bid price of 30 1/4. Claimant asserted that some hours later, after the close of trading on January 19, 1993 Respondent's Touch-Tone Trader System reported what appeared to be the additional purchase of 1,000 shares of PWSB at a price of 26 1/4, and subsequently on January 20, 1993, Claimant phoned Respondent to ask about what appeared to be an additional position in PWSB, at which time, Claimant was informed by Respondent that this was not an additional position in PWSB, rather, it was a reported of a corrected error in the purchase price of PWSB whereby Respondent further explained that the floor trader had erroneously reported an executed price of 25 1/4 to them and later corrected it to 26 1/4. Claimant further asserted that his decision to sell 1,000 shares of PWSB at 27 3/4 was based on his understanding that Claimant had purchased PWSB at a price of 25 1/4 whereby had the purchase price of 26 1/4 been correctly reported to him, Claimant would not have sold PWSB at 27 3/4, thus, Respondent is liable in excess of \$2,500.00, the amount Claimant would have received has he been able to sell at the reopening bid of 30 1/4.

Respondent Fidelity Brokerage Services, Inc. by and through their in-house counsel Kenneth J. McDonald, Esq., maintained that there is no dispute to Claimant Robert E. Bernard's assertion that his order on January 19, 1993 for 1,000 shares of Peoples Westchester Savings Bank ("PWSB") had been originally reported back to him as having been purchased at \$25.25, and that this transaction was subsequently canceled and rebilled at \$26.25, at which time, Respondent provided Claimant with a written confirmation showing the trade of \$26.25. Respondent further maintained that the Claimant purchased 1,000 shares of PWSB at 12:42 p.m., and sold these same securities seven minutes later at 12:49 p.m. at \$27.75. Respondent contended that even with the adjusted price, Claimant did not realize a loss on these transactions, but rather realized a net gain in excess of \$1,300.00, whereby, a full five minutes following Claimant's sale of his PWSB shares, the NASD halted trading in PWSB based on news of a takeover offer for PWSB at \$30.00 a share. Respondent further contended that at the time of the halt, the price of PWSB had risen to \$28.25, up \$.50 over Claimant's sale price and the market surveillance staff has informed Respondent that trading in the shares of PWSB resumed approximately one hour later at 1:55 p.m. at \$29.50, not the alleged \$30.25. Respondent asserted that Claimant's assertion that he suffered a loss "of a least \$2,500.00", has no basis in fact and is based upon pure speculation, conjecture and hindsight, and is totally without merit whereby, on the contrary, Claimant enjoyed an actual profit in excess of \$1,300.00.

RELIEF REQUESTED

Claimant Robert E. Bernard requested \$2,500.00 in actual damages.

Respondent Fidelity Brokerage Services, Inc. requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Paul T. Green, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 2, 1993 and by the Respondent on May 3, 1993.

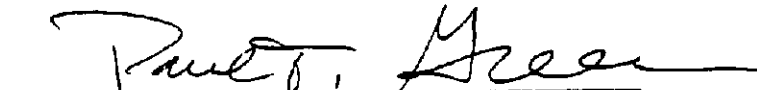
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Fidelity Brokerage Services, Inc. is liable and shall pay to the Claimant Robert E. Bernard the sum of \$1,000.00 in damages.
2. The parties shall bear their respective costs.

3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Robert E. Bernard shall be retained by the NASD, Inc. Respondent Fidelity Brokerages Services, Inc. is liable and shall pay to the Claimant the sum of \$50.00, as reimbursement.

AFFIRMATION

I, PAUL T. GREEN, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: July 20, 1993

STATE OF: Connecticut
ss: Fairfield

COUNTY OF: Fairfield

On this 14 day of July 1993, before me personally appeared Paul T. Green to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



Notary Public for the State of Connecticut
My Commission Expires June 30, 1996