

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Lloyd I. Edgerly

93-00922

Name of Respondent

Fidelity Brokerage Services, Inc.

REPRESENTATION

For Claimant: Morris J. Levin, Esq., a sole practitioner, Washington, D.C.

For Respondent: Douglas P. Lobel, Esq. of Dechert Price & Rhoads, Washington, D.C.

CASE INFORMATION

Statement of Claim filed: March 9, 1993.

Claimant's Submission Agreement signed on: March 30, 1993.

Statement of Answer filed by Respondent, Fidelity Brokerage Services Inc., on: June 8, 1993.

Respondent, Fidelity Brokerage Services Inc.'s Submission Agreement signed on: May 18, 1993.

HEARING INFORMATION

Pre-Hearing Conference: January 10, 1994 / One Session
January 12, 1994 / One Sessions

Hearing Dates/Sessions: January 25, 1994 / Two Sessions
January 26, 1994 / Two Sessions
January 27, 1994 / Two Sessions
February 22, 1994 / One Session

Hearing Location: NASD offices, Washington, D.C.

CASE SUMMARY

Claimant, Lloyd Edgerly ("Edgerly"), alleges this proceeding arises out of Respondent, Fidelity Brokerage Services ("Fidelity"), failure to adequately inform him of the required minimum margin calls on his account. Edgerly maintains the handbook he recieved from Fidelity when opening his account failed to disclose a certain "\$3.00 Rule", whereby, any stock held by a customer which is traded between \$3 1/8 and \$9 7/8 is required to maintain \$3/share of equity. When equity falls below this minimum, a margin sale is triggerd to satisfy this requirement. Edgerly alleges he had to sell certain stock to satisfy this rule, and as a result, he sustained substantial losses.

Edgerly further alleges that Fidelity failed to inform him of the method by which they determine his debit balance on which interest is charged, and the conditions under which additional collateral would be required. Claimant maintains that claims the failure to disclose this information before his account was opened violates Rule 10(b)-16 of the Securities Exchange Act of 1934, NASD rules of Fair Practice, and Massachusetts "Blue Sky" laws.

Respondent's answer denied the allegations contained in the statement of claim. Respondent asserts that Edgerly's claim should be dismissed since the statute of limitations for his rule 10(b)-16 claim has passed. Further, Fidelity filed a counter-claim alleging that Edgerly knew the Statute of Limitations had passed. Respondent also asserted a malicious prosecution claim, and cited Edgerly's numerous past arbatration suits against other brokerage firms.

Claimant then filed his response to the answer, and a motion to dismiss the counter-claim. The motion to dismiss asserted the statute of limitations defense does not apply because the Supreme Court decision cited by Fidelity concerning this defense does not deal solely with a Rule 10(b)-16 violation. Further there is no such statute of limitaitons for Edgerly's claim of violation of NASD rules of Fair Practice. The motion also stated that the counter-claim was inflammatory since Edgerly's past legal disputes are irrelevant, and that the claim for malicious prosecution ws baseless in fact.

Lastly, Fidelity filed their answer and counter-claim to Edgerly's amended statement of claim. Fidelity asserted that the amended claim stated nothing new, and that they complied with rule 10(b)-16 by sending Edgerly an account application entitled "Disclosure of Credit Practices". This form outlined Fidelity's procedures concerning the method of determining the debit balances on which

interest is charged, along with the conditions under which additional collateral would be required. Finally, they asserted that it was a "general market decline" which triggered the required margin call complained of by Edgerly and not the above mentioned "\$3.00 rule".

RELIEF REQUESTED

Claimant requested damages in the amount of \$199,895, plus attorney's fees, other costs, and interest.

Respondent requested attorney's fees, punitive damages, interest, and other costs in an unspecified amount.

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 originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearings, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Claim is hereby dismissed in its entirety
- 2) The Counter-Claim is hereby dismissed in its entirety

FORUM FEES

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

\$200 Non-refundable filing fee for claim
\$250 Non-refundable filing fee for counter-claim
\$300 Pre-hearing Conference fee (January 10, 1994)
\$300 Pre-Hearing Conference fee (January 12, 1994)
\$5,250 Hearing Session Fees (7 sessions x \$750.00)

- 1) Total Forum fees in the amount of \$6,300 are hereby assessed against the Claimant, to be disposed of as follows:

A) Claimant is directed to reimburse to the Respondent the amount of \$850.00 that Respondent previously paid to the NASD Inc.

B) Claimant is entitled to offset the balance of \$5,450.00 with the \$950 Claimant previously paid to the NASD Inc. Therefore Claimant is directed to pay the amount of \$4,500 to the NASD, Inc.

Concurring Arbitrator's Signature
Name

Public Arbitrator


Harold F. Reis, Esq.

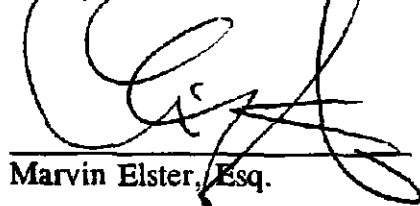
Date of Decision: May 3, 1994

- 1) Total Forum fees in the amount of \$6,300 are hereby assessed against the Claimant, to be disposed of as follows:

A) Claimant is directed to reimburse to the Respondent the amount of \$850.00 that Respondent previously paid to the NASD Inc.

B) Claimant is entitled to offset the balance of \$5,450.00 with the \$950 Claimant previously paid to the NASD Inc. Therefore Claimant is directed to pay the amount of \$4,500 to the NASD, Inc.

Concurring Arbitrator's Signature
Name



Marvin Elster, Esq.

Public Chairperson

Date of Decision: May 3, 1994

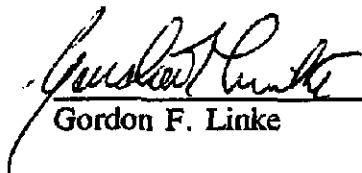
- 1) Total Forum fees in the amount of \$6,300 are hereby assessed against the Claimant, to be disposed of as follows:

A) Claimant is directed to reimburse to the Respondent the amount of \$850.00 that Respondent previously paid to the NASD Inc.

B) Claimant is entitled to offset the balance of \$5,450.00 with the \$950 Claimant previously paid to the NASD Inc. Therefore Claimant is directed to pay the amount of \$4,500 to the NASD, Inc.

Concurring Arbitrator's Signature
Name

Industry Arbitrator


Gordon F. Linke

Date of Decision: May 3, 1994