

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Mary Ellen Hirsh

93-05048

Name of Respondent

Fidelity Brokerage Services, Inc. (Fidelity Investments)

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 7, 1993, Claimant Mary Ellen Hirsh, who appeared Pro Se, alleged that Respondent Fidelity Brokerage Services, Inc. failed to abide by its fiduciary obligation to follow through on collection of \$1,124.00 to be collected for 400 shares of Singer Corp. Cumulative Preferred stock. The Claimant further alleged that the funds should have been credited directly to her account, but were not, and upon her discovery she contacted the Respondent to correct the problem, but to date she still has not received these funds.

Respondent Fidelity Brokerage Services, Inc. (Fidelity Investments), through its in-house representative, Anne Marie Gillette, Esq., maintained that it serves as a Custodian for the Claimant's account, not a fiduciary, and as a custodian its duty was limited to informing the class administrator that she held Singer shares in her IRA account. The Respondent also maintained that it did inform the class administrator of her position and therefore fulfilled its duty to the Claimant. The Respondent also maintained that it has no way of knowing whether or not the Claimant fully complied with the instructions of the class administrator in filing her proof of claim, or whether she was determined to be ineligible to participate, but that by providing her name to the class administrator, it fulfilled its role in regard to the class action suit, and therefore it has committed no wrongdoing.

RELIEF REQUESTED

Claimant Mary Ellen Hirsh requested \$1,124.00 in actual damages.

Respondent Fidelity Brokerage Services, Inc. requested that the claims of the Claimant be dismissed.

AWARD


Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, David M. Krichiver, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 1, 1993 and by the Respondent on February 22, 1994

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 Claimant Mary Ellen Hirsh \$1,124.00 in actual 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 shall be retained by the NASD, Inc. Respondent Fidelity Brokerage Services, Inc. is liable and shall pay \$50.00 to the Claimant as reimbursement of the filing fee.

AFFIRMATION

I, DAVID M. KRICHIVER, ESQ., 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: September 14, 1994

