

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Dorothy A. DaPonte

93-05068

**Name of Respondent**

Fidelity Investments

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on December 8, 1993, Claimant Dorothy A. DaPonte, who appeared Pro Se, alleged that Respondent Fidelity Investments, through its broker, Tammy Eikenhorst, failed to follow her instructions to sell 2,000 shares of Alza Corp. when it reached 32 1/2 and instead sold it immediately at 32 5/8. The Claimant contended that due to the error of the Respondent she has suffered damages for which the Respondent should be held liable.

Respondent Fidelity Investments, through in-house counsel, Ann Marie Gillette, Esq., maintained that it properly handled the Claimant's order, which was confirmed by the Claimant before it was placed, and further that she has suffered no compensable losses and her claim is unsupported by the facts and should be dismissed.

**RELIEF REQUESTED**

Claimant Dorothy A. DaPonte requested \$3,500.00 in actual damages.

Respondent Fidelity Investments requested that the claims of the Claimant be dismissed.

**AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert Volk, Esq., was selected to review the matter in controversy between the Parties set forth in submissions to Arbitration signed by the Claimant on January 20, 1994 and by the Respondent on March 8, 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. The claims of the Claimant Dorothy A. DaPonte against Respondent Fidelity Investments are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Dorothy A. DaPonte shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **ROBERT VOLK, 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.

A handwritten signature in cursive script, appearing to read "Robert Volk", is written over a horizontal line.

Signature of Arbitrator

**DATE OF DECISION:**      October 25, 1994