

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Melvin W. and Rita Kroot

93-05226

Name of Respondents

Fidelity Brokerage Services, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 20, 1993, Claimants Melvin W. and Rita Kroot, who appeared Pro Se, alleged that they owned an unspecified number of Rogers Communication zero coupon bonds that were subject to a bond tender offer in which the bonds would either be converted to common stock or redeemed for cash. Claimants further alleged that the deadline for inclusion in the tender offer was August 14, 1993. Claimants contended that on August 13, 1993, they told a representative of Respondent that if the redemption price of the bonds was only \$220.00 per bond, they wanted their bonds converted to stock as permitted by the tender offer. Claimants contended that they told the representative of Respondent to call them back after verifying the price of the redemption, and that they would convert the bonds into securities. Claimants further contended that the representative of Respondent never called them back, and that the bonds were redeemed for cash, rather than converted to stock as per the Claimants' request. Due to the above, Claimants alleged that they suffered damages for which the Respondent should be held liable.

Respondent Fidelity Brokerage Services, Inc., through Respondent's in-house counsel Anne Marie Gillette, Esq., Boston, Massachusetts, contended that Claimants maintained separate IRA accounts with Respondent, and that in each of these accounts Claimants owned 100 Rogers Communication zero coupon bonds. Respondent further contended that on August 6, 1993 Rogers Communications announced a tender offer for all holders of these bonds, giving

them the option to convert their bonds into Rogers Communication stock or if no order for conversion was placed, the bonds would be redeemed for cash. Respondent maintained that on August 10, 1993 it sent the Claimants a reminder that the deadline to participate in the tender offer was August 14, 1993. Respondent further maintained that Claimant called Respondent's representative and asked for a verification of the conversion price and a call back, but did not state that if the price of the redemption was \$223.55 he would want the conversion. Respondent contended that its representative called back Claimant as requested but he was unavailable. Respondent further contended that later that day Claimant called Respondent's representative, and was told by the representative that \$223.55 was the correct price for the redemption. Respondent maintained that Claimant then said he would reconsider the offer and call the representative back. Respondent further maintained that the representative never received a call back from Claimants that day, and on August 16, 1993 the Claimants' bonds were redeemed for cash. Respondent contended that Claimants never placed an order to convert the bonds into stock, and knew that such action could not be taken by Respondent unless authorized by the Claimants. Respondent contended that due to the above, it should not be held liable in this matter.

RELIEF REQUESTED

Claimants Melvin W. and Rita Kroot requested \$2,000.00 in actual damages.

Respondent Fidelity Brokerage Services, Inc. requested that the Claimants' Statement of Claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Joseph W. Grossner, 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 9, 1993 and by the Respondent on April 4, 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:

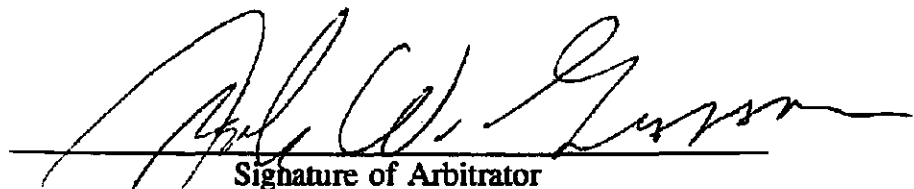
1. Respondent Fidelity Brokerage Services, Inc. is liable and shall pay to Claimants Melvin W. and Rita Kroot \$2,000.00 in actual damages.
2. The parties shall bear their respective costs.

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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 to Claimants Melvin W. and Rita Kroot \$50.00 as reimbursement of the filing fee.

AFFIRMATION

I, **JOSEPH W. GROSSNER**, do hereby affirm upon my oath of 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: June 27, 1994