

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Eileen C. and Eric E. Schenck

94-00956

Name of Respondents

Fidelity Brokerage Services, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 11, 1994, Claimants Eileen C. and Eric E. Schenck, who appeared Pro Se, alleged that they purchased shares of Vision Sciences, Inc. of California from Respondent Fidelity Brokerage Services, Inc. ("Fidelity"). Claimants further alleged that their original intention was to buy shares in Vision Sciences, Inc. of Massachusetts which was soon to be traded on the NASDAQ exchange. Claimants contended that they told their broker at Respondent before they purchased the stock in question that they wanted to buy stock in the Vision Sciences, Inc. which would be trading on the NASDAQ exchange. Claimants further contended that the original confirmation statement did not specify if their Vision Sciences, Inc. shares were from a company in Massachusetts or California. Claimants alleged that Respondent sold them stock in a worthless, bankrupt company more than one and a half years after it declared bankruptcy. As a result of the above, Claimants contended that they have suffered damages for which the Respondent should be held liable.

Respondent Fidelity Brokerage Services, Inc., through its in-house counsel Anne Marie Gillette, Esq., Boston, Massachusetts, maintained that Claimants placed an order to buy one thousand dollars worth of Vision Sciences, Inc. through Respondent on December 14, 1992, without indicating what the ticker symbol of this company was. Respondent further maintained that it read the order back to Claimants, Claimants confirmed it, and Respondent executed the order. Respondent contended that Vision Sciences, Inc., California, was the only Vision

Sciences stock trading publicly on the day the Claimants placed their trade. Respondent further contended that Vision Sciences, Inc. of Massachusetts did not start trading publicly until December 15, 1992. Respondent maintained that Claimants received a transaction confirmation within five days of when the order was executed, as well as month end statements in December and January which listed the purchase of Vision Sciences, Inc., California. Respondent contended that the Claimants were seeking to hold it responsible for their failure to provide Respondent with the correct identity of the security they sought to purchase. As a result of the above, Respondent maintained that it should not be held liable in this matter.

RELIEF REQUESTED

Claimant Eileen C. and Eric E. Schenck requested \$538.00 in actual damages.

Respondent Fidelity Brokerage Services, Inc. requested that the Claimant's Statement of Claim be dismissed in its entirety.

AWARD


Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, David Fogel, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on March 4, 1994 and by the Respondent on April 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. The claims of Claimants Eileen C. and Eric E. Schenck against Respondent Fidelity Brokerage Services, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

AFFIRMATION

I, **DAVID FOGEL, ESQ.**, 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

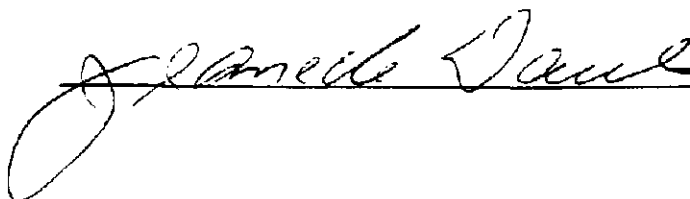
DATE OF DECISION: August 2, 1994

STATE OF: *New Jersey*

SS:

COUNTY OF: *Bergen*

On this 26 day of July 1994, before me personally appeared David Fogel, Esq. to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



COUNTY OF BERGEN
STATE OF NEW JERSEY
JEANETTE DAUE
NOTARY PUBLIC
MY COMMISSION EXPIRES 2/7/99
I.D. NO. 2056189