

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Wendy H. Cohen

94-01135

Name of Respondent

Fidelity Brokerage Services, Inc.

REPRESENTATION

For Claimant, Wendy H. Cohen ("Cohen"): Maxine Bradford, Esq. and Jack Stein, Esq., of Stein, Rosenberg & Winikoff, P.A., Fort Lauderdale, Florida.

For Respondent, Fidelity Brokerage Services, Inc. ("Fidelity"): Anne Marie Dever, Esq., of Fidelity, Boston, Massachusetts.

CASE INFORMATION

Statement of Claim filed: March 15, 1994. Claimant's Submission Agreement signed: March 15, 1994.

Statement of Answer filed: June 27, 1994. Respondent's Submission Agreement signed: June 27, 1994 by Anne Marie Dever, Esq., Product Manager of Fidelity.

HEARING INFORMATION

On January 31, 1995, in Fort Lauderdale, Florida a hearing lasting one session was conducted.

CASE SUMMARY

Claimant alleged that Respondent did not inform the Claimant about the early expiration date of her warrants of SciClone Pharmaceuticals ("SCLN") which Fidelity held in street name; that the warrants were to expire on August 5, 1993, and Cohen was not mailed notification until August 3, 1993; and, that Respondent's actions constituted the following claims: breach of contract, breach of fiduciary duty, and negligence.

Respondent denied all allegations of wrongdoing and alleged that Fidelity provided timely notice to Cohen of the expiration date of the SCLN warrants; that Cohen was away from her home at the time of the notice; and, thus Cohen was unable to receive her mail until after the expiration date had passed.

RELIEF REQUESTED

Claimant requested damages of \$10,000.00, interest at 12% from October 4, 1993 through the date of the Award, reasonable attorney's fees, costs of this proceeding, and such further relief that this Panel deems appropriate.

Respondent requested dismissal.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award be entered and have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Fidelity, is found liable and shall pay to the Claimant the amount of \$4,620.00.
2. Claimant's requests for interest, punitive damages, and attorney fees are denied.

OTHER COSTS

None.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$200.00 (1 session x \$200.00).
2. Claimant is hereby assessed \$100.00 for which the NASD shall retain the \$100.00 previously deposited in full satisfaction thereof. The NASD shall retain the remaining \$100.00 deposited by the Claimant, which shall be reimbursed by the Respondent as provided hereafter.
3. Respondent is hereby assessed \$100.00 which shall be paid directly to the Claimant.
4. 3. The NASD shall retain the non-refundable filing fee of \$75.00 paid by the Claimant.
6. Pursuant to Section 45 of the Code of Arbitration Procedure, Respondent is hereby assessed a Membership Surcharge of \$200.00 payable to the National Association of Securities Dealers, Inc.

Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrator's Signature

LS/
Leo H. Kerns, Esq.

Public

Date of Decision: 2/23/95