

**NASD AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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In the Matter of the Arbitration Between

Charanjit and Mary Jane Rai

and

NASD Case Number 94-01167

Fidelity Brokerage Services, Incorporated  
and Edward Johnson, III and Neil Rhein

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**REPRESENTATION OF PARTIES**

Claimants, Charanjit and Mary Jane Rai were Pro Se and were represented at the hearing by Charanjit Rai only.

Respondents, Fidelity Brokerage Services, Inc., Edward Johnson, III and Neil Rhein were represented by Stefani I. Silverberg, Esq. of Jenkins & Gilchrist located in Dallas, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 28, 1994.

The Submission Agreement of Claimants, Charanjit and Mary Jane Rai was signed on March 25, 1994 .

The Amendment to the Statement of Claim was filed on June 22, 1995.

The Statement of Answer was filed by Respondent, Fidelity Brokerage Services, Inc. was filed on or about October 26, 1994.

The Submission Agreement of Respondent, Fidelity Brokerage Services, Inc. was signed on October 27, 1994 by Anne Marie Gillette, Product Manager.

The Response to the Amendment to the Statement of Claim and Motion to Dismiss was filed by Fidelity Brokerage Services, Inc. on or about October 31, 1995.

### **HEARING INFORMATION**

The hearing was held on October 31, 1995 in Houston, Texas for a total of one (1) session.

### **CASE SUMMARY**

Claimants, Charanjit and Mary Jane Rai ("Rai") alleged that the Respondents, Fidelity Brokerage Services, Inc. ("Fidelity"), Edward Johnson, III ("Johnson") and Neil Rhein ("Rhein"), are responsible for selling the Claimant's 600 shares of Chrysler stock on January 15, 1993, for being unable to confirm the transaction until January 21, 1993 and for refusing to buy 600 shares of GM stock on January 18, 1993. The Claimants contended that they made repeated requests on January 16, 18 and 19, 1993 to several Fidelity representatives to purchase 600 shares of GM stock if the 600 shares of Chrysler had been sold. Rai asserted that the Respondents told the Claimants that they did not know if the Chrysler stock had been sold and that the telebroker recording listed the Chrysler stock in their portfolio on January 20, 1993. According to the Claimants, they were not informed that the Chrysler stock was stock until January 21, 1993. The Claimants claimed that, although they made requests to a number of Fidelity employees, they were told they could not purchase 600 shares of GM. The Rais contended that, when they complained to Fidelity about the Respondent's indecision, they were told Fidelity would not reimburse them for the loss.

In its Answer, Respondent, Fidelity Brokerage Services, Inc. denied all allegations of wrongdoing asserted by the Claimants. Fidelity maintained that they did not prohibit the Claimants from purchasing GM on January 18, 1993 yet that the Claimant decided to wait to purchase the shares of GM until they were informed of the status of the Chrysler options. Fidelity further maintained that there was no evidence that the Claimants wanted to purchase 600 shares of GM on January 18, 1993 and that the Rais purchased only 200 shares of GM on January 22, 1993.

### **RELIEF REQUESTED**

Claimants, Charanjit and Mary Jane Rai requested an award in the amount of approximately \$10,000.00. The Claimants specifically requested that the Respondent be required to purchase the 600 shares of GM at the closing price of \$34 5/8 on January 18, 1993 and to remove all the trading restrictions on their account.

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

### **OTHER ISSUES CONSIDERED & DECIDED**

At the start of the hearing, Respondents, Edward Johnson, III and Neil Rhein by and through their attorney requested that they be dismissed from this arbitration pursuant to Section 16 of the NASD Code of Arbitration Procedure (the "Code"). After reviewing their written Motion to Dismiss and subsequent to hearing the oral arguments from the parties, the arbitrator determined that the request was granted; therefore, Johnson and Rhein were dismissed as parties to this action. Johnson and Rhein did not personally appear at the hearing yet their attorney appeared on their behalf.

Respondents, Edward Johnson, III and Neil Rhein did not file with the NASD properly executed submissions to arbitration or answers to the claim but are required to submit to arbitration pursuant to Section 12 of the Code and by having their attorney appear on their behalf at the hearing and by filing a Motion to Dismiss are bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered. The parties 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, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby denied in its entirety;
2. The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein; and
3. Any requests for relief not specifically granted herein are hereby denied.

### **FORUM FEES**

Forum fees are calculated at the rate of \$300.00 per hearing session. There was one (1) session x \$300.00 = \$300.00 in forum fees. Pursuant to Section 43(b) of the NASD Code of Arbitration Procedure, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$100.00

and shall retain as forum fees the hearing session deposit in the amount of \$300.00 previously deposited with the NASD by the Claimants. Respondent, Fidelity Brokerage Services, Inc. is liable for and shall pay to the Claimants the sum of \$200.00 as reimbursement. Pursuant to Section 45 of the NASD Code of Arbitration Procedure, Respondent, Fidelity Brokerage Services, Inc. is hereby liable for and shall pay to the NASD the amount of \$200.00 for the member surcharge.

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

Arbitrator's Signature:

Dated:

A. Bentley Nettles, Esq.  
A. Bentley Nettles, Esq.  
Public Arbitrator, Presiding Chair

November 6, 1995

Date served by the NASD: November 13, 1995