

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Charles and Victoria Simone

vs.

94-02128

Name of Respondent

Fidelity Brokerage Services, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 7, 1994, Claimants Charles and Victoria Simone, who appeared Pro Se, alleged that Respondent Fidelity Brokerage Services, Inc. sold securities out of their account without authorization. Claimants further alleged that in mid-January 1994, Tony Walker, an employee of Respondent called to say that Claimants needed to cover a margin call and Claimants authorized him to take the required money from their Municipal Bond Fund. Claimants contended that on February 3, 1994, Herb Shaver, another employee of Respondent called to say that Respondent needed more money to cover the margin and Claimants again authorized a transfer from their Municipal Bond Fund and told Respondent that if monies were needed in the future to make a transfer from this fund. Claimants further contended that on February 18, 1994 Respondent sold 1400 shares of IGMM out of their account for a margin sellout without authorization. Claimants alleged that it was their understanding that Respondent would call them first if they needed money to cover a margin and since they previously called on two occasions they set the precedent that this would be the procedure. 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 representative and in-house counsel Anne Marie Gillette, Esq., Boston, MA, maintained that it did provide notice to Claimants regarding their margin call by sending them a mailgram on February 15, 1994. Respondent further maintained that, in any event, no notice to Claimants was required before liquidating stock to meet a margin call. Respondent contended that Claimants were aware that, pursuant to the margin agreement, Respondent had the authorization to liquidate stock at any time, without notice to them, to cover a margin call. As a result of the above, Respondent maintained that it should not be held liable in this matter.

RELIEF REQUESTED

Claimants Charles and Victoria Simone requested \$7,175.00 in actual damages.

Respondent Fidelity Brokerage Services, Inc. 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, David Fogel, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on June 3, 1994 and by the Respondent on October 17, 1994.

And, the Arbitrator, having considered the proof to the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants Charles and Victoria Simone against Respondent Fidelity Brokerage Services are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Charles and Victoria Simone, shall be retained by the NASD, Inc.

AFFIRMATION

I, **DAVID FOGEL, 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.



Signature of Arbitrator

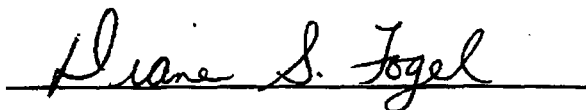
DATE OF DECISION: March 28, 1995

STATE OF:

SS:

COUNTY OF:

On this ____ day of _____, 19____, before me personally appeared **DAVID FOGEL, ESQ.** to me known and known before 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
DIANE S. FOGEL
NOTARY PUBLIC
MY COMMISSION EXPIRES SEPT. 8, 1999
I.D. NO. 2169521