

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Boleslaw Kielar
Janina Kielar

vs.

Award No.
95-00001

Name of Respondent

Fidelity Brokerage Services, Inc.

REPRESENTATION

Claimants, Boleslaw Kielar and Janina Kielar, were not represented by counsel.

For Respondent, Fidelity Brokerage Services, Inc., David C. Boch, Esq. from the firm of Bingham, Dana & Gould, located in Boston, Massachusetts.

CASE INFORMATION

Statement of Claim was filed on December 9, 1994.

Claimants' Submission Agreement was signed on December 9, 1994.

Statement of Answer was filed by Respondent on February 9, 1995.

Respondent's Submission Agreement was signed on January 11, 1995.

HEARING INFORMATION

See Other Issues Considered and Decided section of this decision.

CASE SUMMARY

Claimants in their Statement of Claim alleged that Respondent caused them to sustain a loss of \$6,525.80 by failing to cancel a pending order to buy back five call option contracts (a "limit order") on July 20, 1990, the date on which the options expired. Claimants maintained that when he phoned Respondent to cancel his order to buy back the options, Respondent told him that it was experiencing computer problems and that there was a problem with the stock in question. Claimants alleged that this resulted in the order being executed, and the consequent loss of the amount above.

Respondent maintained that it did follow Claimants' instructions and that Claimants lost no money as a result of Respondent's actions. Further, Respondent claimed that Claimants actually benefitted from the order allegedly not being placed or executed, as the price at which Claimants would to have paid for the options on the date of the controversy was higher than it was seven days later, when Claimants allowed

the options be assigned.

Respondent also alleged that Claimant was in sole control of, ratified, and was aware of the nature of every transaction.

RELIEF REQUESTED

Claimants requested restitution in the amount of \$6,525.80.

Respondent requested that the case be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The hearing in this matter was scheduled for September 19, 1995. By letter dated September 12, 1995, Claimants' through Mr. Kielar, Janina Kielar, requested that the hearing date be postponed because Mr. Kielar was under the care of a physician at Veterans Medical Center in Northampton, Massachusetts. Respondent consented to this request and this arbitrator postponed the hearing.

By letter dated January 30, 1996, the NASD staff attempted to reschedule this matter and gave Claimants until February 9, 1996 to provide dates or this case would be referred to this arbitrator for dismissal pursuant to Section 16 of the *Code of Arbitration Procedure*. The NASD staff confirmed by letter dated February 9, 1996 to Mrs. Kielar and copied Respondent that Mr. Kielar has passed away, Mrs. Kielar did not want to proceed with the case by hearing or based upon the papers previously submitted, and that Mrs. Kielar did not want to put this in writing. The staff gave Mrs. Kielar until February 29, 1996 to decide. No response was received by the NASD from Mrs. Kielar.

AWARD

After reading the pleadings, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

All claims are dismissed with prejudice for failure to prosecute.

FORUM FEES

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees were paid by Claimants and shall be reimbursed as indicated below.

Non-Refundable Filing Fee:	\$75.00
Hearing Session Fee:	\$200.00

1. Claimant is entitled to a refund of the Hearing Session Fee of \$200.00.

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Sole Public Arbitrator


June Y. Kilmarx, Esq.

NASD's Date of Decision: April 17, 1996