

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Edwin J. Kliegman

95-00328

Name of Respondent

Fidelity Brokerage Services, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 23, 1995, Claimant Edwin J. Kliegman ("Kliegman"), who appeared Pro Se, alleged that on February 23, 1994 he contacted Respondent Fidelity Brokerage Services, Inc. ("Fidelity") to sell \$75,000 of Spartan Short-Inter Muni Fund and that he indicated to the Fidelity representative that he needed to receive the proceeds as soon as possible. Claimant further alleged that the representative stated that the proceeds check could be picked up on Saturday, February 26, 1995 at either Fidelity's San Francisco or Walnut Creek office. Claimant contended that on February 26, 1994 he telephoned Fidelity's San Francisco office and got a recording indicating that the office was closed, and that he telephoned Fidelity's Cincinnati phone center and was told that nothing could be done. As a result of the above, Claimant alleged that he lost an investment opportunity, and has suffered damages for which Respondent should be held liable.

Respondent Fidelity, through its in-house counsel Anne Marie Dever, Esq., Boston, Massachusetts, maintained that the San Francisco office was open on Saturday February 26, 1994, but because of reduced staffing on Saturdays the representative on duty was occupied and unable to answer the telephone when Claimant called. Respondent further maintained that a proceeds check was issued to Claimant on Monday February 28, 1994. As a result of the above, the Respondent contended that it should not be held liable in this matter.

RELIEF REQUESTED

Claimant Kliegman requested \$7,875.00 in damages.

Respondent Fidelity requested that the Statement of Claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

On April 10, 1995, Claimant Kliegman filed a Motion to preclude Respondent's answer and to bar Respondent from presenting any matter, arguments, or defenses, pursuant to Section 25(b)(2)(iii) of the NASD Code of Arbitration Procedure ("the Code"). On June 2, 1995 Respondent Fidelity filed a response. After due consideration, the presiding Arbitrator decided to deny the motion.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public Arbitrator, Ann C. Northern, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 18, 1995 and by the Respondent on April 3, 1995.

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. Respondent, Fidelity Brokerage Services, Inc., shall be liable for, and shall pay to Claimant, Edwin J. Kliegman, \$500.00 in actual damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. ("NASD") by the Claimant shall be retained by the NASD, Inc. Respondent, Fidelity Brokerage Services, Inc., is liable for and shall pay to Claimant, Edwin J. Kliegman, \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, ANN C. NORTHERN, 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

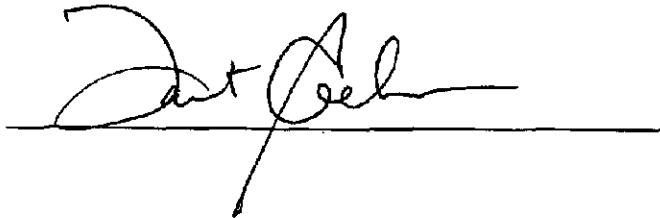
DATE AWARD SERVED BY THE NASD: *October 11, 1995*

STATE OF: NY

SS:

COUNTY OF: Kings

On this 5 day of Oct 1995, before me personally appeared ANN C. NORTHERN, ESQ. to me known and known before me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.



JANET GELMAN
Notary Public, State of New York
No. 24-02GE4837925
Qualified in Kings County
Commission Expires 2/1/96