

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Marvin E. Lowenhardt

95-00340

**Name of Respondent**

Fidelity Investments

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**REPRESENTATION**

For Claimant, Marvin Lowenhardt ("Lowenhardt") pro se.

For Respondent, Fidelity Investments ("Fidelity") David J. Gellen, Esq. of Kutak Rock, Atlanta Ga.

**CASE INFORMATION**

Statement of Claim filed January 23, 1995.

Claimant's Submission Agreement signed on January 18, 1995.

Statement of Answer filed by Respondent, Fidelity on March 30, 1995.

Respondent, Fidelity's Submission Agreement signed on March 29, 1995.

**HEARING INFORMATION**

On December 1, 1995 in Ft. Lauderdale, Florida, hearings lasting two sessions were conducted.

**CASE SUMMARY**

Claimant, alleged that Fidelity gave incorrect information and disclosure concerning the risks of the brokered CDs the Claimant bought July 1, 1994. The Claimant asserts that he has suffered damages in excess of \$55,000.00 in loss income opportunity because he was locked out of the S&P 500 related instruments which had a yield of 33% for the relevant investment period.

In addition the claimant asserts damages of \$5,000.00 in missed market income opportunity if his investment was placed in a money market instrument from July 1, 1994 through December 31, 1994.

Respondents allege that on June 29, 1994, Claimant purchased three Certificates of Deposit ("CDs") issued by three different financial institutions brokered by Respondent. None of those institutions was affiliated with Respondent. The CDs were purchased at a price of \$62,000 each for a total of \$186,000. The CDs matured in three, four, and five years and had interest rates of 5.60%, 6.15%, and 6.20%, respectively. Claimant alleges that he was told the CDs at issue were just like CDs, and does not remember being informed that if his CDs were withdrawn prior to maturity, they would be sold on a secondary market and subject to the prevailing market price. After his purchase, the market price for the CDs declined. Claimant sold the CDs on September 28, 1995, receiving \$182,900. While he held the CDs he received \$13,820 in interest. Claimant did not pay any early withdrawal penalty.

Respondent asserts that Claimant is not entitled to recover from Respondent because it was not the cause of any decrease in Claimant's principal and he received exactly what he bargained for. Respondents denies it is liable on the grounds that it appropriately disclosed all material facts relating to Claimant's purchase of his CDs, and no misinformation was given to Claimant.

#### **RELIEF REQUESTED**

Claimant requested damages in excess of \$55,000.00.

Respondent requested dismissal of the claim with prejudice.

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

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

#### **AWARD**

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

Respondent Fidelity is found liable and shall pay to the Claimant the amount of \$5,384.50.

### OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney fees.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$600.00 (two hearing sessions x \$300.00).

Claimant is hereby assessed \$300.00 for which the NASD shall retain the \$300.00 previously deposited in full satisfaction thereof.

Respondent is hereby assessed \$300.00 payable directly to the NASD.

The NASD shall retain the non-refundable filing fee of \$100.00 paid by the Claimant.

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

Concurring Arbitrators' Signatures  
Name

Public/Industry

/s/  
Randy R. Freedman, Esq.

Public

/s/  
Robert Kasky, Esq.

Industry

/s/  
J. Phillip Knight

Public

Date of Decision: January 30, 1996