

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Hill A. Robertson

95-00747

Name of Respondents

Fidelity Brokerage Services, Inc.  
Cole Sawyer

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 13, 1995, Claimant, Hill A. Robertson, who appeared Pro Se, alleged that Respondents, Fidelity Brokerage Services, Inc. ("FBS") and Cole Sawyer ("Sawyer"), failed to inform him of material information in a sale of securities. Claimant further alleged that in December, 1993, he purchased \$50,000.00 of a GNMA unit trust from Respondents. Claimant contended that Respondents never disclosed that there was a 4.167% sales commission involved. Claimant further contended that the confirmation he received did not disclose the sales charge. Claimant alleged that had he known about the sales charge, he would not have made the investment and Respondents should be held liable for reimbursement of the sales charge.

Respondents, Fidelity Brokerage Services, Inc. and Cole Sawyer, through their representative, Suzanne R. Michaud, Esq., Boston, MA., maintained that Respondent Sawyer reviewed the investment with the Claimant, explaining the monthly payments of principle and interest, coupon rate, yield to maturity, and estimated current returns and specifically told the Claimant that all these figures were net of the sales charge. Respondents further maintained that Claimant had the prospectus in his possession from December, 1993 until April, 1994, but chose not to read it. Respondents contended that if Claimant had read the prospectus, he would have immediately seen that the prospectus states that the price of the investment includes a sales charge. Respondents further contended that because the price of the investment includes the sales charge, the confirmation statement did not separately identify it as a "commission." As a result of the above, Respondents maintained that they should not be held liable for Claimant's loss.

**RELIEF REQUESTED**

Claimant, Hill A. Robertson, requested \$2,083.00 in actual damages, plus interest.

Respondents, Fidelity Brokerage Services, Inc. and Cole Sawyer, 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, William Edmund Burke, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on March 3, 1995, by Respondent Cole Sawyer on May 9, 1995 and by Respondent Fidelity Brokerage Services, Inc. on May 10, 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. Respondents, Fidelity Brokerage Services, Inc. and Cole Sawyer, are jointly and severally liable and shall pay to the Claimant, Hill A. Robertson, \$2,083.00 in actual damages.
2. Respondents, Fidelity Brokerage Services, Inc. and Cole Sawyer, are jointly and severally liable and shall pay to the Claimant, Hill A. Robertson, simple interest at the rate of 7.5% per annum from December 6, 1993 to July 20, 1995.
3. The parties shall bear their respective costs.
4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Hill A. Robertson, shall be retained by the NASD, Inc. Respondents Fidelity Brokerage Services, Inc. and Cole Sawyer, are jointly and severally liable and shall pay to the Claimant \$50.00 as reimbursement of the filing fee.

Affirmation

STATE OF

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COUNTY OF

I, William Edward Smith, do hereby affirm upon my oath  
as arbitrator that I am the individual described in and who executed this instrument,  
which is my oath and award.

  
Signature of Arbitrator

DATE OF DECISION: October 20, 1995