

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Paul R. and Rose A. Gagnon

95-00778

Name of Respondents

Fidelity Investments Institutional Services
Lee Datesman
David Colbert
Vince Jouret
Rand Sutton

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 14, 1995, Claimants Paul R. and Rose A. Gagnon ("Claimants"), who appeared Pro Se, alleged that Respondent Fidelity Investments Institutional Services ("FIIS"), on August 18, 1994, was notified to sell \$5,000.00 from their Equity Income II Mutual ("EIM") and to purchase \$5,000.00 of Cascade Communications ("CC"), which it failed to do. Claimants further alleged they received control number (TVJ 1344) and was later informed by Respondent Lee Datesman ("Datesman") that there had been a computer error which prevented the trade for which the Claimants would not receive credit. Claimants contended that Paul Gagnon listened to the taped conversation with Datesman and did not hear the control number or account numbers for the accounts. Claimants further contended that Respondent Rand Sutton ("Sutton") reviewed their complaint filed with FIIS finding there was no fault with which Paul Gagnon does not agree. Claimants alleged that as a result of the above, they have suffered a loss for which the Respondents should be held liable.

Respondents Fidelity Investments Institutional Services and David Colbert, through their representative and in-house counsel, Suzanne R. Michaud, Esq., maintained that Claimants never executed the two alleged transactions on August 18, 1994. Respondents further maintained that Claimants placed a sell order through Respondent Vince Jouret, to sell \$5,000.00 of their EIM holdings but never placed a buy order for shares of CC stock. Respondents contended that the sell order was not executed because of a computer problem but that Claimants have repeatedly refused to accept FIIS's offer to effect the transfer. Respondents further contended Paul Gagnon never placed a buy order as evidenced by the tape recordings of their conversations and that as a result of the above, they should not be held liable.

Respondents Vince Jouret and Lee Datesman, failed to file Answers to the Statement of Claim.

RELIEF REQUESTED

Claimants Paul R. and Rose A. Gagnon, requested \$5,000.00 in actual damages.

Respondents Fidelity Investments Institutional Services, David Colbert, and Rand Sutton, requested that the claims of the Claimants be dismissed.

Respondents Vince Jouret and Lee Datesman failed to file Answers to the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator reviewed and considered all documentation submitted by the parties regarding the Motion to Dismiss Respondent Rand Sutton, from this action. The Arbitrator granted the Motion.

In accordance with Section 13 of the NASD Code of Arbitration Procedure, the Respondent Lee Datesman, was served by regular mail and given an opportunity to respond, which he failed to do. In addition, an overdue answer notice and notice of the identity of the Arbitrator were sent by certified mail as evidenced by the return signature card on file at the NASD.

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent Lee Datesman, had notice of the claim, and was required to submit to this arbitration proceeding; and is therefore, bound by the Arbitrator's ruling and determination.

Although reasonable attempts were made, Respondent Vince Jouret, was not served with the Statement of Claim.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Neil J. Carey, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Paul R. and Rose A. Gagnon, on February 6, 1995, and by the Respondents Fidelity Investments Institutional Services and David Colbert, on April 19, 1995, and by Respondent Rand Sutton, on April 7, 1995, but not by Respondent Lee Datesman, as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

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. The claims of the Claimants Paul R. and Rose A. Gagnon, against Respondent Vince Jouret, are dismissed without prejudice.
2. The claims of the Claimants Paul R. and Rose A. Gagnon, against Respondents Fidelity Investments Institutional Services, Lee Datesman, David Colbert, and Rand Sutton, are denied in their entirety.

3. The parties shall bear their respective costs.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Paul R. and Rose A. Gagnon, shall be retained by the NASD, Inc.

AFFIRMATION

I, **NEIL J. CAREY**, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Neil J. Carey

DATE OF DECISION: January 3, 1995