

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Richard J. & Carolyn Ann Scioscia

95-01147

Name of Respondent

Fidelity Brokerage Services, Inc.

REPRESENTATION

For Claimants Richard J. and Carolyn Ann Scioscia ("the Scioscias"): Lawrence Schechterman, of Securities Arbitration Recovery, Inc., of Boca Raton, Florida, and Jeffrey Kahn of Securities Arbitration Consultants, Inc.

For Respondent Fidelity Brokerage Services, Inc. ("Fidelity"): Angela G. Miele, Esq., and Michael K. Wolensky, Esq., of Kutak Rock, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on: March 6, 1995.

Claimants, the Scioscias', Submission Agreement signed on: February 28, 1995.

Answer filed on: June 2, 1995.

Respondent Fidelity's Submission Agreement signed on: April 21, 1995, by Suzanne R. Michaud, Senior Product Manager of Fidelity, on behalf of Fidelity.

HEARING INFORMATION

On March 20, 1996, a pre-hearing conference was conducted via telephone conference call with an arbitrator.

On April 9, 10, and 11, 1996, in Fort Lauderdale, Florida, a hearing lasting six (6) sessions was conducted.

CASE SUMMARY

Claimants, the Scioscias, alleged that Respondent Fidelity breached its fiduciary duty, made unsuitable investments, acted fraudulently, and violated Rule 10b-5 and Section 10(b) of the Securities Exchange Act of 1934, the NASD Rules of Fair Practice, the Florida Investor Protection Act, and the Massachusetts fraud laws by permitting and failing to supervise the options trading in Claimants' option account and allowing Claimant Richard J. Scioscia ("Richard"), who is disabled and suffering from mental disease, to commit "financial suicide."

Claimants alleged that Respondent failed to terminate Claimants' option trading privileges despite the fact that on several occasions Richard called Respondent for assistance in completing several new account forms and disclosed on the forms that he was "disabled," "retired," "age 48," and that Claimants' annual earnings mainly consisted of "disability insurance" paid from a private carrier and from social security benefits.

Claimants maintained that Richard's calls for assistance in completing the forms were prompted by his inability to complete them by himself because part of his mental handicap included the inability to form thought processes. That he also suffered from deep depression, schizophrenia, paranoid ideation, delusions and hallucinations, and an obsessive-compulsive personality was communicated to Respondent's representatives who provided direction on the information to be included in the applications.

Claimants further alleged that they were solicited with a recommendation to open option accounts, first with Fidelity and then with its Spartan Brokerage program which was designed only for active traders wanting a deeper discount. The positions Richard took exposed Claimants to the loss of substantially all of their liquid net worth, and almost all of their funds were lost within eight months.

Respondent alleged that in accordance with its policies and procedures, Fidelity made no recommendations to Claimants and offered them no investment advice, merely taking Claimants' orders and executing those orders. Respondent further alleged that from March to November 1994, Claimants placed unsolicited purchase and sale orders for contracts of the Standard & Poor's 100 Index options, ticker symbol OEX, of varying expiration dates. Fidelity denied all liability to Claimants and asserted there was no factual or legal basis for the Statement of Claim.

RELIEF REQUESTED

Claimants sought compensatory damages in the amount of \$385,373.11 and punitive damages in an amount not less than that provided by section 768.73 of the Florida Statutes, plus interest, rescission, and damages in accordance with section 517.211 of the Florida Statutes, costs of this proceeding, and reasonable representative's fees.

Respondent requested dismissal of the claim against it and that it be awarded its litigation expenses, costs, attorneys' fees, and filing and forum fees.

OTHER ISSUES

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:

1. Respondent Fidelity is found not liable and, therefore, all claims against it are hereby dismissed.
2. Claimants' request for attorneys' fees, costs, expenses, and punitive damages is denied.
3. Respondent's request for expenses, costs, attorneys' fees, and filing and forum fees is denied.

OTHER COSTS

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

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,800.00 (1 pre-hearing conference x \$300.00 plus 6 regular sessions x \$750.00).
2. Claimants, the Scioscias, are hereby assessed \$2,400.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD of \$1,650.00 payable to the National Association of Securities Dealers, Inc.
3. Respondent Fidelity is hereby assessed \$2,400.00 payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$200.00 paid by Claimants.

ARBITRATORS

Concurring Arbitrators' Signatures

/s/

Myron Dunay, Esq.

/s/

J. Philip Knight
Panelist/Public Arbitrator

/s/

Hewitt Bruce
Panelist/Industry Arbitrator

Date of Decision: May 20, 1996