

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Cynthia J. Hines

95-01839

Name of Respondent

Fidelity Brokerage Services, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 4, 1995, Claimant Cynthia J. Hines ("Claimant"), who appeared Pro Se, alleged that Respondent Fidelity Brokerage Services, Inc. ("Respondent"), failed to execute an order to purchase shares of USES placed by Claimant's trading representative, Joseph Cox ("Cox"). Claimant further alleged that Respondent had told Cox "your order went through" which led Cox to believe that the order had been executed. Claimant contended that Cox called Respondent to place an additional purchase order for shares of USES and discovered that the first purchase order had not been executed. Claimant further contended that Brian Mehigan called Cox from Fidelity Brokerage Services, Inc., and indicated that Respondent could have handled the transaction better and that he would not make any adjustment for the dispute. Claimant alleged that as a result of the above, she has suffered a loss for which the Respondent should be held liable.

Respondent Fidelity Brokerage Services, Inc., through its representative and Senior Product Manager, Suzanne R. Michaud, Esq., located in Boston, MA, maintained that Claimant erroneously believed that the buy limit order he placed had been executed. Respondent further maintained that the stock never fell to the limit price so it was not executed. Respondent contended that Cox had been told several times that the order had not been filled. Respondent further contended that Cox chose to wait and purchase the stock in three separate transactions at prices higher than the limit price. Respondent maintained that it does not provide advice or make recommendations regarding investment decisions, types of accounts or other financial matters and assumed that a customer who called and placed a limit order had a working knowledge of industry terms. Respondent further maintained that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant Cynthia J. Hines, requested \$3,724.00 in actual damages.

Respondent Fidelity Brokerage Services, Inc., 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, John R. Thompson, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Cynthia J. Hines, on April 4, 1995, and by the Respondent Fidelity Brokerage Services, Inc., on June 15, 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. The claims of the Claimant Cynthia J. Hines, against Respondent Fidelity Brokerage Services, Inc., are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Cynthia J. Hines, shall be retained by the NASD, Inc.

AFFIRMATION

I, JOHN R. THOMPSON, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


John R. Thompson

DATE OF DECISION: November 2, 1995