

**IN ARBITRATION
UNDER CHAPTER XVIII OF THE RULES
OF THE CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED**

IN THE MATTER OF)	
)	
Thomas W. O'Hearn,)	
)	
Claimant,)	DECISION
)	
v.)	File No. 95 NM 01
)	
Fidelity Brokerage Services,)	
)	
Respondent.)	
)	

Representation

For Claimant(s): Gary E. Lambert, Lambert & Ricci, P.C.
For Respondent(s): Robert A. Buhlman, Bingham, Dana & Gould

Pleadings

	Filed on or about:
Statement of Claim filed on or about:	01-23-95
Answer filed on or about:	03-03-95
Claimant's Motion for Judgment	08-25-95
Respondent's Opposition to Claimant's Motion	09-12-95

Hearing

The named parties appeared at the hearing specified below, and had full opportunity to present arguments and evidence.

Date(s):	December 11, 1995	No. of Sessions:	2
Location:	Boston, MA		

Summary of Issues

Thomas W. O'Hearn ("Claimant") alleges that he purchased 100 OEX Jan 430 put contracts at 3 1/8 on January 12, 1995 at approximately 10:30 a.m. EST from Fidelity Brokerage Services ("Respondent") via Respondent's toll free telephone number. Claimant further alleges that between 11:00 and 11:55 a.m. EST on the same day he placed a limit order to sell the contracts at 3 3/4, and subsequently canceled and replaced the limit order with a market order to sell the 100 OEX Jan 430 put contracts. Claimant asserts that all orders were placed via

Respondent's toll free telephone numbers. Claimant asserts that Respondent failed to execute the market order causing a loss to Claimant of at least \$28,750.17.

Relief Requested

Claimant requests an award against Respondent in the amount of at least \$28,750.17 in compensatory damages.

Other Issues Resolved

As a first order of business at the hearing, the arbitrators heard arguments with respect to two pending motions, Claimant's Motion for Judgment, filed on or about August 25, 1995, and Respondent's Motion to Compel, filed on or about December 8, 1995. After consideration, the arbitrators denied Claimant's Motion for Judgment and denied Respondent's Motion to Compel with respect to all documents, except Claimant's account documents that were available for review during a hearing break.

Award*

After due deliberation and consideration of the hearing testimony, documentary evidence, and other submissions of the parties, the undersigned arbitrators, in full and final resolution of all matters in controversy, award as follows:

1. Thomas W. O'Hearn's claim is denied.
2. Fidelity Brokerage Services' request for an award, asserted at the hearing, is denied.

Forum Fees

Pursuant to CBOE Rule 18.33, the Arbitrators assess forum fees as follows:

1. Liability for the filing fee in the amount of \$100 and hearing session fee in the amount of \$800 (2 sessions at \$400 per session), shall be divided equally between the parties.
2. The Exchange shall retain the non-refundable filing fee in the amount of \$100.00 and the hearing session deposit in the amount of \$400.00 previously submitted by Claimant.
3. Respondent is responsible for and shall pay to Claimant the sum of \$50 for fees previously deposited by Claimant.

* Pursuant to CBOE Rule 18.31, all monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction.

4. Respondent is responsible for and shall pay to the Exchange the sum of \$400.

<u>/s/ Peter P. Harrington, Jr.</u>	<u>12/18/95</u>
Peter P. Harrington, Jr.	Date
Chairperson and Public Arbitrator	
<u>/s/ Thomas E. Stern</u>	<u>12/22/95</u>
Thomas E. Stern, Industry Arbitrator	Date
<u>/s/ Robert Volk</u>	<u>12/15/95</u>
Robert Volk, Public Arbitrator	Date