

NASD REGULATION, INC. AWARD

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Milan L. Obradovich

96-01311

Name of Respondent

Fidelity Brokerage Services, Inc.

REPRESENTATION

For Claimant Milan L. Obradovich ("Claimant") appeared Terrence P. Tormey, Esq., Hazlet, New Jersey.

For Respondent Fidelity Brokerage Services, Inc. ("Respondent") appeared Michael G. Shannon, Esq. of Phillips, Lytle, Hitchcock, Blaine & Huber, New York, New York.

CASE INFORMATION

Statement of Claim filed: March 25, 1996.

Amended Statement of Claim filed: October 3, 1996.

Claimant's Submission Agreement signed on: July 22, 1996.

Statement of Answer filed by Respondent on: November 22, 1996.

Respondent's Submission Agreement signed on: May 29, 1996.

HEARING INFORMATION

Pre-Hearing Conference: March 26, 1997.
 April 9, 1997.

Hearing Date/Sessions: April 22, 1997/Two Sessions

Hearing Location: The offices of NASD Regulation, Inc., New York, New York.

CASE SUMMARY

Claimant alleged that respondent recommended unsuitable securities, made omissions and misstatements

of material facts, engaged in fraud and breached its fiduciary duty to claimant. Claimant alleged that he received a mailing from respondent which strongly recommended investment in Rollins Environmental ("Rollins"). Claimant asserted that he was an unsophisticated investor who relied upon a subsequent recommendation by a broker employed by respondent to purchase Rollins. Claimant stated that he purchased 2,000 shares of Rollins on November 16, 1992 for a total price of \$36,000. Claimant alleged that the share price of Rollins began dropping within one month of his purchase. Claimant further alleged that when he questioned respondent as to why the price was falling, respondent repeatedly advised him that the decline was temporary and that claimant should hold on to his shares because the investment would recover. Claimant alleged that, in November 1995, fearful of losing his entire investment, he sold his shares of Rollins for \$9,735 for a loss of \$26,625.00.

Respondent denied all material allegations of the Statement of Claim. Respondent maintained that it is a discount brokerage firm and does not generally provide its brokerage account holders with recommendations to buy or sell any particular securities. Respondent alleged that its account holders make their own investment decisions. Respondent maintained that it does afford its account holders access to a variety of informational sources and services from independent third parties. Respondent maintained that claimant did not allege that he had any communication with any representative employed by respondent regarding Rollins prior to his decision to purchase the stock. Respondent also maintained that claimant's allegations were vague and failed to specify persons with whom claimant allegedly spoke, misrepresentations which were allegedly made or acts for which respondent allegedly had a fiduciary duty to claimant. Respondent maintained that the source of the recommendation to purchase Rollins was an article written by an independent analyst for Standard & Poor's and further maintained that claimant acknowledged that this was the source of the recommendation.

RELIEF REQUESTED

Claimant requested the sum of \$26,625.00 in compensatory damages, interest at 8% per year for three years equaling approximately \$6,390, all filing fees and expenses of the arbitration equaling approximately \$3,000 and such other relief as deemed just and appropriate. Claimant also requested that the arbitration panel consider awarding the amount of earnings lost to date of settlement or award, plus attorneys fees.

Respondent requested dismissal of the Statement of Claim in its entirety, fees and costs associated with the proceeding, reimbursement of all costs and attorneys fees and an appropriate monetary sanction against claimant.

OTHER ISSUES CONSIDERED & DECIDED

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 NASD Regulation, Inc.

Respondent made a Motion to Dismiss the Statement of Claim which was denied by the panel.

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. The Statement of Claim is dismissed in its entirety with prejudice.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$100 non-refundable filing fee and have assessed the following Forum Fees:

Two Pre-hearing conferences x \$300	=	\$600
Two sessions x \$400	=	\$800
minus claimant's hearing session deposit	-	<u>\$400</u>
TOTAL OUTSTANDING		\$1000

Claimant be and hereby is liable for the sum of \$1400 representing 100% of the total forum fees assessed. Claimant has already paid \$400 to NASD Regulation, Inc. Claimant owes NASD Regulation, Inc. the sum of \$1000.

Fees are payable to NASD Regulation, Inc.

David I. Goldblatt, Esq.

I, David I. Goldblatt, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who have executed this instrument which is my award.

David I. Goldblatt, Esq.

Date of Decision: _____

Joseph Kosinsky, MBA

I, Joseph Kosinsky, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who have executed this instrument which is my award.

Joseph Kosinsky, MBA

Date of Decision: _____

William A. Mechmann, Esq.

I, William A. Mechmann, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who have executed this instrument which is my award.

William A. Mechmann, Esq.

Date of Decision: _____