

9709046

AWARD
NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.
OFFICE OF DISPUTE RESOLUTION

In the Matter of Arbitration Between

Gerald D. DeLuca and Rebecca L. DeLuca

Claimants,

and

No. 96-01666

Fidelity Brokerage Services, Incorporated, FMR
Corporation d/b/a Fidelity Investments, National
Financial Services Corporation

Respondents.

REPRESENTATION OF PARTIES

Claimants, Gerald D. DeLuca and Rebecca L. DeLuca of Houston, Texas, were represented pro se.

Respondents, Fidelity Brokerage Services, Incorporated, FMR Corporation d/b/a Fidelity Investments, and National Financial Services Corporation were represented by Samuel Cooper, Esquire of Baker & Botts, located in Houston, TX.

CASE INFORMATION

Claimants, Gerald D. DeLuca and Rebecca L. DeLuca's Statement of Claim was filed on or about April 25, 1996.

Claimants, Gerald D. DeLuca and Rebecca L. DeLuca's Submission Agreement was signed on September 9, 1996.

Respondents, Fidelity Brokerage Services, Incorporated and National Financial Services Corporation's Statement of Answer was filed on or about June 20, 1996.

Respondent, Fidelity Brokerage Services, Incorporated's Submission Agreement was signed by Suzanne R. Michaud, Senior Product Manager, on June 19, 1996.

Respondent, National Financial Services Corporation's Submission Agreement was signed by Suzanne R. Michaud, Senior Product Manager, on June 19, 1996

Respondent, FMR Corporation, d/b/a Fidelity Investments, did not file a Statement of Answer nor Submission Agreement.

HEARING INFORMATION

The hearing was held on August 5, 1997, in Houston Texas, for a total of two (2) sessions.

CASE SUMMARY

Claimants, Gerald D. DeLuca and Rebecca L. DeLuca ("Claimants"), brought this action in relation to their April 5, 1994 purchase of fifteen (15) contracts of S&P 500 index options at 2 1/2 and their April 14, 1994 purchase of thirty (30) contracts of S&P 500 index options (collectively, "SPX Options") at 1/8, and their subsequent failure to sell these options due to incorrect expiration information which they allegedly received from a Fidelity option trader.

Claimants asserted that on April 13, 1994, because he was tracking the options to determine the best time to place an order, Gerald DeLuca called an options trader at Fidelity requesting information regarding the last time and day he could place a trade before the SPX options expired. Claimants asserted that the option trader responded to his questions about the expiration of the SPX options, telling him that 3:15 PM on Friday, April 15, 1994 would be the last time to place an order; however, Claimants later found this information was false as the expiration date was Thursday, April 14, 1994. Claimants alleged that all forty-five (45) of the purchased SPX options could have been exercised on April 14, 1994 at 10/16 if he had known the true expiration of the SPX options, Claimants requested the money that they would have made had their orders been allowed plus treble damages under the Texas Deceptive Practices Act §43.001, et seq.

Respondents, Fidelity Brokerage Services, Incorporated, and National Financial Services Corporation (collectively, "Fidelity,") denied the allegations set forth in the Statement of Claim as they related to any wrongdoing on their part. Fidelity asserted that Claimants were experienced options traders with extensive investment knowledge and should have been aware of the potential risks and expiration dates for the European style SPX options which they purchased. Furthermore, Respondents pointed to Claimants' failure to name the representative to whom they allegedly spoke, which barred discovery of such a conversation through tapes made of conversations with Fidelity customers. Fidelity also claimed that as an expression of goodwill, they returned to the Claimants a \$165.50 commission on the SPX options and that the amount of Claimants losses, if they were found responsible, should not be calculated at the 10/16 price quoted by Claimants. Rather, Fidelity asserted that after subtracting the \$165.50 commission, the 1/8 price at which the Claimants actually purchased their options earlier that day was a more accurate portrayal of the price at which they could have placed their orders.

RELIEF REQUESTED

Claimants, Gerald D. DeLuca and Rebecca L. DeLuca, requested an award for: \$2,812.50 in actual damages and \$8,437.50 in treble damages under the Texas Deceptive Practices Act, §43.001, et seq. and \$700.00 of other costs including but not limited to filing fees.

Respondents, Fidelity Brokerage Services, Incorporated and National Financial Services Corporation, requested that the claims asserted against them be dismissed in their entirety and that they be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent, FMR Corporation d/b/a Fidelity Investments did not file an answer and did not execute an agreement to arbitrate. Since FMR Corporation d/b/a Fidelity Investments is not a member of the NASD, it is not required to arbitrate. FMR Corporation d/b/a Fidelity Investments was removed as a party.

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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Fidelity Brokerage Services, Incorporated and National Financial Services Corporation are jointly and severally liable for and shall pay to Claimants, Gerald D. DeLuca and Rebecca L. DeLuca the sum of \$1, 312.50 as compensatory damages;
2. Other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$300.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were two (2) hearing sessions x \$300.00 = \$600.00 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$100.00 and shall retain as forum fees the hearing session deposit of \$300.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimants, Gerald D. DeLuca and Rebecca L. DeLuca.

Pursuant to § 10333 of the Code, Fidelity Brokerage Services, Incorporated is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge of \$200.00. Pursuant to § 10333 of the Code, National Financial Services Corporation is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution the member surcharge of \$200.00.

The NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees of \$300.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondents.

Respondents, Fidelity Brokerage Services, Inc. and National Financial Services Corporation are jointly and severally liable for and shall pay NASD Regulation, Inc. Office of Dispute Resolution, forum fees of \$300.00.

Respondents Fidelity Brokerage Services, Inc. and National Financial Services Corporation are jointly and severally liable for and shall reimburse Claimants the hearing session deposit of \$300.00

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Arbitrator's Signature

Martha Failing, Esquire
Martha Failing, Esquire
Chairperson
Public Arbitrator

September 17, 1997
Dated:

For NASD use only:
Date served: September 18, 1997