

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Joseph E. and Marie Sylvester

96-02658

Name of Respondents

Joseph Roberts & Company, Inc.  
Lascelles A. Knight

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 20, 1996, Claimants Joseph E. Sylvester and Marie Sylvester ("Claimants"), who appeared Pro Se alleged that they were contacted by their broker Ted Werner ("Werner"), an employee of Respondent Joseph Roberts & Company Inc. ("Joseph Roberts") about Western Fidelity Funding, Inc., ("WFFI"), an Initial Public Offering. Claimants further alleged that on November 21, 1995, they placed an order to purchase 500 shares of WFFI common stock at \$6 and to sell the same day at \$11 1/2 or higher. Claimants also alleged that on opening day, WFFI reached \$13 1/4. Claimants contended that they attempted to reach Werner after they did not receive confirmation for the purchase or sale of WFFI. Claimants further contended that they were unsuccessful in reaching Werner, but were referred to Respondent Lascelles Knight ("Knight") who offered to help since he worked with Werner and who, according to Knight was "away on company business". Claimants also contended that they received the purchase confirmation on December 1, 1995 and were told that Werner was taking care of the sale confirmation. Claimants asserted that after a number of calls to inquire about the sale confirmation, Knight finally admitted that Werner was no longer with the company. Claimants further asserted that by December 4, 1995 the price of WFFI had fallen to \$8 1/2 so they asked Knight to sell. Claimants also asserted that Werner contacted them and informed them that he had left a specific order with Knight to sell the stock on opening day if it reached \$11 1/2 or higher. Claimants alleged that Werner confirmed that on opening day the stock had reached a high of \$13 1/4. Claimants further alleged that Joseph Roberts and Knight should be held liable for their loss.

Respondents Joseph Roberts & Co. Inc. and Lascelles A. Knight ("Respondents") through their representative and Compliance Officer, Brian E. Baginski, maintained that Claimants have failed to state a cause of action. Respondents further maintained that Claimants ratified the activity in their account by not raising any objections for more than seven months. Respondents also maintained that Claimants' right of recovery, if any, should be reduced since they waited until the price of the security had fallen before advancing a claim. Respondents contended that they are not liable since Claimants failed to discharge their duty to mitigate damages. Respondents further contended that NASD does not impose any obligation upon members to accept and handle limit orders from any or all of its customers.

#### **RELIEF REQUESTED**

Claimants Joseph E. Sylvester and Marie Sylvester requested a minimum of \$1,500 in actual damages.

Respondents Joseph Roberts & Co. Inc. and Lascelles A. Knight requested costs and reasonable attorneys fees.

#### **AWARD**

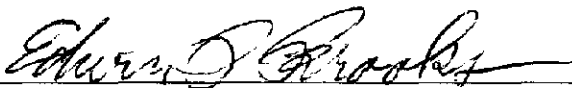
Pursuant to Section 10302 of the NASD Regulation, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Edwin P. Brooks, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Joseph E. Sylvester and Marie Sylvester on June 18, 1996 and by Respondents Joseph Roberts & Co. Inc. and Lascelles Knight on July 19, 1996.

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. Respondent Joseph Roberts & Co. Inc. is liable and shall pay to the Claimants Joseph E. Sylvester and Marie Sylvester \$1,750.00 in actual damages.
2. The claim of Claimants Joseph E. Sylvester and Marie Sylvester against Respondent Lascelles Knight is dismissed in its entirety.
3. The parties shall bear their respective costs.
4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by the Claimants shall be retained by the NASD, Inc. Respondent Joseph Roberts & Co. Inc. is liable and shall pay to the Claimants Joseph E. Sylvester and Marie Sylvester \$50.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, **EDWIN P. BROOKS**, do hereby swear or affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument, which is my award.

  
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Signature of Arbitrator

DATE OF DECISION:      November 27, 1996

### EXPLANATION OF THE ARBITRATOR'S AWARD

Mr. Ted Werner stated that he told Claimants that he (Werner) would try to get Claimants out of the stock at its peak. When Werner left Respondent Joseph Roberts & Co. Inc's employ, he left orders to take Claimants out of stock at \$11 - \$13 a share.

If the stock had been sold at \$12, the Claimants would have received \$6,000 instead of the \$4,250 they received for sale of the stock at \$8.5. Therefore, I am awarding the Claimants the difference which is \$1750.

I have dismissed the claim against Lascelles Knight, as Mr. Werner left written instructions with a Keith Procovic, not Mr. Knight.