

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

David C. and Annie Kennicutt

96-02863

Name of Respondents

Fidelity Brokerage Services, Inc. d/b/a
Fidelity Investments

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 5, 1996, claimants David C. and Annie Kennicutt ("claimants"), who appeared Pro Se, alleged that respondent Fidelity Brokerage Services, Inc. d/b/a Fidelity Investments ("respondent") changed an Leap call position they held resulting in the unexpected and premature expiration of the call. Claimants further alleged that on June 15, 1995, they purchased 20 January 1997 Toys R Us call Leaps ("Leaps") at a strike price of \$25.00 through respondent and subsequently received the trade confirmation. Claimants also alleged that in February of 1996, they were informed via their January Investment Report that the Leaps were worthless. Claimants contended that they complained to respondent but were informed that the Leaps would stand as expired. Claimants further contended that respondent made an internal reporting error and has unfairly passed the loss onto them.

Respondents Fidelity Brokerage Services d/b/a Fidelity Investments, through its representative and in-house counsel, Alicia Reines-Leo, Esq., maintained that claimants are attempting to capitalize on respondent's printing error which it readily corrected. Respondent further maintained that the Leaps should have been reported as options, a less expensive purchase. Respondent also maintained that D. Kennicutt had extensive trading experience as reflected in his options account opening form and would not have been surprised by the January 1996, expiration. Respondent contended that the trading log made when the trade was requested reflects that claimants placed an order for 1996 options not 1997 Leaps and that claimants had a duty to report the value discrepancy as soon as it was noticed which they did not do. Respondent further contended that it changed the description of the security from 1997 Leaps to 1996 options in July of 1995, and that claimants received monthly statements through January but did not raise the description issue until after the options expired. Respondent asserted that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimants David C. and Annie Kennicutt requested \$9,000.00 in actual damages plus \$999.00 in costs.

Respondent Fidelity Brokerage Services d/b/a Fidelity Investments requested that the claims be dismissed in their entirety plus costs and fees.

AWARD

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Marc L. Ripp, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimants on June 25, 1996, and by respondent Fidelity Brokerage Services, Inc. d/b/a Fidelity Investments on September 17, 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. The claims of the claimants David C. and Annie Kennicutt against respondent Fidelity Brokerage Services, Inc. d/b/a Fidelity Investments are denied in their entirety.
2. The parties shall bear their respective costs and attorney's fees.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the claimants shall be retained by the NASD, Inc.
4. All other relief requests are denied.

AFFIRMATION

I, Marc L. Ripp, Esq., 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.

Marc L. Ripp, Esq.

Signature of Arbitrator

Date of Decision: December 19, 1996