

NASD REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimant

Fidelity Brokerage Services, Inc.

96-04461

Name of Respondent

Donald J. Boyko

REPRESENTATION

For Fidelity Brokerage Services Inc. ("claimant") appeared Henry L. Grossman, Esq., of Stroock & Stroock & Lavan, LLP located in Boston, Massachusetts.

Donald J. Boyko ("respondent") appeared pro se.

CASE INFORMATION

Statement of Claim was filed on: October 4, 1996.

Claimant's Submission Agreement was signed on: March 6, 1997.

Statement of Answer was filed by respondent on: December 17, 1996.

Respondent's Submission Agreement was signed on: December 16, 1996.

HEARING INFORMATION

Hearing Date/Session:

May 9, 1997

- 1 session

The hearing was conducted at the offices of NASD Regulation, Inc. located at 260 Franklin Street, Boston, Massachusetts.

CASE SUMMARY

Claimant alleged that, as of July 31, 1992, respondent's account was valued at \$74,645.33 and that, pursuant to respondent's request, on July 31, 1992, it issued a check payable to respondent in the amount of \$74,645.33 ("check #1"). Claimant maintained that, on August 3, 1992, it erroneously debited respondent's account for only \$30,272.07 and, therefore, after payment of check #1 respondent's account reflected a balance of \$44,373.26. Claimant contended that, pursuant to respondent's requests, on October 6, 1992 and March 8, 1994, it issued two checks

payable to respondent in the amount of \$44,586.46 and \$1,742.55, respectively. In addition, claimant maintained that, upon discovering its error in connection with check #1, it demanded that respondent repay the \$44,373.26 which was erroneously not debited from his account. Claimant further alleged that, in spite of repeated demands, respondent has failed, refused, and neglected to pay the \$44,373.26.

Respondent alleged that, in 1991 or 1992, he called claimant and directed it to sell stock worth more than \$44,000.00. Respondent contended that, after he submitted the signed stock certificates to claimant, he received payment of more than \$44,000.00 and considered the transaction complete. Respondent maintained that, if there was an error in his account, claimant should have discovered the error before 1994. In addition, respondent alleged that any alleged error was a result of either a computer glitch or human error on the part of claimant's employees.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$44,373.26 plus interest, costs, attorneys' fees, and such other and further relief as the panel deemed just and proper.

Respondent requested that all claims be dismissed in their entirety.

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. Respondent be and hereby is liable and shall pay claimant the sum of **FORTY FOUR THOUSAND THREE HUNDRED SEVENTY THREE DOLLARS and TWENTY SIX CENTS (\$44,373.26)**.
2. Respondent be and hereby is liable and shall pay to claimant interest in the amount of \$12,699.26.
3. Respondent be and hereby is liable and shall pay claimant for its attorneys' fees in the sum of \$2,800.00.
4. Respondent be and hereby is liable for the total amount of forum fees assessed and shall pay claimant the sum of \$600.00 to reimburse claimant for the fees previously paid to NASD Regulation, Inc.
5. Claimant's request for costs is hereby denied.
6. All other requests are hereby denied.

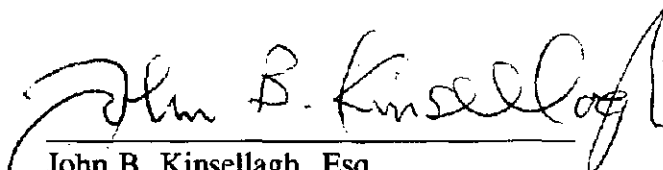
FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee and the \$200.00 member surcharge previously paid by claimant and have assessed the following forum fees:

1 hearing session = \$600.00

Respondent be and hereby is liable for the sum of \$600.00, representing the total amount of forum fees assessed. Respondent shall pay this amount to claimant as provided in the "Award" section above.

Arbitrators' Signatures



John B. Kinsellagh, Esq.
Chairperson-Public Arbitrator

John J. Mark
Public Arbitrator

Irwin M. Chase
Industry Arbitrator

Date of Decision: July 8, 1997

Arbitrators' Signatures

John B. Kinsellagh, Esq.
Chairperson-Public Arbitrator



John J. Mark
Public Arbitrator

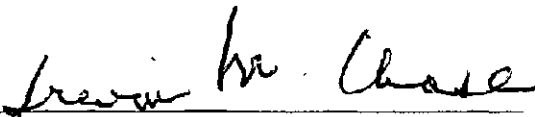
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