

PACIFIC EXCHANGE, INC.  
301 Pine Street  
San Francisco, California 94104

AND

Claimants

v.

MORGAN STANLEY DEAN WITTER,

Respondent

v.

HERZOG HEINE GEDULD, INC.,

Third Party Respondent

PCX CASE NO.: 00-S006

DECISION

The undersigned Arbitrators, having read and considered the claim submitted by Claimants [REDACTED] and [REDACTED] ("Claimants") on February 17, 2000, and the answers of Respondent Morgan Stanley Dean Witter ("MSDW") and Third Party Respondent Herzog, Heine; having considered all testimony given on January 10, 2001, at Los Angeles, California, and, having considered all papers submitted in this matter, hereby render the following decision pursuant to Rule 12.29(a) of the Rules of the Pacific Exchange:

**REPRESENTATION OF PARTIES**

Of Claimants:

Matthew Pero, Esq.  
*Pero and Kaplan*

Of Respondents:

Timin VerDuin, Esq.  
*Morgan Stanley Dean Witter*

Of Third Party Respondent:

Robert McGahan  
*Bird, Marella, Boxer & Wolpert*

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PCX ARBITRATOR

**SUMMARY OF CASE**

On May 3, 1999 Claimant [REDACTED] placed a limit order through Soussan Arfaania, his broker at Respondent MSDW, to sell 400 shares of stock at \$200 per share to meet a margin call by MSDW. Claimant alleges that he was told on that day that the sale had been accomplished. Respondent Herzog, Heine notified Respondent MSDW that the sale had been erroneously reported, and that the sale was

"busted" on May 3, 1999. Respondent MSDW alleges that Claimant was informed that this sale had been "busted" later in the afternoon of that same day. Respondent Herzog admits that the sale was erroneously communicated as accomplished, but that they notified MSDW of the cancellation of the erroneous notification within 20 minutes. Respondent Herzog alleges that the NBBO for the stock never reached \$200 on that day, and that the sale was clearly erroneous. Claimant alleges that Respondent Arfaania did not advise him to sell the stock on May 3, 1999 or the following day, and that she advised him to hold on to the stock while she tried to rectify the busted sale. The next day, Claimant's margin further deteriorated, and subsequently the Claimant sold the stock for a loss of \$10,958.41. The claim is for that amount plus interest, for a total of \$16, 759.41. Respondent MSDW filed a cross-claim against Respondent Herzog, Heine for indemnification if MSDW were to be found liable in damages to the Claimant.

### **ISSUES PRESENTED**

1. Was Respondent MSDW negligent and responsible in damages for the losses of the Claimant on this "busted sale"?
2. Was Respondent MSDW liable for the acts of its Agent, Respondent Herzog, Heine, for its actions in "busting" the sale and erroneously reporting the sale as accomplished?
3. Was Respondent Herzog, Heine liable to Claimant for its actions in erroneously reporting the sale as accomplished and in busting the sale?
4. Was Respondent Herzog liable to indemnify Respondent MSDW?

### **RELIEF REQUESTED**

Claimant seeks damages of \$16, 759.41. Respondent MSDW seeks indemnification from Respondent Herzog of any amount awarded to Claimant.

### **FINDINGS OF FACT**

1. The stock did not reach the price of \$200 per share on May 3, 1999, as the NBBO report for that day reflects.
2. The trade was erroneously reported as executed by Respondent Herzog to Respondent MSDW.
3. Claimant was notified that the trade was busted prior to the close of the market and did not choose to place a market order on May 3, or May 4, 1999.

### **DECISION**

After considering the argument and evidence of both the Claimants and Respondents in this matter, the undersigned arbitrators made the following findings:

1. Respondent MSDW was not negligent in its handling of this matter, and is not responsible in damages for the losses of the Claimant in this "busted" sale.
2. Respondent Herzog, Heine is not liable to Claimant for its actions in erroneously reporting the sale. Respondent Herzog is not liable to Claimant for its actions in "busting" the sale.

3. As a result of the decision herein, it is not necessary to consider the Issues of Indemnification and Agency.

**AWARD**

It is therefore the decision of this Panel that the Claimants take nothing in their claims against both Respondents herein. All parties are to bear their own costs and attorney's fees, including their proportionate share of the Pacific Exchange forum costs.

Forum fees of \$500 are assessed against Claimants.

Forum fees of \$500 are assessed against respondent Morgan Stanley Dean Witter.

Forum fees of \$500 are assessed against respondent Herzog Heine Geduld

  
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Kenan Oldham, Chair

Date: 1/31/01

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Ernest Burnside, Public Arbitrator

Date: \_\_\_\_\_

\_\_\_\_\_  
Donald Lisle, Industry Arbitrator

Date: \_\_\_\_\_

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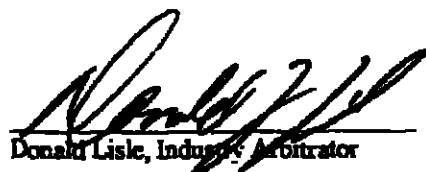
Forum fees of \$500 are assessed against respondent Herzog Heine Geduld.

\_\_\_\_\_  
Kenan Oldham, Chair

Date: \_\_\_\_\_

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Ernest Burnside, Public Arbitrator

Date: \_\_\_\_\_

  
Donald Lisle, Industry Arbitrator

Date: 1 Feb 2001