

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

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MAY 22 2000
PACIFIC EXCHANGE

In The Matter Of The Arbitration Between

J. CARL PEUS, MD

PCX CASE NO. 00-5000

Claimant

Respondent

PRUDENTIAL SECURITIES, INC.

Respondent

The undersigned Arbitrators, having carefully read and considered the Claim submitted by Claimant on March 22, 2000 and the Answer of Respondent dated May 9, 2000, as well as the submissions, testimony, and oral arguments presented at the hearing held October 23-24, 2000, do hereby render the following Decision pursuant to Rule 12 of the Rules of the Board of Governors of the Pacific Exchange

REPRESENTATION OF PARTIES

Of Claimant(s)

John M. Rochefort, Esq.
Weston, Benschouf, Rochefort, Rubalcava & Mawish, LLP

Of Respondent(s)

Paul M. Foster, Esq.
Prudential Securities, Inc.

SUMMARY OF FACTS

Claimant's Allegations

Claimant J. Carl Peus, MD ("claimant" or "Peus") alleges he had a history of making uncovered calls with Respondent Prudential Securities Inc. ("respondent" or "Prudential"). In February 1999, claimant wrote 30 uncovered EBAY calls with a \$300.00 strike price due in July 1999. On March 24, 1999, claimant sought to implement an investment strategy whereby he would roll out the calls with respondent. Respondent however, ultimately refused to carry out claimant's roll out request. Among other alleged reasons, Peus alleges that Prudential declined to implement claimant's strategy on the grounds that he lacked the appropriate sophistication as an investor. Claimant asserts Prudential made this determination despite claimant's trading history, which he believes demonstrated sufficient investor sophistication. At one point, claimant's broker placed some of the requested roll outs, but respondent's compliance department busted these trades.

Peus further alleges he had ongoing communications with respondent in July 2000 seeking respondent's approval for his roll out strategy. He asserts that during this period Prudential repeatedly represented that his roll out request was "still under consideration." All the while, Prudential declined to give claimant a definitive answer. Claimant offered in writing to limit his losses to \$1,000,000.00 and, while waiting for Prudential's final decision, attempted to minimize his losses by selling certain puts and -- with respondent's permission -- trying additional calls.

Respondent ultimately declined to implement claimant's request. Peus alleges that at that time, his Prudential broker told him it was then too late for him to effect the proposed investment strategy by transferring his account to another brokerage house.

Claimant's statement of claim contends respondent was negligent, breached its obligation of trust and confidence to claimant, and breached its implied covenant of good faith and fair dealing. At the hearing, claimant asserted further that Prudential had failed to disclose its intention to deny his request and that its actions and inactions proximately caused claimant's losses, alleged to be in excess of \$1,000,000.00.

Respondent's Allegations

Prudential, on the other hand, asserts it prudently and properly refused to implement claimant's roll out instructions. Respondent asserts that claimant's preexisting losses of approximately \$1,000,000.00 necessarily precluded continued implementation of his risky investment strategy, and claimant's offer to limit his losses was not enforceable given the volatile nature of EBAY stock during the subject time period. Respondent ultimately held claimant responsible for his own losses. Prudential claims that Peus was not precluded from mitigating his losses by, among other things, transferring all or part of his account to another brokerage house or houses where he could have implemented the same trading strategy.

Prudential alleges that claimant's strategy was to profit from what he believed to be an "inevitable" decline in EBAY stock. That decline occurred, but only after the July calls expired and within the time sought in the requested roll out, i.e., October.

Both parties agree, with the benefit of hindsight, claimant's trading strategy would have ultimately resulted in a profit, had he been able to roll out the July calls.

RELIEF REQUESTED

Claimant seeks in excess of \$1,200,000.00

Respondent seeks dismissal of claimant's claims and costs

WAIVER OF RIGHT TO CHALLENGE TECHNICAL FAILURE DURING HEARING

At the outset of the hearing, before the introduction of any evidence, a technical difficulty was encountered with the recording device. The Chair advised the parties that the panel was prepared to begin the proceedings anew to ensure a full and complete record. Both parties agreed that the Chair's instructions, including the oath of the arbitrators, would be incorporated by reference and waived reinitiating the proceedings from the beginning of the Chair's opening remarks.

The arbitration panel's decision is made and signed by the arbitrators in the attached part.

Testimony and arguments were presented over four hearing sessions.

FINDINGS AND DECISION

Having reviewed the pleadings and all oral and written evidence presented at the hearing as well as oral arguments, the majority of the panel holds as follows:

1. Respondent is liable to claimant in the amount of \$40,000.00 inclusive of interest.
2. Each party will bear its own costs and attorney's fees.
3. Forum fees, payable to the Pacific Exchange, are assessed against respondent in the amount of \$2,500.00.
4. Pacific Exchange shall refund claimant's hearing session deposit.

Arbitrator Ernest S. Gould separately concurs in the Award as follows:

"I reluctantly concur in the Award herein but feel compelled to elaborate that my consideration of the testimonial and documentary evidence (or, on certain questions, the lack thereof) leads me to the following conclusions:

1. That respondent had duties of disclosure which were breached in several different respects during the course of time between March and July, 1999.
2. These breaches had a definite causal effect on claimant's losses in this transaction, in an amount which is impossible to measure with exactness.
3. Claimant failed to take sufficient reasonable steps to attempt to mitigate his own damages."

Dated November 21, 2000


Elliott Finkel, Esq., Chair

Dated November _____, 2000

Ernest S. Gould, Esq., Public Arbitrator

Arbitrator Cobb respectfully dissents from the decision.

Dated November _____, 2000

Mary E. Cobb, Industry Arbitrator

The Arbitration Panel is composed of three Arbitrators signed by the arbitrators on each part.

Comments and arguments were presented over four hearing sessions.

CONCLUSIONS AND DECISION

The Arbitrators reviewed the pleadings and all oral and written evidence presented at the hearing sessions. The Arbitrators find the evidence of the panel holds as follows:

- Respondent's action to claimant in the amount of \$1,000,000.00 inclusive of interest.
- Each party will bear its own costs and attorney's fees.
- Claimant fees payable to the Pacific Exchange are assessed against respondent in the amount of \$12,000.00.
- Pacific Exchange shall refund claimant's hearing session deposit.

Arbitrator Elliott Finkel has several separate concerns in the Award as follows:

I reluctantly concur in the Award herein but feel compelled to elaborate that my consideration of the testimonial and documentary evidence for certain questions, the lack thereof leads me to the following conclusions:

- That respondent had duties of disclosure which were breached in several different respects during the course of time between March and July, 1999.
- These breaches had a definite causal effect on claimant's losses in this transaction, in an amount which is impossible to measure with exactness.
- Claimant failed to take sufficient reasonable steps to attempt to mitigate his own damages.

Dated November ____, 2000.

Elliott Finkel, Esq. Chair

Dated November 20, 2000.



Ernest S. Gould, Esq. (Public Arbitrator)

Arbitrator Cobb respectfully dissents from the decision.

Dated November ____, 2000.

Mary E. Cobb, Industry Arbitrator

The arbitration panel's decision is made & signed by the arbitrators in unanimous

Testimony and arguments were presented over four hearing sessions

FINDINGS AND DECISION

Having reviewed the pleadings and all oral and written evidence presented at the hearing as well as oral arguments, the majority of the panel finds as follows:

1. Respondent is liable to claimant in the amount of \$400,000.00, inclusive of interest.
2. Each party will bear its own costs and attorneys fees.
3. Forum fees payable to the Pacific Exchange, are assessed against respondent in the amount of \$2,500.00.
4. Pacific Exchange shall refund claimant's hearing session deposit.

Arbitrator Ernest S. Goud separately concurs in the Award as follows:

I reluctantly concur in the Award herein but feel compelled to elaborate that my consideration of the testimonial and documentary evidence (or, on certain questions, the lack thereof) leads me to the following conclusions:

1. That respondent had duties of disclosure which were breached in several different respects during the course of time between March and July, 1999.
2. These breaches had a definite causal effect on claimant's losses in this transaction, in an amount which is impossible to measure with exactness.
3. Claimant failed to take sufficient reasonable steps to attempt to mitigate his own damages."

Dated: November ____, 2000

Elliott Finkel, Esq., Chair

Dated: November ____, 2000

Ernest S. Goud, Esq., Public Arbitrator

Arbitrator Cobb respectfully dissents from the decision

Dated: November 22, 2000

Mary E. Cobb, Industry Arbitrator