

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

In The Matter Of The Arbitration Between.

Herbert T Woods
CLAIMANT

Y

Dean Witter Reynolds
RESPONDENT

PCX Case #: (No) 00-S010

DECISION

The undersigned Arbitrator, having read and considered the claim submitted by Claimant on July 24, 2000 and the Answer of Respondent, hereby renders the following Decision pursuant to Rules 12 of the Rules of the Board of Governors of the Pacific Exchange:

REPRESENTATION OF PARTIES

Of Claimants: Herbert T Woods

Of Respondents: Janet T Epstein, Esq., Counsel

FINDINGS OF FACT

Claimant bought 90,000 Virginia Power A+ bonds on February 25, 1993 from Robert Townsend of Dean Witter Reynolds, Inc., the Respondent.

On March 23, 1999, Claimant, pursuant to a bid by Respondent, requested that those A+ bonds be sold at a bid of 99.50. Instead of selling the A+ bonds, Dean Witter sold AAA MBIA Insured Virginia Electric Power bonds at a price of 99.50 (which was the price of the AAA bonds, not the A+ bonds which Claimant owned. The A+ bonds would have been priced approximately \$500 less on March 23, 1999). There is no evidence that Claimant would have sold the A+ bonds for \$500 less.

Respondent deposited the proceeds from the sale of the AAA bonds, \$90,544.52, in Claimant's account. Subsequently, realizing that it had sold AAA bonds instead of the A+ bonds owned by Claimant, it sold Claimant's A+ bonds for \$92,565.14 on April 28, 1999.

Through a series of trades from March through September 1999, Dean Witter undertook to correct its error in selling the AAA bonds on March 23, 1999 instead of the A+ bonds. The net effect of these transactions was to credit Claimant's account for \$92,554.54 (the April 28, 1999 trade) and, subsequently in September 1999 to debit its account for \$2,020.62, based on the allegations that the \$2,020.62 was a "windfall" to Claimant.

This allegation is supported, Respondent claims, by the fact that the A- bonds would have been priced at \$90,565 14 (actually \$500 - - less but Respondent made up the difference) on March 23, 1999, when the sale of the bonds was requested, not at \$92,554 54 when the A+ bonds were sold April 28, 1999

ISSUE PRESENTED

Should the increase in the price of the A+ bonds between March 23, 1999 and April 28, 1999 (i.e., \$2020.62) be awarded to Claimant or Respondent.

RELIEF REQUESTED

Claimant requests the following relief.

Differences in bond trades	\$2020.62
Filing Fee	\$50.00
Fax & Mail	\$29.38
My Time	<u>\$400.00</u>
	\$2500.00

DECISION

The Findings of Facts, stated above are essentially undisputed. It is the decision of the Arbitrator that Dean Witter should not have debited Claimant's account for \$2,020.62 and that it must, therefore, pay (1) \$2,020.62 to Claimant in damages plus, (2) Claimant's filing fee of \$50.00 and fax and mail costs of \$29.38. (Respondent not having challenged the amount of the fee or costs, only the propriety thereof which is denied), and (3) \$400 for "my time" which appears to be appropriate and reasonable in the circumstances where no attorney represented Claimant. No other fees or costs are allowed. The total award shall be \$2500.

The issue between the parties could be otherwise stated: should Dean Witter be awarded \$2,020.62 to offset, at least in part, its loss of \$2,022.97 caused by its buying back the AAA bonds it sold in error? The answer is clearly, no. Claimant did nothing wrong and committed no error. The additional amount it received by Dean Witter's late execution on April 28, 1999 can be attributed to the operation of the market conditions during a period when Dean Witter was correcting its error, and not due to a "windfall" in the sense of an unjustified gain. Dean Witter cites no regulation, case or authority which would be contrary to this conclusion.

After reviewing the submissions of both the Claimant and Respondent in this matter, the undersigned Arbitrator makes his final determination and decision of the issue presented, as set forth above.

Date:

July 27, 2000


Walter F. Pettit
Arbitrator