

PACIFIC EXCHANGE, INC.
115 Sansome Street, 3rd Floor
San Francisco, California 94104

NOV - 3 2001

In The Matter Of The Arbitration Between:

Robert Kyle,

CLAIMANT

v.

D.A. Davidson & Co., Timothy Owens,
And Brenda Hurless,

RESPONDENTS

PCX CASE 01-S010

DECISION

The undersigned Arbitrator, having read and considered the Claim submitted by Robert Kyle ("Claimant") on June 18, 2001; the Answer of D.A. Davidson & Co., Timothy Owens, and Brenda Hurless ("Respondents") submitted on July 20, 2001; all testimony given by telephone conference calls; and all papers submitted in this matter, hereby renders the following Decision pursuant to Rule 12.29(a) of the Rules of the Pacific Exchange:

REPRESENTATION OF PARTIES

Of Claimant: Pamela Kyle, Esq.

Of Respondents: David Dennis, Esq.
D.A. Davidson & Co.

SUMMARY OF FACTS

In the summer of 1995, Claimant met and opened a retirement account with Timothy C. Owen, a principal with D. A. Davidson. Claimant states he was looking for someone who would call him when something needed to be discussed. In February of 1997, at Mr. Owen's suggestion, Claimant purchased 1,000 shares of Morrison Knudsen Corp ("MK"). In September of 2000, Mr. Owen called Claimant to discuss Claimant's account and suggested he place a limit order to sell all 1,000 shares of MK when the stock reached \$12.00. Claimant's order was placed on September 12, 2000.

Within days thereafter MK underwent a corporate reorganization and changed its name to Washington Group International Inc. ("WNG"). The order had to be reentered and Respondent admits that, when the order was reentered on September 24, 2000, an order was mistakenly entered to sell 100 shares of WNG instead of 1,000 shares. Claimant's statements from September 2000 through January 2001 showed a limit order for 100 shares, not 1,000 shares, of WNG. Mr. Kyle admits that he did not review his statements.

On February 7, 2001 the trade was executed for 100 shares of WNG at \$12.00. A confirmation was sent to Claimant. Claimant denies having received the confirmation. On March 9, 2001, when the price of WNG had dropped precipitously, Cory Custer, Mr. Owen's associate, called Claimant to discuss what he wanted to do with the remaining 900 shares of WNG. Mr. Kyle told Mr. Cory he did not own any WNG as all shares had been sold, and immediately tried to contact Mr. Owen. At no time did Mr. Kyle tell Mr. Owen or any representative of D.A Davidson to whom he spoke to sell the remaining 900 shares of stock.

ISSUES PRESENTED

Claimant contends that Mr. Owen breached his fiduciary duty to Claimant by failing to carefully monitor his account. As a result, Mr. Owen failed to discover his error both at the time the sell order was entered and again at the time the sale was executed. In addition, Claimant claims that Mr. Owen had a duty to advise him with respect to the remaining 900 shares of WNG which had not been sold. Claimant also contends that D.A. Davidson breached its fiduciary duty to Claimant by failing to properly supervise its employees and not discovering its mistake when Claimant initially entered its complaint with the company.

Respondents contend that Claimant failed to fulfill his obligation to review his statements and confirmations for discrepancies, as required in his Customer Account Agreement. In addition, Respondents contend that Claimant failed to mitigate his damages.

There is no counterclaim.

RELIEF REQUESTED

Claimant is seeking damages in the amount of \$10,800, plus interest, reimbursement of all filing and hearing fees and other costs, including attorney costs and punitive damages.

Respondent believes damages should not be awarded because Claimant failed to fulfill his obligation to review his account statements and confirmation and/or to mitigate his damages.

FINDING OF FACTS AND DECISION

Claimant failed to fulfill his obligations under his Customer Account Agreement and to mitigate his damages.

Respondents were negligent in reentering the sale order and failing to perform reasonable periodic reviews of Claimant's account.

AWARD

D.A. Davidson and Timothy Owens are jointly and severally liable to Claimant for monetary damages of \$2,745 and miscellaneous costs of \$50. Respondents shall also reimburse Claimant for \$75 filing fee and \$75 hearing session deposit. Therefore, the total amount due to Claimant from Respondents is \$2,945.

Respondents are assessed forum fees in the amount of \$400, payable to the Pacific Exchange.

Parties shall bear their own costs of arbitration, except as noted in the previous two paragraphs.

Brenda Hurless has no liability in this case. This matter should not be referred to any regulatory organization (SRO or SEC) for disciplinary investigation of rule violations or violation federal securities laws.

Dated: 11/4/01

Rita Schuman
Rita Schuman, Esq.