

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

In The Matter Of The Arbitration Between:

Diane Merrick,

CLAIMANT

v.

AG Edwards, Inc., Paul Kromhout, Ronnie
Monatlik, and Salomon Smith Barney

RESPONDENTS

PCX CASE 01-S023

DECISION

AG Edwards, Inc., Paul Kromhout, and Ronnie Monatlik were dismissed by Claimant prior to the hearing on the merits. The undersigned Arbitrators, having read and considered the claim submitted by Claimant and the answer of Respondent, and having considered all evidence submitted at the arbitration hearing held on August 6-8, 2002, 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: Brian Zagon, Esq. and Robert Gonser, Esq.
Resolution Law Group

Of Respondent: Peter Boutin, Esq. and Kelly Moynihan, Esq.
Keesal, Young & Logan

SUMMARY OF FACTS

Claimant alleges that Respondent was negligent and breached its fiduciary duty when it did not provide her with any kind of written plan or idea for the handling of her account when it transferred from AG Edwards to Salomon Smith Barney. The account, which consisted of a majority of Cisco stock options Claimant had earned during her employment tenure at Cisco, had been abused by the AG Edwards broker to the point that it had a margin debit of \$3.2 million and was transferring over with a \$383,000 margin call.

Respondent claims that it did proffer various ideas, orally and in writing, but Claimant refused to heed any of that advice, opting instead to keep her Cisco stock options.

ISSUES PRESENTED

Claimant alleged negligence and breach of fiduciary duty cause of actions against Respondent.

Respondent alleged that Claimant refused to follow the advice proffered and, as such, she was ultimately responsible for the demise of her account.

There was no counterclaim.

RELIEF REQUESTED

Claimant requested \$1,372,238.00 (damages from Salomon Smith Barney's inaction to sell Cisco shares to pay off margin debt from AG Edwards) plus \$1,193,988.22 (the exercise and hold of February 15, 2001) plus pre-judgment interest and attorneys fees.

Respondent requested dismissal of the case, award of costs, forum fees and attorney's fees as Respondent believes this was a case brought in bad faith.

FINDINGS AND DECISION

Findings of Fact

After considering the arguments and evidence of both Claimant and Respondent in this matter, the undersigned Arbitrators make the following findings:

Claimant was informed of various strategies to reduce her margin debt by Salomon Smith Barney when her account transferred over from AG Edwards. Claimant did not opt to follow the advice of Respondent, choosing instead to hold her Cisco options.

Whether the advice was written or not is irrelevant. Claimant knew what Respondent's advice was in relation to extricating her from her financial dilemma. However, if Respondent had provided something in writing to Claimant when the account initially transferred, or had proffered notes of meetings or letters to the Claimant discussing strategies during the time the account was at Salomon Smith Barney, the undersigned Arbitrators believe this action could have been averted.

Decision

After considering the arguments and evidence of both Claimant and Respondent in this matter, the undersigned Arbitrators make the final determination and decision of the issues presented as set forth below:

Claimant has not met her burden of proof that Respondent was negligent or breached its fiduciary duty in the handling of her account.

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PAGE 23/03
PAGE 03/03

Award

Claimant takes nothing. Respondent takes nothing.

Other Determinations

Respondent shall not reimburse Claimant's non-refundable filing fee.
Respondent shall reimburse Claimant's hearing session deposit in the amount of \$1,000.
Parties shall bear their own costs of arbitration.
The matter should not be referred to any SRO for disciplinary investigation.

Forum Fees

Forum fees in the amount of \$3,500, payable to the Pacific Exchange, are assessed against Respondents for the reasons noted in the section entitled "Findings of Fact."

Date: 9/3/02

Beverly Narayan
Beverly Narayan, Esq.

Date: 9/4/02

Kenneth Gostiner
Kenneth Gostiner

Date: 9/4/02

Frank Weaver
Frank Weaver