

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

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DEC - 2002
PCX ARBITRATION

In the Matter Of The Arbitration Between:

**THEODORE S. GOODWIN, in all
Authorized capacities,**

Claimant,

PCX CASE # 01-S033

And

**Morgan Stanley DW, Inc.
(Morgan Stanley Dean Witter)**

Respondent.

_____)

The undersigned Arbitrators, having read and considered the Claim submitted by Claimant on December 27, 2001, and the Answer of Respondent, and the hearings on the matter having been held on October 28th, 29th, 30th and 31st, 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: LAW OFFICES OF WILLIAM P. TORNGREN
By: William P. Torngren

Of Respondent: CROSBY, HEAFEY, ROACH & MAY
A Professional Corporation
By: Eric G. Wallis

SUMMARY OF FACTS

The Claimant herein, THEODORE S. GOODWIN, hereinafter referred to as "GOODWIN") filed this arbitration claim against Respondent, MORGAN STANLEY

DW, INC. (hereinafter referred to as "MORGAN") with the Pacific Exchange on December 27, 2001. The claim refers to four of six accounts maintained by GOODWIN through MORGAN'S offices in Sacramento and Davis, California while Kirk Stauffer, who eventually became the Branch Manager of the Davis office, was the Financial Advisor for GOODWIN. "Financial Advisor" is the designation given "Registered Representatives" by MORGAN. All references to "Financial Advisor" hereinafter used in this document refers to MORGAN'S name designation for their registered representatives.

Prior to the time relevant to the Claim, GOODWIN'S Financial Advisor at MORGAN was David L. Baskins. At the time the GOODWIN accounts at MORGAN switched to Stauffer as the Financial Advisor, the equity in the four accounts in question was approximately \$180,000 in mutual funds, stocks and money market funds. None of these accounts were margin accounts.

At all times relevant to the Claim, GOODWIN maintained brokerage accounts with other securities firms wherein said accounts were controlled by GOODWIN. These accounts held mutual funds, municipal bonds, government bonds and money market funds.

GOODWIN was the beneficiary of a trust account whose corpus primarily contained three regional bank stocks. The trust was set up by GOODWIN'S grandfather. In the mid-to-late 1990's, there had been two distributions from the trust in the form of securities certificates for the banks and other securities. GOODWIN retained the securities in certificate form and did not deposit them in any of his brokerage accounts.

As of the end of January, 2000, the stock certificates distributed from the trust had a value of approximately \$2,000,000 of which approximately \$1,700,000 were in the bank stocks.

In February, 2000, on the recommendation of an acquaintance, GOODWIN sought out Mr. Stauffer. At this point in time, Stauffer was a vice-president - investments for MORGAN in its Sacramento, California office. Stauffer subsequently moved to the Davis, California office as a producing Branch Manager.

From the evidence presented at the Hearing, Stauffer was the Financial Advisor for GOODWIN'S acquaintance. The acquaintance's account at MORGAN had been trading in IPO'S and tech stocks.

Prior to the switch of GOODWIN'S Financial Advisors, GOODWIN'S investment philosophy appeared to be, "buy and hold". Prior to January, 2000, it did not appear GOODWIN had been interested in entering the lists and doing battle with the uncertainties and volatility of short term trading.

Between February 18, 2000 and March 1, 2000, GOODWIN and Stauffer met four (4) times. They discussed the need for GOODWIN to diversify his holdings. Among the types of investment diversification possibilities discussed was the use of a MORGAN profile portfolio called Competitive Edge Strategic Equity Portfolio (STEP) model with a moderate growth objective. In addition, they discussed the placing of five percent of GOODWIN'S portfolio in IPO'S, and the use of margin. Stauffer agreed to charge GOODWIN on a fee only basis without commissions.

Following the first of the meetings, GOODWIN brought the stock certificates he received as distribution from his grandfather's trust and placed the assets in his

MORGAN account # 184-102903. The equity in these securities totaled \$1,885,929.

Trades were made following the first meeting. The trades primarily followed the MORGAN Competitive Edge (STEP) Profile Portfolio followed by trades entering the IPO market.

There were a number of trade tickets marked "Unsolicited" when they were actually "Solicited" by Mr. Stauffer. Some of the mismarked tickets included IPO trades undertaken to "flip" IPO'S. This was admitted by both Mr. Stauffer and Richard Smith, Mr. Stauffer's compliance supervisor.

During all time relevant to this Claim, GOODWIN was in constant contact with Mr. Stauffer either by phone or in person. GOODWIN was also aware of the activity in his accounts via the internet on a regular basis. There were two trades about which GOODWIN questioned Mr. Stauffer, claiming he did not know of the company or was unaware of the trade. Although one was profitable, both were broken at GOODWIN'S behest, without cost to GOODWIN.

The stock market as a whole began to fall at this time. The GOODWIN portfolios lost \$880,850 or 48.34% of its equity value between March, 2000 and August, 2001.

GOODWIN claims through the actions of Stauffer, MORGAN:

1. Managed his accounts as discretionary accounts and exercised discretion over his accounts without proper authorization.
2. Failed to diversify his portfolio in accordance with GOODWIN'S investment objectives, thereby breaching its fiduciary duty to GOODWIN.
3. Made misstatements and omissions of material facts that misled GOODWIN in making decisions with regard to his accounts.

4. Was negligent and breached NASD rules and regulations.
5. And is therefore entitled to damages in the amount set forth above together with attorneys fees, forum costs and other expenses of arbitration.

MORGAN claims GOODWIN should get nothing because:

1. At all times, MORGAN acted in good faith and exercised reasonable diligence.
2. GOODWIN'S losses were due to the tenor of the market and his own decisions, conduct and negligence.
3. The decline in the value of the GOODWIN portfolio was caused by events outside the control of MORGAN.
4. GOODWIN did not attempt to mitigate his damages and failed to object to any of the transactions although being aware of them through the mails, internet and conversations with Stauffer.

ISSUES PRESENTED

1. ISSUES RAISED BY CLAIMANT

- A. Did GOODWIN give MORGAN discretion over his accounts?
- B. Were the investments made in the GOODWIN accounts suitable?
- C. Did MORGAN breach its fiduciary obligation to GOODWIN?
- D. Did MORGAN intentionally, recklessly, or negligently omit and/or misstate material facts upon which GOODWIN justifiably relied to his damage?
- E. Was MORGAN negligent in its handling of GOODWIN'S accounts?
- F. Did MORGAN breach its agreement with GOODWIN?

II. ISSUES RAISED BY RESPONDENT

- A. Does GOODWIN'S failure to object to trades impose the defenses of ratification, laches, waiver and estoppel?
- B. Was the GOODWIN claim filed in a timely manner?
- C. Does GOODWIN'S claim fail to state a cause of action?
- D. Is GOODWIN'S claim barred by his failure to minimize or mitigate his damages?
- E. Is GOODWIN'S claim barred by his failure to exercise due diligence?
- F. Is GOODWIN'S claim barred by his own negligence?
- G. Is GOODWIN'S claim barred because the decline in the value of his investments was caused by events outside the control of MORGAN?

RELIEF REQUESTED

GOODWIN requests the arbitration panel to award:

- 1. Damages in the sum of \$884,442 for his net out of pocket losses.
- 2. Interest at the California statutory rate of 7% per annum from August 20, 2001.
- 3. All pre hearing and hearing session fees be assessed against MORGAN.
- 4. Reimbursement of his hearing deposit and filing fee.
- 5. Attorney's fees.

MORGAN requests the arbitration panel:

- 1. To dismiss the GOODWIN claim.**
- 2. For an award in its favor.**
- 3. For all costs of the proceedings incurred.**

FINDINGS AND DECISION

A. Findings of fact:

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

- 1. GOODWIN did not give MORGAN discretion over his accounts.**
- 2. MORGAN did not exercise discretion over the GOODWIN accounts.**
- 3. The investments recommended for the GOODWIN accounts were suitable.**
- 4. MORGAN did not intentionally, recklessly or negligently omit and/or misstate material facts upon which GOODWIN justifiably relied to his damage.**
- 5. MORGAN did not breach its agreement with GOODWIN.**
- 6. GOODWIN filed his claim in a timely manner.**
- 7. None of GOODWIN'S actions with regard to his accounts bars his claims, but could limit recovery due to his own actions.**
- 8. GOODWIN objected to only two (2) transactions. Both transactions were broken at no cost to GOODWIN**

9. GOODWIN did not take appropriate actions when he became dissatisfied with the content and performance of his portfolio.

10. Some of the decline in the value of GOODWIN'S investments can be attributed to events outside the control of MORGAN.

11. MORGAN violated NASD rules and regulations by mislabeling "solicited" orders as "unsolicited". Stauffer marked a number of IPO transactions as "unsolicited" to "fix" them

12. MORGAN violated NASD rules by failing to maintain GOODWIN'S investment objectives current on the New Account Forms and ~~fail~~^{to} maintain monthly activity reports with accurate investment objective information.

13. A 2% concession fee provided to the broker for selling IPO'S was not disclosed to GOODWIN.

B. DECISION

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

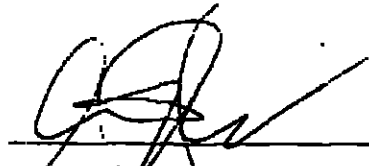
1. MORGAN breached its fiduciary obligation to GOODWIN by failing to maintain its records to properly reflect the investment objectives of GOODWIN. MORGAN further breached its fiduciary obligation to GOODWIN by marking "solicited" trades as "unsolicited".

2. For all other claims made by GOODWIN, he failed to meet the burden of proof required to prevail on those claims.

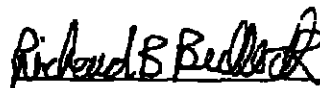
3. It is the opinion of the Arbitration Panel, that with the failure to disclose to GOODWIN the 2% concession provided to the broker for selling IPO'S, the mismarking of tickets and the failure to maintain records properly reflecting customers investment objectives, the compliance procedures of MORGAN as exhibited in this matter should be referred to the appropriate Designated Enforcement Authority.

AWARD

1. Monetary damages are awarded to Claimant, THEODORE S. GOODWIN, against Respondent, MORGAN STANLEY DW. INC. (MORGAN STANLEY DEAN WITTER) in the sum of \$7,500.00
2. All forum fees are to be assessed to Respondent.
3. Respondent shall reimburse Claimant's non-refundable filing fee.
4. Respondent shall reimburse Claimant's hearing session deposit.


11/19/2002
ALVIN SCHIFFRIN, Chair


12/1/2002
GAIL KILLEFER, Public Arbitrator


12/2/2002
RICHARD BULLOCK, Industry Arbitrator