

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

In The Matter Of The Arbitration Between:

C.J. Hefte

Claimant

v.

First Union Securities, Inc.
and Fredric C. Berger

Respondents

PCX CASE #: 02-S013

DECISION

The undersigned Arbitrators, having read and considered the Claim submitted by Claimant and the Answer of Respondents, and having considered evidence presented at the hearings on April 5 - 7, 2005 and June 17, 2005, hereby render the following Decision pursuant to Rule 12 of the Pacific Exchange;

REPRESENTATION OF PARTIES

Of Claimant: Jules L. Federman,
Securities Arbitration Consultant

Of Respondents: Andrew S. May
Lewitas & May

SUMMARY OF FACTS

Claimant had an account at Prudential in which she purchased stocks with a family broker. In 1999 Ms. Hefte deposited \$50,000, the proceeds of a settlement, into a Schwab account. In late 1999/early 2000 Ms. Hefte was living with her fiancé Mr. Friedman when she met with Frederic Berger, who was Mr. Berger's broker at Merrill Lynch and then at First Union.

In January 2000, Ms. Hefte deposited the \$50,000 with Mr. Berger. In March 2000, Ms. Hefte also transferred her Prudential Cash and IRA accounts to First Union and Mr. Berger. Ms. Hefte's stated objective on the New Account Form was Growth and risk tolerance was Aggressive. Her net worth was shown as \$150,000.

During the course of 2000, Mr. Berger executed 25 trades in Ms. Hefte's accounts for a

total of \$3,079 in commissions with approximately \$1000 going to Mr. Berger. Trades were executed at a discount.

In August 2000, Ms. Hefte moved out of Mr. Friedman's residence and broke off her relationship. In December 2000, the positions were transferred to Schwab. The positions have not been sold to present.

In May 2001, Ms. Hefte filed a pro se claim with the NASD that was withdrawn in December 2001. On March 20, 2002, Claimant filed a Statement of Claim with the Pacific Exchange. Further on May 20, 2004, Claimant filed an Amended Statement of Claim.

ISSUES PRESENTED

Issues Raised by Claimant:

- Suitability – the recommendations and purchases were unsuitable for Claimant as they were highly speculative and Claimant was not informed of the risks.
- Unauthorized transactions – all non-Value Line transaction were unauthorized.
- Excess trading in both the cash and IRA accounts.
- Trade Switching with Mr. Friedman's account.
- Breach of Fiduciary Duty by acting for his/their own benefit and not the benefit of Claimant.
- Breach of Fiduciary Duty in failing to recommend the sale of the securities.
- Breach of Duty in failing to adequately apprise Ms. Hefte of her positions (monthly statements or confirmations).
- Breach of rules of the Exchanges by acting for his/their own benefit and not the benefit of Claimant.
- Claimant alleges that Mr. Berger left Merrill Lynch under a cloud and thus, First Union had a heightened duty to supervise.

Issues Raised by Respondents:

- The trades were suitable and in keeping with the stated objectives and prior positions of Ms. Hefte.
- All the transactions were authorized and a couple were unsolicited. Further, Ms. Hefte ratified the transactions and never repudiated them.
- There was no trade switching, nor was such a thing possible between the accounts or persons alleged.
- Respondents denies that transactions were done for any personal gain by Respondent Berger or First Union.
- Respondents denies that there is any duty to recommend sale of positions.
- Respondents kept contact with Claimant through periodic phone calls during the time in question and through the sending of confirmations and account statements to the address of record.
- Respondent First Union denies any failure to supervise.
- Claimant was contributorily or comparatively negligent in failing to review her statements in a timely manner.

- Claimants damages were the results of market forces beyond Respondents control.

No counterclaim was filed in this case.

RELIEF REQUESTED

Claimant requested \$38,000, later amended to \$36,000 to give credit for gains received. In turn Claimant would transfer her positions in the stocks to First Union.

Respondents requested that the claim be denied in its entirety.

FINDINGS AND DECISION

A. Findings of fact:

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

Claimant failed to prove any of her allegations.

B. Decision:

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

Claim is denied and panel finds for Respondents.

C. Award:

Claimant takes nothing.

Other determinations (please check "yes" or "no" for each item)

- | | | |
|---|-------|------|
| 1. Respondent shall reimburse Claimant's non-refundable filing fee: | YES | X NO |
| 2. Respondent shall reimburse Claimant's hearing session deposit: | YES | X NO |
| 3. Claimant shall pay the \$400 adjournment fee for the 2 nd adjournment which has not been paid. | X YES | NO |
| 4. Parties shall bear their own costs of arbitration: | X YES | NO |
| 5. Should this matter be referred to any regulatory organization (SRO or SEC) for disciplinary investigation of rule violations or violation federal securities laws? | YES | X NO |

D. Forum Fees:

October 27, 2004 - prehearing - \$400
December 14, 2004 - prehearing - \$400
March 7, 2004 - discovery with chair only - \$300
May 5, 2005 - 2 sessions - \$800
May 6, 2005 - 2 sessions - \$800
May 7, 2005 - 2 sessions - \$800
June 17, 2005 - 1 session - \$400
Total \$3900 Forum Fees

Forum fees shall be split 50/50 between Claimant Hefte and Respondent First Union.

Dated: 6/30/05

Robin L. Berry
Robin L. Berry, Chair

Dated: 7/6/05

Ronald Vernali
Ronald Vernali, Public Arbitrator

Dated: _____

Kenneth Domingues, Industry Arbitrator

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Kenneth Domingues
Kenneth Domingues, Industry Arbitrator