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PCX ARBITRATION

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

In The Matter Of The Arbitration Between

[REDACTED]

Claimant,

v.

Wachovia Securities, Brian Kondeff

Respondents

PCX CASE # 02-S060

DECISION

The undersigned Arbitrator, having read and considered the Claim submitted by Claimant on December 6, 2002 and the Answer of Respondents, hereby renders the following Decision pursuant to Rules 12.2 and 12.29(a) of the Rules of the Board of Governors of the Pacific Exchange.

REPRESENTATION OF PARTIES

Of Claimant:

[REDACTED]

Of Respondent:

Todd Ratner Esq.
Wachovia Securities

SUMMARY OF FACTS

In March 2002, Claimant transferred his IRA Fund to Respondents who liquidated the same and purchased WorldCom corporate-backed trust securities in the amount of \$31,021. Claimant filed a claim dated December 2002 which stated that Respondents had not disclosed material information to Claimant and that this failure by Respondents constituted misrepresentation and financial elder abuse. Claimant sought \$29,150.36 in damages plus \$2217 in lost income and costs of \$150. Respondents denied that they did not disclose materials facts, asserted that Claimant did not mitigate his damages, and disputed elements of Claimant's damages. Claimants and Respondents both waived a hearing and submitted the matter for decision on the pleadings.

ISSUES PRESENTED

The issue is whether Respondents are liable for the loss incurred by Claimant with respect to the WorldCom corporate-backed trust securities. Another issue is whether

Claimant failed to mitigate his damages and whether he may properly claim lost income as an element of damages.

RELIEF REQUESTED

Claimant sought \$29,150.36 in damages plus \$2217 in lost income and costs of \$150.

FINDINGS AND DECISION

After considering the pleadings from both the Claimant and Respondents in this matter, the undersigned Arbitrator makes the following findings:

1. Claimant authorized Respondents to purchase WorldCom corporate-backed securities in March 2002 to replace the IRA Claimant previously held with Washington Mutual.
2. Claimant did not want to use the proceeds from the liquidation of the Washington Mutual IRA to purchase more than one investment. Claimant purchased the World Com corporate-backed trust securities with the proceeds from the sale of the Washington Mutual IRA.
3. Respondents did not fail to disclose material facts to Claimant in connection with the purchase of the WorldCom corporate-backed trust securities.

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

Claimant failed to establish that Respondents did not disclose material facts concerning the investment in WorldCom CORTS. Consequently, Respondents are not liable for any damage or loss that Claimant may have suffered as a consequence of his investment and his decision not to liquidate it during 2002.

Each party is to bear its own filing fees and cost of this arbitration.

Dated: February 20, 2005


Mary Margaret Bush, Esq.