

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

In The Matter of the Arbitration Between:

RICHARD PEREZ

CLAIMANT

v.

GOLDMAN, SACHS & COMPANY AND
JOHN UNDERWOOD

RESPONDENTS

PCX CASE #: 02-S062

ARBITRATION DECISION

HEARING DATES: APRIL 13, 14, AND 15, 2004

LOCATION: SAN FRANCISCO, CA

The undersigned Arbitrators, having read and considered the Claim submitted by Claimant on _____, and the Answer of Respondent(s), 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: Timothy A. Canning, Esq.
Irwin Stein, Esq.

Of Respondents Wilson Sonsini Goodrich & Rosati
Boris Feldman, Esq.
Peri Nielsen, Esq.

SUMMARY OF FACTS

From Claimant's Perspective:

Claimant testified he personally met with Mr. Underwood and various Goldman, Sachs & Co. personnel and signed documents, and that after this meeting, he believed that he had successfully opened an account. Claimant's counsel stated that having accepted Claimant's account, along with full discretion over handling the account, Respondents failed to act reasonably by: 1) unilaterally failing to transfer the securities into it; 2) immediately liquidating these securities; 3) substantially reducing the outstanding debit balance; and 4) failing to provide a diversified portfolio, consistent with Claimant's investment objectives. By simply standing by and doing nothing, Claimant's account equity declined by 60% (\$10 million) over five trading sessions. This is a clear breach of the duty of "highest good faith" which Respondents owed to Claimant.

From Respondents Perspective:

In spite of the fact that he was never a Goldman, Sachs & Co. customer, Claimant is seeking to recover \$10 million he allegedly lost during a one-week period in December 2000 when all of the stocks held at one brokerage firm declined in value. Claimant alleges that he signed a Goldman, Sachs & Co. account opening agreement shortly before his stocks dropped in value, gave orders to transfer his stocks from "E" Trade to Goldman, Sachs & Co., and was assured that Goldman, Sachs & Co. would manage his portfolio. All of those allegations are demonstrably false.

ISSUES PRESENTED

This issues presented to the arbitration panel for consideration and resolution relate to the summary of facts presented by the parties.

There is no counterclaim.

RELIEF REQUESTED

Claimant's Requests

Claimant requests the Arbitration Panel make the following award:

- 1) \$10 million or more, subject to proof at the hearing, measured by the decline in Claimant's account's value between the time Claimant became a customer of Respondents, and the time Respondents first told Claimant that respondents had put a hold on transferring his positions over to Goldman, Sachs & Co.;
- 2) Interest at the legal rate from December 12, 2000 until this matter is concluded
- 3) Reimbursement for the reasonable costs and fees in the prosecution of this claim, including filing fees, hearing sessions costs, expert witness fees, and attorney fees.
- 4) Punitive and exemplary damages, in an amount the arbitration panel determines to be sufficient to punish Respondents and to deter similar misconduct in others. Claimant specifically alleges that Respondents' actions were willful, intentional and done with the express knowledge that Claimant was likely to be injured. California Civil Code Section 3294, and *Mastrobunono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 115 S. Ct. 1212 (1995).

Respondents' Request:

Respondents requests the Arbitration Panel make the following award:

- 1) Claimant's demands for relief are denied in their entirety;
- 2) Respondents are reimbursed for costs incurred in defense of this matter;
- 3) Respondents are awarded reasonable attorney's fees incurred in defense of this matter;
- 4) The record of this Statement of Claim filed against Respondent John Underwood's Form U-4 be expunged;
- 5) For such other and further relief as the Arbitration Panel deems just and proper.

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:

- 1) Claimant had no contract with Goldman, Sachs & Co.;
- 2) Goldman, Sachs & Co. and its employees had no fiduciary duty to the Claimant;
- 3) Any loss suffered by the Claimant were within his own control and self directed;
- 4) Mr. John Underwood was not responsible for any financial loss suffered by the Claimant.

B. Decision:

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

C. Award:

1. Monetary Damages

Claimant's demand for monetary damages is denied in its entirety.

2. Punitive Damages

Claimant's demand for punitive and exemplary damages is denied in its entirety.

3. Costs

a. Both parties shall be responsible for their own individual hearing expenses, including, but not limited to, expert witness fees, court reporter fees, communication expenses, and the expenses associated with the reproduction of documents, etc.

b. Claimant shall pay all forum hearing fees.

4. Attorney Fees

Both parties shall be responsible for their own expenses and attorney fees relative to the preparation, presentation, etc., of their perspective claims.

5. Other

The Arbitration Panel directs that the records of this Statement of Claim filed against Respondent John Underwood's Form U-4 be expunged and no reference be reflected on his other professional licenses.

A. Other Determinations

1. Respondent shall reimburse Claimant's non-refundable filing fee ☐ YES ☒ NO
2. Respondent shall reimburse Claimant's hearing session deposit ☐ YES ☒ NO
3. Parties shall bear their own costs of arbitration ☒ YES ☐ NO
4. Should this matter be referred to any regulatory organization (SRO or SEC) for disciplinary investigation of rule violations or violation Federal securities laws? ☐ YES ☒ NO

B. Forum Fees:

To be determined by the Pacific Exchange Arbitration Administration.

Dated: APRIL 17/2004


Peter Kessel, Chair

Dated: _____

Charles Stark, Public Arbitrator

Dated: April 29, 2004


Kenneth Domingues, Industry Arbitrator

FROM : FRANCES A. STARK

04/25/2004 09:27

415-635-4823

FOX NO. : 415 387 8216

FOX GENERAL COUNCIL

Apr. 29 2004 11:34AM

A. Other Determinations

1. Respondent shall reimburse Claimant's non-refundable filing fee ☐ YES ☒ NO
2. Respondent shall reimburse Claimant's hearing session deposit ☐ YES ☒ NO
3. Parties shall bear their own costs of arbitration ☒ YES ☐ NO
4. Should this matter be referred to any regulatory organization (SRO or SEC) for disciplinary investigation of rule violations or violation Federal securities laws? ☐ YES ☒ NO

B. Forum Fees:

To be determined by the Pacific Exchange Arbitration Administration.

Dated: APRIL 17/2004


Peter Kassel, Chair

Dated: April 29, 2004


Charles Stark, Public Arbitrator

Dated: _____

Kenneth Dominguez, Industry Arbitrator