

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

In The Matter Of The Arbitration Between:

Paul Bilecky,

Claimant,

v.

E*Trade Securities LLC,

Respondent

PCX CASE #: 05-L001

DECISION

The undersigned Arbitrators, having read and considered the Claim submitted by Claimant and the Answer of Respondent, and having considered evidence presented at the hearing on August 15, 2005, hereby render the following Decision pursuant to Rule 12 of the Pacific Exchange:

REPRESENTATION OF PARTIES

Of Claimant: Paul Bilecky

Of Respondent: John Bersin, Esq.

SUMMARY OF FACTS

Claimant alleges Respondent liquidated his option trading account without his consent or knowledge and that it also failed to credit his account with the sum of \$86,744.14 which had been transferred from his previous brokerage account. Claimant further contends that he received no notice that his account was being liquidated pursuant to a margin call.

Respondent denies each and every allegation in the Statement of Claim and, further, alleges that the sum of \$86,744.14 was transferred from Claimant's Wall Street Access account into Claimant's account and was utilized in the series of option trades made by Claimant.

Respondent asserts that when Claimant's account went into a negative equity and was subject to a margin call he received both written and oral notices that unless he met the margin call his account would be liquidated, which was done; that as a result of the necessary liquidation Claimant's account was left with a negative cash balance of \$11,591.82.

ISSUES PRESENTED

The issues presented by Claimant involved whether or not his account was properly credited with the sum of \$86,744.14 and whether Respondents had the authority to liquidate his account to meet a margin call.

The Issues presented by Respondent was whether it had properly accounted for all of Claimant's losses and, when the account went into a negative equity position, whether it had the legal obligation to satisfy the margin call by liquidating Claimant's account; further, whether it is entitled to be reimbursed for the deficit in the account as set forth in its counterclaim.

RELIEF REQUESTED

Claimant requested the sum of \$86,744.14 in compensatory damages, and \$193,788.80 as compensatory damages resulting from the liquidation of his account, the sum of \$250,000.00 as punitive damages, for \$30,000.00 for premature sale loss (sic), and for interest and costs.

Respondent requested that all of Claimant's claim be denied; that it be granted the sum of \$11,491.82, plus consequential and incidental damages and lost interest, and that Claimant be assessed the costs and expenses of the proceeding.

FINDINGS AND DECISION

A. Findings of fact:

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

1. That Claimant's account was accurately credited with the sum of \$86,744.14 and was utilized in a succession of option trades made by Claimant;
2. That Claimant's trades resulted in a negative position and resulted in an unmet margin call;
3. That notices of the impending margin calls were appropriately given to Claimant;
4. The failure of Claimant to meet the margin call resulted in a debit of \$11,491.82 in the account;
5. That Respondent has sustained damages in the said sum of \$11,491.82.

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.

C. Award:

1. Claimant's claim is denied in its entirety;
2. Respondent is awarded the sum of \$11,491.82 as and for damages and the further and additional sum of \$34.74 as and for interest.

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

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

D. Forum Fees:

Assessed to Claimant:

One-half of prehearing fee (5/26/05)	\$500.00
2 hearing sessions (8/15/05)	\$2,000.00
Total --	\$2,500.00

Assessed to Respondent:

One-half of prehearing fee (5/26/05)	\$500.00
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Dated: AUGUST 20, 2005


George M. Wiener, Chair

Dated: _____

Robert Granas, Public Arbitrator

Dated: _____

Larry Haugaard, Industry Arbitrator

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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

D. Forum Fees:

Assessed to Claimant:

One-half of prehearing fee (5/26/05)	\$500.00
2 hearing sessions (8/15/05)	<u>\$2,000.00</u>
Total --	\$2,500.00

Assessed to Respondent:

One-half of prehearing fee (5/26/05)	\$500.00
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Dated: _____

George M. Wiener, Chair

Dated: August 19, 2005

Robert Granas
Robert Granas, Public Arbitrator

Dated: _____

Larry Haugaard, Industry Arbitrator

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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

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2 hearing sessions (8/15/05)	\$2,000.00
Total --	\$2,500.00

Assessed to Respondent:

One-half of prehearing fee (5/26/05)	\$500.00
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Dated: _____

George M. Wiener, Chair

Dated: _____

Robert Granas, Public Arbitrator

Dated: 9-1-05

Larry Haugaard, Industry Arbitrator