

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

IN THE MATTER OF THE ARBITRATION  
BETWEEN:

[REDACTED],

PCX Case No. 05-S009

Claimant,

DECISION

vs.

RBC Dain Rauscher Inc. and  
Michael McDonough,

Respondents.

The undersigned Arbitrator, having read and considered the Claim submitted by Claimant, [REDACTED] and the Answer of Respondents, RBC Dain Rauscher Inc. and Michael McDonough, and having considered written evidence presented, hereby renders the following Decision pursuant to Rule 12 of the Pacific Exchange.

REPRESENTATION OF PARTIES

Of Claimant :

[REDACTED]

Of Respondents:

Abe Lampart, Esq.

HISTORY OF CASE

Statement of Claim filed on or about: September 8, 2005

Statement of Answer filed on or about: October 21, 2005

Hearing Date: Decision completed January 10, 2006.

SUMMARY OF CASE

Claimant, a public customer bought six (6) Martha Stewart Living (MSO) September, 2004 \$12.50 call options and six (6) MSO September, 2004 \$12.50 put options on January 28, 2004. He instructed his broker to sell the "losing" position in a telephone call on March 5, 2004, presumably after the jury announced the verdict in the Martha Stewart case.

The broker upon hearing rumors of an acquittal and seeing the stock rise, sold the put

1 options. Later, the news of the conviction caused the stock trading to be halted. It re-opened lower,  
2 whereupon the broker sold the now "losing" call options.

3 ISSUED RAISED

4 Claimant claims no authorization for either sale.

5 Respondent claims that the broker dutifully followed instructions, that there was ratification  
6 by Claimant, failure to mitigate and arbitrary damages claimed.

7 RELIEF REQUESTED

8 Claimant seeks \$5,000.00 compensatory and \$5,000.00 punitive damages.

9 Respondent seeks a defense verdict and recovery of attorney's fees, or in the alternative,  
10 maximum recovery by Claimant of loss of put value of \$617.06 (difference between purchase price  
11 of \$1,392.37 and sale price of \$773.51 of put option).

12 FINDINGS AND DECISION

13 A. Findings of Fact:

14 After considering the arguments and evidence of both the Claimant and Respondents in this  
15 matter, the undersigned Arbitrator makes the following findings:

16 Claimant intended for one side of his MSO holdings to be sold, not both. The broker acted  
17 on perhaps uncertain instructions, guessed wrongly before the verdict and sold the puts. He correctly  
18 sold the calls afterwards.

19 B. Decision:

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

23 The broker was responsible for professional execution of the trade requested on Claimant's  
24 behalf. His actions fell below this standard. Claimant's loss is the value of put options sold for less  
25 than the purchase price (\$617.06). Further loss is speculative and was not proven by Claimant.

26 AWARD

27 1. Monetary damages \$617.06  
28

1 2. Punitive damages None

2 3. Attorneys fees Each to bear their own

3 OTHER DETERMINATIONS

4 1. Respondent shall reimburse Claimant's non-refundable filing fee.

5 2. Respondent shall reimburse Claimant's hearing session deposit.

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7 Dated:

JANUARY 10, 2006

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Brian F. Kram, Arbitrator