

PACIFIC EXCHANGE, INC.
301 Pine Street
San Francisco, California 94104

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MAY 16 2000

PCX ARBITRATION

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|--|---|------------------------------|
| Tom A. Perkins |) | PCX CASE #: 98-S032 |
| |) | |
| CLAIMANT |) | DECISION IN THE MATTER OF |
| |) | ARBITRATION BETWEEN TOM A |
| V |) | PERKINS AND OLDE DISCOUNT |
| |) | CORPORATION AND THOMAS |
| OLDE Discount Corporation, Thomas Edward |) | EDWARD COCO AND ROES THROUGH |
| Cisco and Roes 1 through 100, inclusive |) | 100, INCLUSIVE |
| |) | |
| RESPONDENTS |) | |
| |) | |

The undersigned Arbitrators, having read and considered the Claim submitted by Claimant Tom A. Perkins ("Claimant") on December 21, 1998, and the Answer of Respondents, having considered all testimony given on August 18, 19 and 20, 1999, at Sacramento, California, and January 4, 5 and 6, 2000 at San Francisco, California, lasting 16 hearing sessions, and, having considered all papers submitted in this matter, hereby render the following Decision pursuant to Rule 12.29(a) of the Rules of the Pacific Exchange:

REPRESENTATION OF PARTIES

Of Claimant: Jeffrey M. Jones, Esq.,
Law Office of Jeffrey M. Jones, P.C. - Sacramento, CA

Of Respondents: Timothy N. Will, Esq.,
Albert & Will, LLP - Torrance, CA

SUMMARY OF CASE

Claimant had a margin account ("the Account") with Respondent OLDE Discount Corporation ("Respondent OLDE"), and Respondent Thomas Coco ("Respondent Coco")¹ was his broker from October 1996 to October 1997. The Account was opened with a total of \$515,000.00, and for the following twelve months, trades were made in the areas of computer hardware, software and peripherals, telecommunications and gaming among others. During its lifetime the Account suffered a net loss of \$128,000.00. Claimant asserts that the trades conducted in his account were too risky, and speculative given his sophistication level in securities investing. Respondents claim that Claimant approved the investment strategy they followed and understood its inherent risks.

¹ OLDE Discount Corporation and Thomas Coco are sometime collectively referred to herein as "Respondents."

ISSUES FOR RESOLUTION

A BY CLAIMANT

Claimant alleges that Respondent Coco breached his fiduciary duty in his handling of Claimant's account by:

1. excessively trading and churning the account (a turnover of six times in one year);
2. avoiding compliance review by changing the initials of the responsible broker on Claimant's opening account documentation; and
3. not following Respondent OLDF's own analysis on how to treat the securities purchased.

Claimant alleges that Respondent OLDF breached its fiduciary duty when it:

4. made Respondent Coco a branch manager knowing that he did not have the requisite licensing; and
5. failed to adequately supervise Respondent Coco in his handling of Claimant's account.

B BY RESPONDENTS

Respondents allege that Claimant did not suffer any actionable damage because Claimant:

1. was a sophisticated business person who owned his own construction business and amassed a net worth of almost two million dollars (\$2,000,000.00) in cash by the age of 41;
2. knew and understood the risks of the investment strategy approved by him and implemented by Respondent Coco;
3. approved of every purchase and sale made in his account; and
4. knew he could close his OLDF account and get out at any time.

RELIEF REQUESTED

BY CLAIMANT

Claimant requests an award of \$592,783.00 broken down as follows:

1. \$128,119 in net out-of-pocket loss;
2. interest at 7% of \$60,617.00;
3. damages from the benefit of the bargain at \$95,644.00;
4. prejudgment interest on the benefit of the bargain damages of \$27,851.00;
5. disgorgement of "ill-gotten gains" (for churning allegation) of \$30,552.00; and
6. punitive damages in the amount of \$250,000.00.

BY RESPONDENTS:

Respondents request that Claimant's claims be denied in their entirety and that Respondent Coco's CRD record be expunged. Respondents further request that if the decision is made in Claimant's favor, that Claimant's damages be limited to only \$10,000.00 to \$21,000.00, which represents Claimant's 1st to 3rd months' loss.

DECISION

The arbitration panel after considering all evidence and testimony presented find the following (all exhibits were admitted into evidence except Claimant's #45)

ON THE CLAIM:

Respondent Coco treated Claimant's account like a trading account rather than following the investment objectives initially voiced by Claimant. Respondent Coco actively set forth to avoid surveillance by OLDF's compliance department when he manipulated the opening account documentation by placing an unlicensed broker (Ty Gibney) in charge of Claimant's account, thereby violating OLDF's policies and the NASD rules. Respondent Coco also allowed inappropriate access to COIL's private information to Claimant in purchase of COIL. Respondent OLDE breached its duty to Claimant when it promoted Respondent Coco to the position of branch manager when he did not meet the legal requirements and then failed to supervise him and his actions as a broker and branch manager.

On the other hand, Claimant participated in the use of the private information regarding COIL, fully knew and understood the risks of the trading occurring in his account, agreed with every trade made in his account and knew he could close his account at any time.

1. Claimant is awarded **(\$15,000.00)**² against Respondents, jointly and severally, which represents the amount Claimant stated was his "loss limit"
2. Respondent OLDE shall reimburse Claimant's filing fee of **\$200.00** and Claimant's initial hearing session deposit of **\$750.00**.
3. Respondent OLDE shall reimburse Claimant for the legal fees he is obligated to pay his counsel in accordance with their fee agreement and reimburse the cost of expert witnesses limited in total of those *similar expenses and costs paid by OLDE in its defense*.
4. Respondent is assessed and shall pay to the Pacific Exchange forum fees for fifteen (15) hearing sessions and two (2) pre-hearing conferences in the total amount of **\$11,850**³

² Pursuant to PSE Rule 12.29(h), monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. If the award is not paid within thirty (30) days, or if the award is the subject of a motion to vacate which is denied, interest shall accrue at the legal rate from the date of the award.

³ Forum Fees are assessed at the rate of \$750 per hearing session. The pre-hearing conferences held on July 23, 1999 and August 12, 1999 are assessed at the rate of \$300 per pre-hearing conference.

Perkins v. Uf DE Discount et al.

PCX Case # 98-S032

Page 2

5. The parties shall bear their own other costs of arbitration.

Date 4/29/00

Beverly Narayan
Beverly Narayan, Esq. - Chairperson

Date 5/10/00

Patricia Frost
Patricia Frost - Public Arbitrator

Date 5/15/00

Kenneth Domingues
Kenneth Domingues - Industry Arbitrator