

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

PA. 1053
JUN 15 2000
PCX ARBITRATION

DAVID DETIEGE)	PCX CASE #: 99-S024
)	
Claimant)	AMENDED DECISION IN THE MATTER OF
)	ARBITRATION BETWEEN DAVID DETIEGE
V.)	AND CHARLES SCHWAB & CO., INC.
)	
CHARLES SCHWAB & CO., INC.)	
)	
Respondent:)	
)	

The undersigned Arbitrator, having read and considered the Claim submitted by Claimant on June 9, 1999, and the Answer of Respondent; having considered all testimony given on February 3, 2000, at San Francisco, California, lasting one (1) hearing session; and, having considered all papers submitted in this matter, hereby renders the following Decision pursuant to Rule 12 29(a) of the Rules of the Pacific Exchange:

REPRESENTATION OF PARTIES

Of Claimant: Richard Sacks
Law Office of James J. Sullivan - Novato, CA

Of Respondent: Amir Tadjedin, Esq.
Charles Schwab & Co., Inc. - San Francisco, CA

SUMMARY OF CASE

Claimant David Detiege ("Claimant") was a retail customer of Respondent Charles Schwab & Co., Inc. ("Respondent"). Although his trading account was subject to a "cash up front" ("CUF") restriction, Claimant was able, on January 4, 1999, to place three orders via the internet to sell shares in securities he did not own, one of which was 3000 shares of Skymall, Inc. ("SKYM"). The shares were sold "long" and all three orders were routed for execution to the over-the-counter market.

In order to cover his delivery obligations from the sale of SKYM shares on January 4, 1999, Claimant later that same day, purchased 3000 shares of SKYM at a lower price. By purchasing at a lower price, Claimant's overall trades for the day realized a net "profit" of \$10,300.00. It is this alleged "profit" that is the subject of the claim.

Initially, Respondent advised Claimant that he could receive the net profit if he "immediately" deposited good funds of \$41,500.00 in his account to cover the cost of the transactions. Claimant wrote a check to Respondent for that amount, although he did not have sufficient funds in his account. Respondent issued, but did not deliver a check to Claimant in the amount of the alleged "profit" of \$10,300.00. However, Respondent placed a stop order on its check when it determined not to pay the "profit" to Claimant and

Claimant then stopped payment on his check to Respondent.

ISSUES FOR RESOLUTION

1. Was Claimant entitled to profit from the transactions, or should Respondent be allowed to retain the funds?
2. Was a valid secondary contract formed, with the requisite offer and acceptance?
3. Is Claimant entitled to equitable relief?

RELIEF REQUESTED

A. By Claimant.

Claimant prays for payment to him of the net profit from the SKYM trades.

B. Respondent argues that Claimant is not entitled because:

1. It was a "free ride" transaction in violation of Regulation T; and
2. Claimant never "accepted" the secondary contract by depositing good funds.

DECISION

The Arbitrator, after considering all evidence and testimony presented finds the following:

Respondent offered Claimant the right to recover net profits of transactions completed on January 4, 1999, if he deposited of \$41,500.00 in the form of a cashier's check or money order "immediately" (within that day or the next). Claimant tendered a personal check upon which he later stopped payment. His account did not have sufficient funds and he did not personally have such amounts available, except by borrowing from a friend. His friend did not tender the requested funds by the time the check was stopped. Claimant was afraid that Respondent would not perform its promise to pay the \$10,300.00, based upon general (hypothetical) conversations with other of Respondent's employees.

A. Findings:

Although Respondent had the right to claim any profit to Claimant (based upon the Regulation T violation) an offer was made that if he paid good funds of \$41,000.00 soon thereafter, the trade profit would be given to him. For various reasons, Claimant did not accept the offer. Respondent is not responsible for Claimant's non-acceptance.

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B. Award:

1. Claimant's claim is denied in its entirety.
2. Claimant does not owe commission and Respondent is ordered to cease and desist from collection activity for commissions upon trades by Claimant on January 4, 1999.
3. Respondent's computer accessible on-line procedures may be deficient, in that Claimant was successful in entering trades on-line while his account was restricted. Respondent is further ordered to review its procedures and report its findings and conclusions to its Designated Examining Regulatory Authority, as to whether it is necessary to revise its internal procedures so as to prevent customers with restricted accounts from being able to enter transactions on-line, in violation of restrictions imposed by Respondent.
4. Referral is requested that Respondent's DEA be contacted to follow up upon this arbitration's finding # 3.
5. Claimant is assessed forum fees for ½ of the hearing session and ½ of the pre-hearing conference fee, in the total amount of \$250.00.¹ Claimant's initial hearing session deposit of \$75.00 shall be deducted against fees due. Accordingly, Claimant shall remit to the Pacific Exchange the total amount of \$175.00.
6. Respondent is assessed and shall pay to the Pacific Exchange forum fees for ½ of the hearing session and ½ of the pre-hearing conference fee, in the total amount of \$250.00.
7. The parties shall bear their own costs of arbitration, including any and all filing fees, hearing deposits, member surcharge fees, and attorney fees.

Date:

6/13/2000



Brian F. Kram, Esq. - Sole Arbitrator

¹ Forum Fees are assessed at the rate of \$200 per hearing session. The fee for the pre-hearing conference held on January 11, 2000, with the parties and the Sole Arbitrator is \$300