

Arbitration Decision

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

In The Matter Of The Arbitration Between:

CLAIMANTS NAMES

PCX CASE #: 02-S054

DECISION

Claimants

v.

RESPONDENTS NAMES

A.G. Edwards & Sons, Inc.,
Paul Kromhout and
Ronald Monatlik

Respondents

The undersigned Arbitrators, having read and considered the Claim submitted by Claimants and the Answer of Respondents, and having considered the evidence presented at the hearings on April 20 through 27, 2005, hereby render the following Decision pursuant to Rule 12 of the Pacific Exchange:

REPRESENTATION OF PARTIES

Of Claimant(s): **Robert L. Gonser,
Resolution Law Group, P.C.**

Of Respondent(s): **Daryl S. Landy and Brian T. Hafter
Steeffel, Levitt & Weiss, P.C.
For A.G. Edwards and Paul Kromhout Only**

**Mr. Monatlik neither appeared at the hearing
nor was he represented by Counsel.**

SUMMARY OF FACTS

At the opening of the Hearing, Counsel for Claimants and Respondents together represented that all original Parties to this action had settled except for those listed above. They further indicated they were not able to reorganize all the documents to reflect these settlements, but did indicate certain documents in the files to ignore during this Hearing.

The Claimants in this case opened accounts with A.G. Edwards (AGE) between April and October 2000, having been solicited by broker Ronald Monatlik at their places of employment. Claimants varied significantly in their investment experience, objectives, income and net worth. The primary purpose of each account was to implement an "Exercise and Hold" strategy regarding stock options that each of the Claimants had acquired and continued to acquire through their employment either at Cisco Systems or at JDS Uniphase. For each Claimant, this strategy necessitated a substantial Margin Loan if Claimants were to retain all their exercised shares for the full year required to attain lower Capital Gain tax rates. Some of the Claimants also brought additional assets into their AGE accounts and had activity involving other shares and options.

Respondent Paul Kromhout, as AGE Branch Manager, hired Ronald Monatlik as a broker in March 2000. AGE required that Mr. Monatlik be subjected to the terms and conditions of a "Special Supervision Memo", and this responsibility was undertaken by Mr. Kromhout.

Mr. Monatlik was dismissed by Mr. Kromhout on December 8, 2000 for cause involving another AGE client not among this group of Claimants, at which time Mr. Kromhout personally assumed responsibility for Claimants' accounts.

The stock market in general and the Cisco Systems and JDS Uniphase shares in particular, that were held by Claimants, were highly volatile before, during and after this entire period, resulting in substantial losses for those Claimants who did not sell their shares prior to the major market price declines. The Margin Loans made to Claimants magnified these losses substantially.

The case file shows that Ronald Monatlik was served with the Statement of Claim on December 9, 2003. He was also sent a letter on April 2, 2004, confirming that he had not submitted an Answer and stating that the arbitration matter would proceed without him.

ISSUES PRESENTED

Issues Raised by Claimants

"Fraud" against Mr. Monatlik for allegedly making false and misleading statements designed to convince these Claimants to open AGE accounts and implement an "Exercise and Hold" strategy with their vested stock options, utilizing sizable margin positions.

"Unsuitability" of investments, considering Claimants' investment objectives, net worth, income levels and experience, plus the elevated risks resulting from the recommended "Exercise and Hold" strategy which placed Claimants in a highly leveraged and concentrated position in a narrow market sector.

"Failure to Supervise" Mr. Monatlik, as broker, over an extended period of time in conforming to the rules of AGE and the several SRO's having jurisdiction.

"Unauthorized Transactions" in a subset of Claimants' accounts.

"Breach of Contract" by Respondents in failing to comply with applicable laws, rules and regulations.

"Breach of Fiduciary Duty" by Respondents in failing to act with integrity, honesty and in good faith relative to the above cited issues.

"Respondeat Superior" doctrine that renders AGE liable for the wrongdoings of its agents.

Issues Raised by Respondents

"Actual Losses Were Minimal" on the part of each Claimant, because they had in every case sold their exercised shares at prices much higher than the strike price of their option grants.

"Actual and Deemed Experience" on the part of each Claimant was significant, notwithstanding their stated account opening documentation, based on their academic education, other investment account activity, and direct experience with their employers' share valuations, all of which charged them with an increasing responsibility over time for the selection and maintenance of the "Exercise and Hold" strategy utilizing margin.

"Claimants Ratified All Transactions", even if after the fact and/or if apparently made without proper authorization.

"Regular and Prompt Notification" of the status of each Claimant's account was supplied via well documented AGE Account Statements and the ready availability of AGE personnel for telephone and email consultation.

"Investors Had A Responsibility To Apprise AGE" of any errors in Account Profile data that would affect AGE's judgment as to Suitability.

"Investors Had A Responsibility To Limit Losses" when such losses became excessive.

RELIEF REQUESTED

Claimants requested damages and other relief as follows:

\$ 383,495 Monetary Damages Plus Interest
\$ 251,507 Monetary Damages Plus Interest
\$ 343,880 Monetary Damages Plus Interest
\$ 616,035 Monetary Damages Plus Interest

In addition, **Claimants** requested Punitive Damages, Attorneys Fees and Other Fees and Costs.

Respondents requested a dismissal of all claims and an award to AGE and Mr. Kromhout of their costs for the Arbitration proceedings.

FINDINGS AND DECISION

After six days of hearings and taking evidence, both oral and documentary, plus two executive sessions evaluating all the evidence and the credibility and weight thereof and of the witnesses testifying, and after considering the arguments of counsel and giving weight and probative value to the evidence and testimony, the Panel in full, complete and final resolution of the issues presented to it, makes its decision as follows:

A. Decision:

The Panel unanimously finds in favor of Claimants and against Respondents on all issues except Fraud, which remained unproven by the evidence and lack of direct testimony from Mr. Monatlk. Monetary Damages are specified below and reflect mitigating factors in varying degrees for each Claimant based on actual and presumed investment knowledge and experience as well as their shared responsibility to limit losses.

The following Damages, Costs and Fees are awarded **Jointly and Severally** against Respondents.

B. Award:**1. Monetary Damages:**

Claimant Name	Damage Award	Plus Interest At 7.00% From
	\$ 28,000	February 1, 2001
	\$ 28,000	February 1, 2001
	\$ 330,000	February 1, 2001
	\$ 545,000	February 1, 2001

2. **Punitive Damages:** NONE

3. **Costs:**

As Described In Mr. Gonser's Declaration of April 25, 2005 and Not to exceed \$33,000.

4. **Attorney Fees:** Each Party To Bear His, Her and Its Own Attorney Fees.

5. **PCX Fees:**

Respondent shall reimburse Claimant's non-refundable filing fee of \$250.00.
Respondent shall reimburse Claimant's hearing session deposit of \$1000.00.

C. Forum Fees:

Forum fees to be paid by Respondent are as follows:

\$300.00	1 Pre-Hearing Conference Session
\$12,000.00	12 Hearing Sessions at \$1000
<u>\$12,300.00</u>	Total Forum Fees

D. Other determinations:

This matter should be referred to the appropriate regulatory organization for disciplinary investigation of rule violations by Mr. Ronald Monatilk acting as broker.

(See the separate letter to PCX from the Arbitration Panel)

This unanimous Decision by the Arbitration Panel may be signed in counterparts:

Dated: 5/17/2005


Jonathan H. Hathaway,
Chairman

Dated: _____

James L. Gault, Esq.
Public Arbitrator

Dated: _____

Kenneth V. Domingues, CPA
Industry Arbitrator

This unanimous Decision by the Arbitration Panel may be signed in counterparts:

Dated: _____

Jonathan H. Hathaway,
Chairman

Dated: May 18, 2005

James L. Gault
James L. Gault, Esq.
Public Arbitrator

Dated: _____

Kenneth V. Domingues, CPA
~~Public~~ Arbitrator
Industry

This unanimous Decision by the Arbitration Panel may be signed in counterparts:

Dated: _____

Jonathan H. Hathaway,
Chairman

Dated: _____

James L. Gault, Esq.
Public Arbitrator

Dated: 5/16/2005

KV Dominguez

Kenneth V. Domingues, CRA
Industry Arbitrator