

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
LAWRENCE BERMAN

:
: Case No. 04-57
: Hearing Officer – JN
: **AMENDED**
: **DISCIPLINARY PANEL DECISION**
: November 2, 2004
:

Digest

In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel determined that Respondent violated Exchange Rule 100, as stipulated, and as a penalty, imposed a \$1,000 fine.¹

DECISION

I. Introduction

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against Lawrence Berman, a Regular Member of the Exchange and an employee of Wolverine Trading LP, an Exchange member organization. A Disciplinary Panel held a hearing on September 9, 2004, pursuant to Article V, Section 2 of the Exchange Constitution, to review a Stipulation of Facts and Consent to Penalty (“Stipulation”) (attached as Exhibit A). The Exchange and Berman entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Berman based upon or arising out of the facts set forth in the Stipulation.

¹ The Digest in the original Disciplinary Panel Decision, issued on October 13, 2004, incorrectly indicated the rule violated by Respondent.

II. Facts

Berman, without admitting or denying liability, stipulated to the facts set forth in the attached Stipulation. The Disciplinary Panel has determined to accept those facts for purposes of this Decision, and they are incorporated herein.

III. Violation

Based upon the stipulated facts, the Disciplinary Panel concludes that Berman violated Exchange Rule 100 by sending a commitment to sell certain securities through the Intermarket Trading System to the New York Stock Exchange after the close of Exchange trading, as set forth in paragraph 1.5 of the Stipulation.

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel impose upon Berman a \$1,000 fine for the above misconduct. At the hearing, the Parties urged the Disciplinary Panel to accept the proposed penalty as appropriate to the facts and circumstances of this case.

Though trading after the close is a serious matter, the instant record reflects certain circumstances that make a relatively light sanction appropriate. In sending the commitment, 51 seconds after the close of trading, Respondent relied on the Exchange's service desk, where employees advised (erroneously) that he could do so (Hearing transcript, pp. 4, 6, 11, 12). In addition, Berman voluntarily disclosed the matter to the Exchange (Id. at 7-8, 13).² Taking these factors together with the policies favoring settlement of disputes, the Disciplinary Panel finds the proposed penalty is at the appropriate level to be imposed in this proceeding and therefore accepts the penalty proposed in the Stipulation.

² Enforcement counsel stated that Berman should have consulted the intermarket trading analysis department, which would have directed him to regulatory personnel and that the Exchange would have detected the violation in any event (Tr. 11, 13).

The Disciplinary Panel further finds that the results of this disciplinary proceeding should be publicly disclosed, as provided in Rule 12 of the Exchange Rules on Disciplinary Proceedings.³

V. Conclusion

Based on the foregoing, the Disciplinary Panel, by unanimous vote, accepts the Stipulation of Facts and Consent to Penalty and hereby imposes upon Berman a \$1,000 fine.

FOR THE DISCIPLINARY PANEL

Jerome Nelson, Chair

Copies to: Lawrence Berman (*via overnight and first class mail*)
Alison H. Mijares, Esq. (*via electronic and first class mail*)
Arlene Collins-Day (*via first class mail*)

³ Rule 12 exempts from publicity those cases where the Panel finds that the offense “related solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors.” Those exemptions do not apply to the facts of this case.

Disciplinary Panel
American Stock Exchange LLC

.....X
X
IN THE MATTER X STIPULATION OF FACTS
OF X AND
LAWRENCE BERMAN X CONSENT TO PENALTY
X
X
.....X

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”) by a Statement of Charges dated May 17, 2004, against LAWRENCE BERMAN (“Berman”) (CRD # 2842468), a Regular Member of the Exchange and an employee of Wolverine Trading LP. This Stipulation of Facts and Consent to Penalty is entered into with Berman pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Berman based upon or arising out of the facts hereinafter stipulated. Berman, without admitting or denying the facts, allegations and conclusions contained in this Stipulation of Facts and Consent to Penalty, hereby consents to the entry of findings of violations of the Exchange Rules and the imposition of the penalties hereinafter provided. Berman understands that this settlement is subject to approval by an Exchange Disciplinary Panel and by the Amex Adjudicatory Council and that, if so approved, shall constitute a final decision, which may not be appealed by the parties. Berman understands and acknowledges that the Disciplinary Panel’s decision in this matter will become part of his disciplinary record and may be considered in any future proceeding brought by the Exchange.

STIPULATED FACTS

- 1.0 During all relevant periods herein, Wolverine Trading LP (“Wolverine”) was an Exchange member organization and was registered with the Exchange as a specialist firm.
- 1.1 During all relevant periods herein, Berman was a Regular Member of the Exchange and was actively engaged as a specialist for Wolverine on the Floor of the Exchange.
- 1.2 During all relevant periods herein, Berman was subject to Exchange Rule 100, which provided that dealings upon the Floor of the Exchange, including dealings effected through the System defined in Exchange Rule 230 (“ITS”), shall be limited to the hours when the Exchange is open for the transaction of business.¹
- 1.3 During all relevant periods herein, Berman was the individual specialist assigned to handle the stock Broadband Holding Company Depository Receipts (“HOLDERS”) Trust (“BDH”), which was listed on the Exchange.
- 1.4 During all relevant periods herein, BDH was a multiply listed stock eligible for trading through the Intermarket Trading System (“ITS”).²
- 1.5 On trade date August 22, 2003, stock BDH had reported Exchange volume of 32,900 shares; the high for the day was 10.79, and the low for the day was 10.48. At 3:40:35 p.m., Berman quoted a market in BDH of 10.47 – 10.53 (100 x 5).

¹ Exchange Rule 1 provides that the Exchange is open for equity trading from 9:30 a.m. until 4:00 p.m.

² ITS is an electronic communications network which links all U.S. markets, enabling market professionals to interact with their counterparts in other markets whenever the nationwide composite quotation system shows a better price.

The New York Stock Exchange (“NYSE”) then quoted a market in BDH of 10.49 – 10.57 (100 x 100) at 3:51:48 p.m. At 4:00:51 p.m., after the close of equity trading on the Exchange, Berman, in his capacity as specialist for stock BDH, sent a commitment³ to trade through ITS to the NYSE to sell 4,000 shares of stock BDH at 10.49 for his proprietary account. At 4:01:03 p.m., the NYSE notified Berman through ITS that the commitment had been executed. At 4:01:04 p.m., 4,000 shares of BDH traded on the NYSE.

- 1.6 On the following trading day, August 25, 2003, Berman’s opening position in BDH was long 163,333 shares.

CONCLUSION

By reason of the foregoing Stipulated Facts, a Disciplinary Panel may conclude that:

- 2.0 Berman violated Exchange Rule 100 by sending a commitment to sell 4,000 shares of BDH through ITS to the NYSE after the close of Exchange trading, as set forth in paragraph 1.5.

³ A “commitment” is a firm commitment to purchase or sell a specified number of shares of a specified ITS eligible security which is transmitted between participating market centers.

DISCIPLINARY ACTION:

By reason of the foregoing stipulated facts, a Disciplinary Panel may impose the following penalty upon Lawrence Berman:

- (a) a \$1,000 fine.

AMERICAN STOCK EXCHANGE LLC

By: _____

David Rosenstein
Vice President and Chief Counsel

Agreed to this _____ day of _____, 2004.

Lawrence Berman