

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER
OF
JOSHUA ROSEN

:
:
: Case No. 03-81
: Hearing Officer – DMF
:
: **DISCIPLINARY PANEL DECISION**
: June 24, 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 censure and a fine of \$2,000.

DECISION

I. Introduction

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against Joshua Rosen, a Regular Member of the Exchange. A Disciplinary Panel held a hearing on June 14, 2004, pursuant to Exchange Rule 345(k), to review a Stipulation of Facts and Consent to Penalty (“Stipulation”) (attached as Exhibit A). The Exchange and Rosen entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Rosen based upon or arising out of the facts set forth in the Stipulation.

II. Facts

Rosen, 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 Rosen violated Exchange Rule 100 by sending two commitments to sell 3,000 shares of Xcelera, Inc. through Intermarket Trading System to the NASDAQ 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 Rosen a censure and a fine of \$2,000. At the hearing, the Parties urged the Disciplinary Panel to accept the proposed penalty as being appropriate to the facts and circumstances of this case. After consideration of the Stipulation and the agreed-upon penalty, 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.

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.¹

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 Rosen a censure and a fine of \$2,000.

FOR THE DISCIPLINARY PANEL

David M. FitzGerald, Chair

¹ 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.

Copies to: Thomas J. McCabe, Esq. (*via facsimile and first class mail*)
Alison H. Mijares, Esq. (*electronically and via first class mail*)
Arlene Collins-Day (*via facsimile and first class mail*)

Disciplinary Panel
American Stock Exchange LLC

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X
IN THE MATTER X STIPULATION OF FACTS
OF X AND
JOSHUA ROSEN X CONSENT TO PENALTY
X
X
.....X

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”), against JOSHUA ROSEN (“Rosen”) (CRD # 4308915), a Regular Member of the Exchange and an employee of Performance Capital Group.¹ This Stipulation of Facts and Consent to Penalty is entered into with Rosen pursuant to Article V, Section 2 of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Rosen based upon or arising out of the facts hereinafter stipulated. Rosen, 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. Rosen 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. Rosen 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.

¹ Performance Capital Group has since changed its name to Kellogg Capital Group, effective January 2, 2004.

STIPULATED FACTS

- 1.0 During all relevant periods herein, Performance Capital Group (“Performance”) was an Exchange member organization and was registered with the Exchange as a specialist firm.
- 1.1 During all relevant periods herein, Rosen was a Regular Member of the Exchange and was actively engaged as a specialist for Performance on the Floor of the Exchange.
- 1.2 During all relevant periods herein, Rosen 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.²
- 1.3 During all relevant periods herein, Rosen was the individual specialist assigned to handle the stock Xcelera, Inc. (“XLA”), which was listed on the Exchange.
- 1.4 During all relevant periods herein, XLA was a multiply listed stock eligible for trading through the Intermarket Trading System (“ITS”).³
- 1.5 On trade date June 18, 2003, stock XLA had reported Exchange volume of 316,700 shares; the high for the day was 1.70, and the low for the day was 1.35. At 4:00:41 p.m., the National Association of Securities Dealers Automated Quotations (“NASDAQ”) quoted a market in XLA of 1.66 – 1.68 (30 x 6). Rosen

² Exchange Rule 1 provides that the Exchange is open for equity trading from 9:30 a.m. until 4:00 p.m.

³ 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.

then quoted a market in XLA of 1.61 – 1.69 (1 x 40) at 4:03:02 p.m. At 4:03:45 p.m., after the close of equity trading on the Exchange, Rosen, in his capacity as specialist for stock XLA, sent a commitment⁴ to trade through ITS to the NASDAQ to sell 3,000 shares of stock XLA at 1.66 in connection with or on behalf of a Floor Broker’s order. At 4:03:46 p.m., the NASDAQ notified Rosen through ITS that the commitment had been rejected since it was after the close of the market. At 4:04:11 p.m., still after the close of equity trading on the Exchange, Rosen, in his capacity as specialist for stock XLA, sent a second commitment to trade through ITS to the NASDAQ to sell 3,000 shares of stock XLA at 1.66. At 4:04:12 p.m., the NASDAQ notified Rosen through ITS that the commitment had been rejected since it was after the close of the market.

CONCLUSION

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

- 2.0 Rosen violated Exchange Rule 100 by sending two commitments to sell 3,000 shares of XLA through ITS to the NASDAQ after the close of Exchange trading, as set forth in paragraph 1.5.

⁴ 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:

A Disciplinary Panel may impose the following penalty upon Joshua Rosen:

- (a) a censure; and,
- (b) a \$2,000 fine.

AMERICAN STOCK EXCHANGE LLC

By: _____

David Rosenstein
Vice President and Chief Counsel

Agreed to this _____ day of _____, 2004.

Joshua Rosen