

**Disciplinary Panel
American Stock Exchange LLC**

IN THE MATTER OF
OF
DENNIS GAYLIN

:
:
Case No. 03-22

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Hearing Officer – JN

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Disciplinary Panel Decision

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December 24, 2003
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In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel determined that Respondent violated Exchange Rules 958A and 156(b), as stipulated, and as a penalty imposed a fine of \$5,000.

DECISION

I. Introduction

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against Dennis Gaylin (“Gaylin”), a former regular member of and former registered Specialist on the Exchange. A Disciplinary Panel held a hearing on December 16, 2003, 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 Gaylin entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Gaylin based upon or arising out of the facts set forth in the Stipulation.

II. Facts

Gaylin, 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:

- 1.) Gaylin violated Exchange Rule 958A by failing to execute a customer limit order to buy 30 PGX Aug 35 calls at $3 \frac{3}{4}$, which was the existing offer at the time the order was placed, and by failing to fill the customer's order on the three separate occasions when the order became executable, as set forth in paragraphs 1.5 and 1.6 of the Stipulation.
- 2.) Gaylin violated Exchange Rule 156(b) by failing to reflect the customer's limit order, in the absence of an execution, even though it was the best bid on seven (7) separate occasions during the Trade Date, as set forth in paragraphs 1.6 and 1.7 of the Stipulation.

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel impose a \$5,000 fine for the above misconduct. 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

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.

V. Conclusion

Based on the foregoing, the Disciplinary Panel, by unanimous vote, accepts the Stipulation of Facts and Consent to Penalty and hereby imposes a fine of \$5,000 upon Gaylin.

FOR THE DISCIPLINARY PANEL

Jerome Nelson, Chair

Dated: December 24, 2003
Washington, DC

Copies to: Michael D. Pierson, Esq. (*via facsimile and first class mail*)
Paula A. Bosco, Esq. (*via facsimile, electronic mail and first class mail*)
Arlene Collins-Day (*via facsimile and first class mail*)

Disciplinary Panel
American Stock Exchange LLC

.....	X	
	X	
	X	
IN THE MATTER	X	STIPULATION OF FACTS
OF	X	AND
DENNIS GAYLIN	X	CONSENT TO PENALTY
	X	
.....	X	Case No. 03-22

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”), against DENNIS GAYLIN (“Gaylin”) (CRD # 3227891), a former regular member of the Exchange and former registered Specialist on the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Gaylin pursuant to Article V, Section 2, of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Gaylin based upon or arising out of the facts hereinafter stipulated. Gaylin, without admitting or denying the facts, allegations and conclusions contained in this Stipulation of Facts and Consent to Penalty, hereby consents to the findings of violations of the Exchange Constitution and Rules and Federal Securities Laws and to the imposition of the penalties hereinafter provided. Gaylin 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 that may not be appealed by the parties. Gaylin 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.

STATEMENT OF FACTS

- 1.0 During all relevant periods herein, LETCO Specialists, LLP (“LETCO”) was a regular member organization of the Exchange.
- 1.1 During all relevant periods herein, Gaylin was registered with the Exchange as a Specialist and was actively engaged as a member of LETCO on the Floor of the Exchange.
- 1.2 During all relevant periods herein, Exchange Rule 958A provided:
- (a) Firm Quotes. At all times other than during rotation, a specialist is required to sell (buy) at least ten (10) contracts at the offer (bid) which is displayed when a buy (sell) order reaches the trading post where the option class is located for trading. Options series that are subject to this rule shall be determined from time to time at the discretion of the Exchange. A Floor Official may determine on a case-by-case basis that an exception to this rule is warranted for, among other things, a change in market conditions, an obvious error occurring in the posting of the display market quote due to reporter errors or system malfunctions.
- 1.3 During all relevant periods herein, Exchange Rule 156(a) provided:
- (a) A broker handling a limited price order is to use due diligence to execute the order at the limit price, or at a better price, if available to him under the published market procedures of the Exchange.
- 1.4 On July 28, 2000 (the “Trade Date”), the Exchange received a telephone complaint from a customer, which was followed by a formal complaint letter, alleging that Gaylin failed to properly execute the customer’s limit order to buy 30 PGX¹ Aug 35 calls at 3 ¾. The customer also alleged that its order was not reflected in the displayed quote, even though it was the best bid on seven (7) separate occasions during the Trade Date.
- 1.5 On the Trade Date, the PGX Aug 35 calls were offered at 3 ¾ between 11:26:01 a.m. and 11:29:02 a.m. At 11:27:11, the customer placed a limit order to buy 30 PGX Aug 35 calls at 3 ¾. However, Gaylin failed to fill the order.

¹ Denotes option symbol for PairGain Technologies, Inc. (“PairGain”). On June 28, 2000, PairGain merged with ADC Telecommunications (“ADCT”).

- 1.6 Between 11:29:02 and 11:37:58, and approximately two minutes after receiving the customer's order, Gaylin requoted the market six (6) times², which would have required the order to be executed on at least two (2) of the six occasions.
- 1.7 Gaylin also failed to reflect the customer's order as the best bid in the displayed quote on all six occasions when Gaylin requoted the market, which precluded the possibility of price improvement on the customer's order.
- 1.8 Between 11:37:56 a.m. and 12:39 p.m., the customer's order was not executable because the bid moved above $3 \frac{3}{4}$.
- 1.9 At 12:39 p.m., the customer cancelled the order, and Gaylin acknowledged the customer's cancellation request the same minute.
- 2.0 Following the customer's complaint, Exchange staff contacted Gaylin on the Trade Date to inquire about the circumstances surrounding the customer's order. Gaylin stated that due to a takeover of the underlying security, his X-TOPS was not updating, and that it had not been quoting properly all morning. Gaylin also stated that his quotes were far out-of-line with competing markets, thus, he believed he was not obligated to fill the customer's order because the "computer systems" were not updating quotes.
- 2.1. Based on Gaylin's representation of experiencing system problems, an Exchange Floor Official initially ruled in favor of Gaylin in determining whether the customer was entitled

² The Amex market was requoted during the following times:

11:29:30: $3 \frac{3}{8}$ - $3 \frac{3}{4}$
11:32:04: $3 \frac{1}{2}$ - $3 \frac{7}{8}$
11:32:05: $3 \frac{3}{8}$ - $3 \frac{3}{4}$
11:35:29: $3 \frac{1}{2}$ - $3 \frac{7}{8}$
11:37:36: $3 \frac{5}{8}$ - 4
11:37:58: $3 \frac{3}{4}$ - $4 \frac{1}{8}$

to an execution. Thereafter, however, the Exchange was unable to substantiate Gaylin's claim of experiencing system problems.

- 2.2. Based upon the lack of evidence to support a claim of system problems, the Exchange Floor Official reversed his earlier ruling, and determined that the customer was entitled to an execution on the customer's order to buy 30 PGX Aug 35 calls at $3 \frac{3}{4}$.
- 2.3. The customer re-entered its original order at 3:46 p.m. to buy 30 PGX Aug 35 calls at $3 \frac{3}{4}$. The order was immediately filled at that time, approximately three hours after the initial order was placed.

CONCLUSION:

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

- 2.4. Gaylin violated Exchange Rule 958A by failing to execute a customer limit order to buy 30 PGX Aug 35 calls at $3 \frac{3}{4}$, which was the existing offer at the time the order was placed, and by failing to fill the customer's order on the three separate occasions when the order became executable, as set forth in paragraphs 1.5 and 1.6.
- 2.5. Gaylin violated Exchange Rule 156(b) by failing to reflect the customer's limit order, in the absence of an execution, even though it was the best bid on seven (7) separate occasions during the Trade Date, as set forth in paragraphs 1.6 and 1.7.

DISCIPLINARY ACTION:

A Disciplinary Panel may impose the following penalty upon Gaylin:

- (a) a fine in the amount of \$5,000.

AMERICAN STOCK EXCHANGE LLC

By: _____

David Rosenstein
Vice President & Chief Counsel
Enforcement Department

Agreed to on this _____ day of November 2003.

Dennis Gaylin