

III. Violation

Based upon the stipulated facts, the Disciplinary Panel concludes that Dunn engaged in conduct inconsistent with just and equitable principles of trade, in violation of Exchange Rule 345(a)(4). As shown in the Stipulation, he improperly transferred options trades between Cowen's error account and his personal account; he effected options trades for his own account ahead of and at better prices than those available to fill unexecuted public customer orders entrusted to him; and he closed out options positions from his personal account "by buying (or selling) to the customer the options position at an inferior price to which the customer would otherwise be entitled...." (Stipulation, ¶ 5.1).

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel impose the following penalties: (1) a censure; (2) a six-month suspension; and (3) a requirement that Dunn re-qualify as a registered representative if he chooses to re-enter the securities industry after the suspension. The Stipulation explains that in arriving at these agreed-upon sanctions, the Exchange considered the fact that Cowen withheld \$138,000 from Dunn's partnership account in order to make restitution to customers disadvantaged by his activity. At the hearing, the Parties urged the Disciplinary Panel to accept the proposed penalties as being appropriate to the facts and circumstances of this case. After consideration of the Stipulation and the agreed-upon penalties, the Disciplinary Panel finds the proposed penalties are at the appropriate level to be imposed in this proceeding, and the Disciplinary Panel will, therefore, accept the penalties 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 the following penalties upon Dunn:

1. a censure;
2. a six-month suspension from employment or association in any capacity with an Exchange member or member organization; and
3. a requirement that Dunn re-qualify as a registered representative if he decides to re-enter the securities industry after serving his six-month suspension.

FOR THE DISCIPLINARY PANEL

Jerome Nelson, Chair

Dated: March 13, 2003

Copies to: Mark J. Astarita, Esq. (via overnight delivery and first class mail)
Eric Brown, Esq. (via electronic mail and first class mail)

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.

Disciplinary Panel
American Stock Exchange LLC

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IN THE MATTER :
OF :
JOSEPH F. DUNN :
:
.....:

STIPULATION OF FACTS
AND
CONSENT TO PENALTY
CASE NO. 98-019

This proceeding was instituted by the American Stock Exchange LLC (the "Exchange") by means of a Statement of Charges dated August 12, 2002, against Joseph F. Dunn ("Dunn") (CRD # 73608), a former registered employee of Cowen & Company ("Cowen" or the "Firm"), a Regular Member organization of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Dunn pursuant to Exchange Rule 345(k), in order to settle and conclude all disciplinary actions by the Exchange against Dunn based upon or arising out of the facts hereinafter stipulated. Dunn, 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 Exchange Constitution and Rules and to the imposition of penalties hereinafter provided. Dunn understands that this settlement is subject to the approval by an Exchange Disciplinary Panel and the Amex Adjudicatory Council and that, if so approved, shall constitute a final decision, which may not be appealed by the parties. Dunn understands and acknowledges that the Disciplinary Panel's decision in this matter will become part of Dunn's disciplinary record, and may be considered in any future proceeding brought by the Exchange.

STIPULATED FACTS:

- 1.0 During all relevant periods herein, Cowen was a Regular Member organization of the Exchange.
- 1.1 During the relevant period herein, Dunn was employed as a registered employee of Cowen at the Firm's offices in New York City. Dunn resigned from Cowen in December 1995. The Exchange retained jurisdiction over Dunn by certified letter. According to the Central Registration Depository ("CRD") system, Dunn is not currently employed in the securities industry.
- 1.2 At the time of Dunn's termination, Dunn was a Managing Director of the Firm's Options Trading Desk and was responsible for the execution of the Firm's customers' options orders.
- 1.3 On January 30, 1996, the Exchange received a Form U-5 Termination Notice ("Form U-5") filed by Cowen on behalf of Dunn. The Form U-5 reported that Dunn had been permitted to resign on December 27, 1995, for "inappropriate options trading under firm policies." According to the Firm, an internal investigation it conducted revealed that during the period February 1994 through December 1995, Dunn effected options trades for his own personal account at Cowen ("personal account") ahead of, and at better prices, than unexecuted public customer orders in the same options series previously entrusted to him. Additionally, the firm noted that during the period May 1995 through October 1995, Dunn diverted certain profitable options trades from a firm error account to a personal account at Cowen. At the time of Dunn's resignation from the Firm in December 1995, the Firm withheld \$138,000 from Dunn's Firm partnership account.

2.0 During all relevant periods herein, Article V, Section 4(h) of the Exchange Constitution provided that a member, member organization or approved person who engages in conduct inconsistent with just and equitable principles of trade may be suspended or expelled from membership unless the offense is the violation of a provision, rule or resolution for which a different penalty has been provided, in which case such other penalty may be imposed.

Dunn's Diversion of Trades from Cowen's Error Account

3.0 On eight separate occasions between May 24, 1995 through October 1995, Dunn effected the improper transfer of trades between Cowen's error account and Dunn's personal account at Cowen (see Exhibit A).

3.1 One example of Dunn's diversion of trades occurred on May 24, 1995. As a result of a trade error that occurred on May 23, 1995, a buy of 10 contracts of Compaq Computer ("CPQ") July 40 calls were booked to a firm error account at 2 ½. On May 24, 1995, the 10 contracts of CPQ July 40 calls at 2 ½ were crossed by Dunn from the firm's error account to his personal account. Later during the day on May 24, 1995, Dunn sold the 10 CPQ July 40 calls from his own personal account at 3 ¼. As a consequence of Dunn's conduct, Dunn was able to personally profit \$750 (3/4 on 10 contracts) on this transaction.

3.2 During the approximate period May 1995 through October 1995, Dunn personally profited approximately \$14,000, from his diversion of trades from the firm's error account.

Dunn Receives Better Prices Than Customers' Unexecuted Orders

- 4.0 On twenty-three separate occasions between February 10, 1994 and December 1995, Dunn effected options trades for his own personal account at Cowen ahead of, and at better prices, than unexecuted public customer orders in the same options series previously entrusted to him. On thirteen of these twenty-three occasions, Dunn closed out the options position placed in his personal account at Cowen at a profit by buying (or selling) to the customer the options position at an inferior price to which the customer would otherwise be entitled (see Exhibit B).
- 4.1 One example of Dunn's conduct occurred on September 18, 1995. On September 18, 1995, Customer A placed a limit order at 9:40 a.m. to buy 100 contracts of Applied Materials ("ANQ") October 105 calls at 5 7/8. Dunn entered an order to purchase the ANQ calls and received an execution price on 50 contracts of 5 1/2. Dunn, however, placed the purchase of the 50 ANQ contracts at 5 1/2 into his personal account. Thereafter, Dunn sold out the 50 ANQ contracts he placed in his personal account to Customer A at Customer A's limit price of 5 7/8.ⁱ As a consequence of Dunn's conduct, Dunn was able to personally profit \$1,875 (3/8 on 50 contracts) on this transaction.
- 4.2 During the approximate period February 1994 through December 1995, Dunn personally profited approximately \$71,000, from his disadvantaging public customer orders.
- 4.3 As a consequence of Dunn's activity, Cowen made restitution of approximately \$130,000 to its customers.ⁱⁱ

ⁱ The remaining 50 ANQ contracts of Customer A's order were purchased at 5-7/8, but were not crossed against Dunn's personal account.

ⁱⁱ The restitution Cowen made to its customers reflected interest and lost opportunity costs.

CONCLUSION:

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

5.0 Dunn engaged in conduct or proceeding inconsistent with just and equitable principles of trade, in violation of Exchange Rule 345(a)(4), in that Dunn effected the improper transfer of option trades between Cowen's error account and a personal account at Cowen, as set forth in paragraphs 3.0 through 3.2.

5.1 Dunn engaged in conduct or proceeding inconsistent with just and equitable principles of trade, in violation of Exchange Rule 345(a)(4), in that Dunn effected options trades for his own personal account at Cowen ahead of, and at better prices, than unexecuted public customer orders in the same option series previously entrusted to him; and in some cases, closed out options positions placed in his personal account at Cowen at a profit by buying (or selling) to the customer the options position at an inferior price to which the customer would otherwise be entitled, as set forth in paragraphs 4.0 through 4.2.

DISCIPLINARY ACTION:

A Disciplinary Panel may impose the following penalty:

- a) a censure;
- b) a six (6) month suspension from employment or association in any capacity with an Exchange member or member organization; and
- c) a requirement that Dunn requalify as a registered representative if he decides to reenter the securities industry after serving his six month suspension.

In entering into this Stipulation, the Exchange considered that Cowen withheld \$138,000 from Dunn's partnership account, which Cowen has advised the Exchange it used in making restitution to customers disadvantaged by Dunn's trading activity.

AMERICAN STOCK EXCHANGE LLC

By: _____
Glen Barrentine
Vice President

Agreed to this _____ day of _____, 2003

Joseph F. Dunn