



- [4] In the case of a short position account, the situation is exactly reversed from the traditional stock exchange transaction. That is to say, the investor who holds a short position wishes to see the share in question go down in value. The more it goes down in value the more money he/she makes. If the order to buy the 3,000 shares entered at 14:41 on January 29, 2005 had been filled, Mr. Phipps would have realized a gain from the price at which he originally “sold” the 3,000 shares and created the short position in his account.
- [5] As it turned out because the transaction was blocked he ended up purchasing at \$86.8156 (US) the next day when the order was filled. This represented a net loss of \$2.6156 (US ) per share as compared to his position if the order had been filled at 14:41 on January 29, 2005 when the price was at \$84.20. This amount of \$2.6156(US) times 3,000 shares is \$7,846.80 (US) and that is the amount of the claim.
- [6] Mr. Phipps at the time of this trade was an employee of the Defendant acting as an investment advisor. Despite that, he submits that he is to be treated by the firm in the same way that a regular client would be treated when making trades. Accordingly, Mr. Phipps submits that because he was not apprised of the limit that the firm therefore should make good on the difference between the share value when he placed the trade and the share value when the trade was actually filled in the system. That is, the \$2.6156 US per share referred to above.
- [7] Mr. Bryson for the Defendant says it is artificial to consider Mr. Phipps in the same light as a regular client. In effect Mr. Phipps was acting as his own broker. He should have known that there were limits. The fact that there are limits is referenced in the Sales Administration Manual. As well, Ms. Brewer gave evidence for the Defendant that she was aware there were limits.
- [8] Mr. Bryson further suggests Mr. Phipps is overly focused on what he perceives to be a fault in the system rather than ensuring that the trade took place. The evidence did indicate that Mr. Phipps could have had the trade effected through the order desk and indeed that is what happened the next day. Mr. Phipps counters this last suggestion by indicating that he would

have been at further potential additional risk had he taken that approach without knowing the status of the original order.

## **Findings**

- [7] I find that the expectation of an investor that an order is filled promptly when placed would apply equally to the person occupying the position of an investment advisor as Mr. Phipps was in this case. However, I accept Mr. Bryson's submission that it is artificial to consider an investment advisor as identical in all respects to a regular client. He is, in effect, acting as his own broker and he must be deemed to have knowledge of the workings and procedures of the very system that he functions in on behalf of his clients. Indeed, Mr. Phipps clearly acknowledged that he was aware that limits could be placed and that the firm has the right to place limits. I do not think the Claimant can rely on his lack of knowledge of the very system that he operates in to base a claim on in an identical respect to an outside client. However, that is not the end of the story.
- [8] In the Sales Administrative Manual (exhibit D-10) there are several references to obtaining approval from a supervisor or branch manager where orders exceed limits. There is nothing in the manual that refers one way or another to time parameters to obtaining such approvals. It seems to me that in the circumstances of share trading industry, which is to say where the passage of minutes can literally mean the loss or gain of thousands of dollars, must mean that there has to be someone in authority who can give approval reasonably promptly to an order which exceeds a trading limit.
- [9] The evidence made it very clear that once Mr. Phipps became aware that the trade had been blocked he made numerous attempts through the balance of that afternoon to find out why the trade had been blocked and to speak to someone who could remove the limit. None of these numerous attempts resulted in reaching a person with authority to remove the limit. It seems to be conceded, or at least as a reasonable inference, that the limit would have been removed

and that by filling the buy order or “closing” the account, that would have actually eliminated risk to the firm and to the investor (Mr. Phipps).

[10] Recognizing that this is necessarily an imprecise exercise, I note that if the transaction had been approved within 20 minutes, i.e., by 3:00, it would have been filled at \$85.67 (exhibit D-11 demonstrates this price at 3:00 pm). To expect a more prompt approval response time than this would be unreasonable and overly onerous on the firm. A twenty minute response time might be considered to be unreasonable in some endeavors, but bearing in mind the observation made above, that in filling or not filling stock trades, the passage of minutes can literally mean the loss or gain of thousands of dollars, it seems reasonable to me. It would follow from this that the Defendant would be responsible for the difference between the price at 3:00 pm on January 29, 2005 and the actual sale price on January 30, 2005.

The difference is:     86.8156  
                          -85.6700  
                          1.1456

\$1.1456 times 3000 shares equals \$3,436.80 (US) and times a 1.24 exchange rate (which was agreed to by the parties) equals \$4,261.63. I will allow the claim in the amount of \$4,261.63 Canadian plus costs.

**Disposition**

[11] I order the Defendant pay to the Claimant as follows:

Debt:	\$ 4,261.63
Costs:	<u>180.00</u>
<b>Total:</b>	<b>\$ 4,441.63</b>

**DATED** at Halifax, Halifax Regional Municipality, Nova Scotia on August , 2005.

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**Michael J. O'Hara**  
**Adjudicator**

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