

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimants

Andrea Enterprises, LLC and Andrea Claire Wagenhals

and

01-01549  
Phoenix, Arizona

Name of Respondent

US Bancorp Piper Jaffray Inc.

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**REPRESENTATION OF PARTIES**

Andrea Enterprises, LLC and Andrea Claire Wagenhals ("**Claimants**") were represented by Rosemary J. Shockman, Esq., Shockman Law Offices, P.C., Scottsdale, Arizona.

US Bancorp Piper Jaffray Inc. ("**Respondent**") was represented by Lisa M. Bertain, Esq. and Gordon Young, Esq., Keesal Young & Logan, P.C., San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 28, 2001. Amended Statement of Claim was filed on or about July 2, 2001. Submission Agreement of Claimants Andrea Enterprises, LLC and Andrea Claire Wagenhals was signed on March 27, 2001 by Andrea Claire Wagenhals, individually and as Manager of Andrea Enterprises, LLC.

Respondent US Bancorp Piper Jaffray Inc.'s Answer to Statement of Claim was filed by on or about August 13, 2001. Submission Agreement of Respondent US Bancorp Piper Jaffray Inc. was signed on August 28, 2001 by Mark S. Reed.

**CASE SUMMARY**

Claimants alleged that Michael Dwyer, a registered representative with Respondent made: unsuitable investment recommendations; material misstatements; omissions and misleading statements. Specifically, Claimants alleged that on Dwyer's advice, she maintained a 100% position in a single, speculative stock, Action Performance. It was also alleged that Mr. Dwyer failed to establish or recommend any defensive or risk reducing strategies, such as diversification, or use of options, collars or other strategies. In addition, it was alleged that Mr. Dwyer failed to disclose the risks inherent in maintaining such a position.

Claimants also alleged that Respondent failed to properly supervise Mr. Dwyer. It was further alleged that Respondent Piper was negligent; breached its fiduciary duties; engaged in securities fraud under A.R.S. §44-1991; and negligently supervised its registered representative.

In its Statement of Answer, Respondent stated the following:

Ms. Wagenhals is a college graduate and has been a very successful businesswoman (a pharmaceutical sales representative). Her eight-year marriage ended in December 1998. Ms. Wagenhals fought for and received in the divorce decree rights to 88,000 shares of Action Performance stock ("ACTN"). Ms. Wagenhals, who was intimately familiar with ACTN by virtue of her eight-year marriage to ACTN's Executive Vice President (who also sat on ACTN's Board of Directors and was the son of ACTN's founder), understood that the vast majority of the net worth available to provide for her needs were tied up in her rights to ACTN stock. In early 1999, her then Smith Barney broker allegedly recommended to her that she begin selling portions of her concentrated ACTN position. Ms. Wagenhals disregarded that advice and instead opened an account with Piper Jaffray broker Mike Dwyer. Keeping her own counsel, Ms. Wagenhals then watched with close attention as the value of her ACTN position steadily declined in value, all the while refusing to sell because she wanted to obtain a much higher sale price, and to retain substantial ACTN shares so that she could conceivably capitalize on the contemplated IPO of an ACTN subsidiary.

### **RELIEF REQUESTED**

In the Amended Statement of Claim, Claimants requested an award of damages sufficient to make them whole; interest at the rate of 10% per annum from the date of loss; attorneys' fees pursuant to A.R.S. §44-1992; prejudgment interest; and unspecified punitive damages.

Respondent requested that the claims asserted in this matter be dismissed in their entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter shall be and hereby are dismissed in their entirety.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee (waived) = \$250.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is US Bancorp Piper Jaffray Inc.

Member surcharge = \$1,200.00  
Pre-hearing process fee = \$ 600.00  
Hearing process fee = \$2,000.00

#### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with Panel x \$1,000.00 = \$ 1,000.00

Pre-hearing conference(s): December 21, 2001 1 session

Ten (10) Hearing sessions x \$1,000.00 = \$10,000.00

Hearing Date(s): May 28, 2002 1 session  
November 4, 2002 2 sessions  
November 5, 2002 2 sessions  
November 6, 2002 2 sessions  
November 7, 2002 2 sessions  
November 8, 2002 1 session

Total Forum Fees = \$11,000.00

The Arbitration Panel has assessed \$5,500.00 of the forum fees to Andrea Enterprises, LLC and Andrea Claire Wagenhals.

The Arbitration Panel has assessed \$5,500.00 of the forum fees to US Bancorp Piper Jaffray Inc.

#### Fee Summary

Claimants, Andrea Enterprises, LLC and Andrea Claire Wagenhals, shall be and hereby is liable for:

Initial Filing Fee (waived)	= \$ 250.00
<u>Forum Fees</u>	= \$ 5,500.00
Total Fees	= \$ 5,500.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,500.00

Respondent, US Bancorp Piper Jaffray Inc., shall be and hereby is liable for:

Member Fees	= \$ 3,800.00
<u>Forum Fees</u>	= \$ 5,500.00
Total Fees	= \$ 9,300.00
<u>Less payments</u>	= \$ 3,800.00
Balance Due NASD Dispute Resolution	= \$ 5,500.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Henry L. Dahl, Jr. - Public Arbitrator, Presiding Chair  
Pamela M. Katzenberg, Esq. - Public Arbitrator  
Stephen E. Lyders - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Henry L. Dahl, Jr.  
Henry L. Dahl, Jr.  
Public Arbitrator, Presiding Chair

November 23, 2002  
Signature Date

/s/ Stephen E. Lyders  
Stephen E. Lyders  
Non-Public Arbitrator

November 23, 2002  
Signature Date

Dissenting from the dismissal of claims only:

/s/ Pamela M. Katzenberg  
Pamela M. Katzenberg, Esq.  
Public Arbitrator

November 22, 2002  
Signature Date

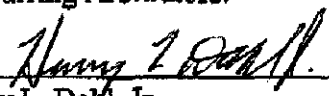
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Arbitration No. 01-01549  
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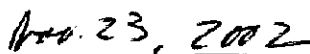
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NASD Dispute Resolution, Inc.  
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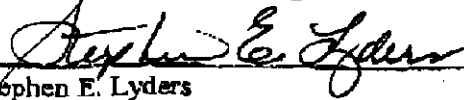
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Stephen E. Lyders  
Non-Public Arbitrator

11-23-02  
\_\_\_\_\_  
Signature Date

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Public Arbitrator

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**Concurring Arbitrators:**

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Henry L. Dahl, Jr.  
Public Arbitrator, Presiding Chair

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Signature Date

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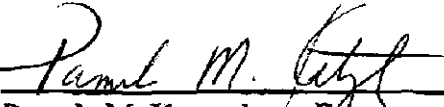
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Public Arbitrator

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11-22-02  
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