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ORIGINAL

**Stipulated Award  
NASD Dispute Resolution**

**COPY**

**In the Matter of the Arbitration Between:**

**Jeffery and Catherine Ray, Claimants v. U.S. Bancorp Piper Jaffray, Inc., Dennis E. Gove, James R. McColley, Jeffrey E. Howell, and Michael J. Bartlett, Respondents**

Case Number: 01-03081

Hearing Site: Seattle, Washington

**REPRESENTATION OF PARTIES**

**For Claimants:**

**Mark S. Davidson, Esq.  
Williams Kastner & Gibbs  
Seattle, Washington**

**For Respondents:**

**Steven M. Phillips, Esq.  
Anthony Ostlund & Baer, P.A.  
Minneapolis, Minnesota**

**CASE INFORMATION**

**Statement of Claim filed: June 11, 2001**

**Claimant Jeffery Ray's Uniform Submission Agreement signed: August 17, 2001**

**Claimant Catherine Ray's Uniform Submission Agreement signed: August 17, 2001**

**Joint Statement of Answer filed by Respondents US Bancorp Piper Jaffray, Inc., Dennis E. Gove, James R. McColley, Jeffrey E. Howell, and Michael J. Bartlett: October 29, 2001**

**Respondent US Bancorp Piper Jaffray, Inc.'s Uniform Submission Agreement signed: September 28, 2001**

**Respondent Dennis E. Gove's Uniform Submission Agreement signed: October 24, 2001**

**Respondent James R. McColley's Uniform Submission Agreement signed: October 25, 2001**

**Respondent Jeffrey E. Howell's Uniform Submission Agreement signed: October 28, 2001**

**Respondent Michael J. Bartlett's Uniform Submission Agreement signed: October 25, 2001**

### **CASE SUMMARY**

Claimants alleged unsuitable investing, unauthorized trading, churning, and breach of fiduciary duty, negligence, violation of §10(b) of the Securities Act of 1934 and SEC Rule 10b-5, §20(b) of the Securities Act of 1934, violation of NASD Rules, violation of Washington State Securities Act RCW 21.20.010 and RCW 21.20.035, violation of the Washington Consumer Protection Act in the trading of Dell Computers, Infospace, and Microsoft common stock.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted several affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested \$1,000,000.00 in compensatory damages, \$200,000.00 in lost opportunity costs, unspecified attorney's fees, costs, \$10,000.00 in punitive damages, and pre-judgment interest.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, an award of costs, expenses, attorney's fees, expert fees, forum fees and that the panel recommend that a court order that all references to this matter in the regulatory records of Respondents Dennis E. Gove, James R. McColley, Jeffrey E. Howell, and Michael J. Bartlett be expunged.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On December 20, 2002, NASD Dispute Resolution received notice that the Parties had reached a settlement.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **FINDINGS**

On or about May 31, 2002, Respondents James R. McColley, Jeffrey E. Howell, and Michael J. Bartlett filed a Motion to Dismiss the claims against them in this arbitration, asserting that the claims against them were unsupported by factual allegations and otherwise failed to state claims against them as a matter of law.

On July 22, 2002, prior to commencement of the hearing in this arbitration, the Panel of undersigned Arbitrators heard argument on the Motions to Dismiss. The Panel granted the Motion to Dismiss brought by Respondent James R. McColley, and deferred ruling on the Motions to Dismiss by Respondents Jeffrey E. Howell and Michael J. Bartlett. At that time,

counsel for Respondents James R. McColley, Jeffrey E. Howell, and Michael J. Bartlett indicated that he intended to seek from the panel and order expunging this arbitration from the Central Registration Depository system record of Respondent James R. McColley, and that he intended, at the appropriate time, to make such a motion as to Respondents Jeffrey E. Howell and Michael J. Bartlett, as well. The Panel determined that following the conclusion of Claimants' case, Respondents Jeffrey E. Howell and Michael J. Bartlett could renew their Motions to Dismiss and that any motions seeking expungement orders could be made at that time or at the close of all of the testimony in the case.

The undersigned Arbitrators heard testimony in this arbitration, consisting of most of the Claimants' case, during the period of July 22, 2002 through July 25, 2002. The Arbitration hearing was then continued and scheduled during the period of January 6, 2003 through January 10, 2003.

In December 2003, the parties hereto notified NASD Dispute Resolution that they had resolved and settled the disputes between them which were the subject of the arbitration. At that time, counsel for Respondents James R. McColley, Jeffrey E. Howell, and Michael J. Bartlett sought and was granted a postponement of the hearing for the purposes of filing a motion seeking and expungement order from this Panel.

On or about February 24, 2003, Respondents James R. McColley, Jeffrey E. Howell, and Michael J. Bartlett filed motions seeking an order from this Panel expunging this arbitration from their CRD system records. In connection with these motions, counsel for Claimants has notified NASD Dispute Resolution that Claimants do not oppose and, in fact, agree to the entry by the arbitration Panel of a written order directing that all of their claims against Respondents James R. McColley, Jeffrey E. Howell, and Michael J. Bartlett be dismissed and that any record of the Claimants' claims in the arbitration are to be permanently expunged from Respondents James R. McColley's, Jeffrey E. Howell's, and Michael J. Bartlett's CRD records, following proper compliance with NASD procedures.

### AWARD

After considering the pleadings, testimony, and the Parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants and Respondents have entered into a confidential settlement agreement.
2. The claims filed by Claimants against Respondents James R. McColley, Jeffrey E. Howell, and Michael J. Bartlett were without merit.
3. The motions filed by Respondents James R. McColley, Jeffrey E. Howell, and Michael J.

Bartlett seeking an expungement order are hereby GRANTED.

4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents James R. McColley, Jeffrey E. Howell, and Michael J. Bartlett's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondents James R. McColley, Jeffrey E. Howell, and Michael J. Bartlett must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 500.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm U.S. Bancorp Piper Jaffray, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 4,500.00</u>
Total Member Fees	= \$ 7,600.00

#### **Adjournment Fees**

The following adjournment fees are assessed:

January 6 – 9, 2003, adjournment requested by Respondents James R. McColley, Jeffrey E. Howell, and Michael J. Bartlett	= \$ 1,200.00
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#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$ 1,200.00/session	= \$ 1,200.00
Pre-hearing conference:      March 22, 2001      1 session	
Eight (8) Hearing sessions @ \$1,200.00/session	= \$ 9,600.00
Hearings:      July 22, 2002      2 sessions	
July 23, 2002      2 sessions	
July 24, 2002      2 sessions	
July 25, 2002      2 sessions	
<hr/> Total Forum Fees	<hr/> = \$10,800.00

The Parties stipulated that the forum fees were to be charged equally to Claimants Jeffery and Catherine Ray jointly and severally and to Respondent U.S. Bancorp Piper Jaffray, Inc.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimants Jeffery & Catherine Ray, requested copies of audio tapes:                   = \$ 240.00  
Respondent U.S. Bancorp Piper Jaffray, Inc., requested copies of audio tapes:       = \$ 240.00

**Fee Summary**

1. Claimants, Jeffery & Catherine Ray, are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 5,400.00
<u>Administrative Costs</u>	<u>= \$ 240.00</u>
Total Fees	= \$ 6,140.00
<u>Less payments</u>	<u>= \$(1,940.00)</u>
Balance Due NASD Dispute Resolution	= \$ 4,200.00

2. Respondent, U.S. Bancorp Piper Jaffray, Inc., is charged with the following fees and costs:

Member Fees	= \$ 7,600.00
Forum Fees	= \$ 5,400.00
<u>Administrative Costs</u>	<u>= \$ 240.00</u>
Total Fees	= \$13,240.00
<u>Less payments</u>	<u>= \$ (7,840.00)</u>
Balance Due NASD Dispute Resolution	= \$ 5,400.00

3. Respondents, James R. McColley, Jeffrey E. Howell, and Michael J. Bartlett are charged jointly and severally with the following fees and costs:

Adjournment Fees	= \$ 1,200.00
<u>Less Payments</u>	<u>= \$ (0.00)</u>
Balance Due NASD Dispute Resolution	= \$ 1,200.00

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

### Parties' Signatures

  
Mark S. Davidson, Esq.  
Attorney for Claimants

6-12-03  
Signature Date

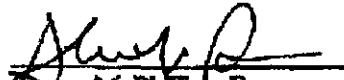
**Steven M. Phillips, Esq.**  
**Attorney for Respondents**

**Signature Date**

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Arbitration No. 01-03081  
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\_\_\_\_\_  
Mark S. Davidson, Esq.  
Attorney for Claimants

  
\_\_\_\_\_  
Steven M. Phillips, Esq.  
Attorney for Respondents

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Signature Date

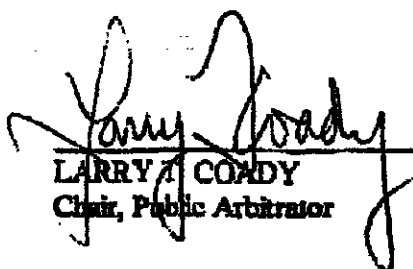
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Signature Date



**ARBITRATION PANEL**

Larry T. Coady	-	Public Arbitrator, Presiding Chair
Michael R.E. Sanders, Esq.	-	Public Arbitrator
Robert E. Mason	-	Non-Public Arbitrator

**Concurring Arbitrators' Signature(s)**

  
LARRY T. COADY  
Chair, Public Arbitrator

6/13/03  
Signature Date

MICHAEL R.E. SANDERS, ESQ.  
Public Arbitrator

Signature Date

ROBERT E. MASON  
Non-Public Arbitrator

Signature Date

6/13/03  
Date of Service

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Larry T. Coady  
Michael R.E. Sanders, Esq.  
Robert E. Mason

- Public Arbitrator, Presiding Chair  
- Public Arbitrator  
- Non-Public Arbitrator

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Chair, Public Arbitrator

Signature Date

  
MICHAEL R.E. SANDERS, ESQ.  
Public Arbitrator

6/13/03  
Signature Date

ROBERT E. MASON  
Non-Public Arbitrator

Signature Date

6/13/03  
Date of Service

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Michael R.E. Sanders, Esq.	-	Public Arbitrator
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Chair, Public Arbitrator

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Signature Date

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MICHAEL R.E. SANDERS, ESQ.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
ROBERT E. MASON  
Non-Public Arbitrator

6-17-03  
Signature Date

\_\_\_\_\_  
Date of Service