

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Domestic Securities, Inc. (Claimant) v. U.S. Bancorp Piper Jaffray, Inc. (Respondent)

Case Number: 02-06420

Hearing Site: New York, New York

Nature of the Dispute: Member v. Member.

REPRESENTATION OF PARTIES

Claimant Domestic Securities, Inc. ("Domestic") hereinafter referred to as "Claimant": Carole R. Bernstein, Esq., Law Offices of Carole R. Bernstein, Westport, CT.

Respondent U.S. Bancorp Piper Jaffray, Inc. ("Piper Jaffray") hereinafter referred to as "Respondent": Robert P. Bramnik, Esq., Duane Morris, LLC, Chicago, IL. Previously represented by: Robert P. Bramnik, Esq., Wildman Harrold, Chicago, IL.

CASE INFORMATION

Statement of Claim filed on or about: October 24, 2002.

Amended Statement of Claim filed on or about: May 5, 2003.

Reply to Amended Counterclaim filed on or about: June 28, 2004.

Claimant signed the Uniform Submission Agreement: October 16, 2002.

Statement of Answer and Counterclaim filed by Respondent on or about: January 7, 2003.

Amended Answer and Counterclaim filed by Respondent on or about: March 24, 2004.

Respondent signed the Uniform Submission Agreement: December 4, 2002.

CASE SUMMARY

Claimant asserted the following causes of action: failure and refusal to pay Claimant for use of services provided by the ATTAIN ECN system.

Unless specifically admitted in its Reply to the Amended Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim.

In its Counterclaim, Respondent asserted the following causes of action: violations of law and contractual undertakings.

RELIEF REQUESTED

Claimant requested compensatory damages in the amounts of \$557,816.40 on the first and second causes of action and \$1,673,449.20 on the third cause of action; interest; an order that Respondent terminate, and cease acting in accordance with any understanding, agreement or conspiracy with any other person regarding the fees charged for access to and use of the ATTAIN ECN system; fees; reasonable attorneys' fees; and such other and further relief as the Panel may deem appropriate.

In its Reply to the Amended Counterclaim, Claimant requested that the Counterclaim be dismissed in its entirety, and that the Panel award Claimant all of its damages sought in the Statement of Claim.

In its Amended Statement of Claim, Claimant requested compensatory damages in the amounts of \$594,026.11 on the first and second causes of action and 1,782,078.33 on the third cause of action; an order that Respondent terminate, and cease acting in accordance with any understanding, agreement or conspiracy with any other person regarding the fees charged for access to and use of the ATTAIN ECN system; fees; reasonable attorney's fees; and such other and further relief as the Panel may deem appropriate.

In its Statement of Answer and Counterclaim and Amended Answer and Counterclaim, Respondent requested that the Statement of Claim be denied and that the Counterclaim be granted, and compensatory damages in the amount of \$696,215.00.

OTHER ISSUES CONSIDERED AND DECIDED

Both Claimant and Respondent submitted Motions for Summary Judgment before the scheduled hearings. The Panel reviewed all submissions submitted by the parties and after due consideration denied the Motions.

On or about October 3, 2003, Claimant submitted a Motion to Dismiss Counterclaim. The Panel reviewed all submissions submitted by the parties and after due consideration denied the Motion.

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.

AWARD

After considering the pleadings, and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of

\$1,251,284.00.

2. The Panel also awarded interest in the amount of \$390,472.00, which represents interest at the rate of 9% per annum (1.5% per month) from January 2003 to November 2003.
3. Respondent is liable for and shall pay to Claimant witness fees in the amount of \$40,000.00. Payable to Claimant's attorney.
4. Respondent's Counterclaim is denied in its entirety.
5. Any and all relief not specifically addressed herein is denied.

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	= \$ 2,000.00
Counterclaim filing fee	= \$ 1,250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Domestic Securities, Inc. is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, U.S. Bancorp Piper Jaffray, Inc. is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

August 17-19, 2004, adjournment by Respondent	= Waived
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Forum Fees and Assessments

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

Three (3) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 3,600.00
Pre-hearing conferences: May 20, 2003 1 session
November 7, 2003 1 session
October 12, 2004 1 session

Fifteen (15) Hearing sessions @ \$1,200.00 = \$18,000.00
Hearing Dates: January 13, 2004 1 session
October 6, 2004 2 sessions
October 7, 2004 2 sessions
October 8, 2004 2 sessions
November 1, 2004 2 sessions
December 6, 2004 2 sessions
December 7, 2004 2 sessions
December 8, 2004 2 sessions

Total Forum Fees = \$21,600.00

1. The Panel has assessed \$21,600.00 of the forum fees solely against Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant requested duplication of tapes = \$ 135.00
2. Respondent requested duplication of tapes = \$ 360.00

Fee Summary

1. Claimant is solely liable for:
- | | |
|-----------------------------|----------------|
| Initial Filing Fee | = \$ 2,000.00 |
| Member Fees | = \$ 8,550.00 |
| Forum Fees | = \$ 00.00 |
| <u>Administrative Costs</u> | = \$ 135.00 |
| Total Fees | = \$ 10,685.00 |
| <u>Less payments</u> | = \$ 11,750.00 |
| Refund Due Claimant | = \$ 1,065.00 |

2. Respondent is solely liable for:
- | | |
|-------------------------------------|----------------|
| Counterclaim Filing Fee | = \$ 1,250.00 |
| Member Fees | = \$ 8,550.00 |
| Forum Fees | = \$ 21,600.00 |
| <u>Administrative Costs</u> | = \$ 360.00 |
| Total Fees | = \$ 31,760.00 |
| <u>Less payments</u> | = \$ 11,225.00 |
| Balance Due NASD Dispute Resolution | = \$ 20,535.00 |

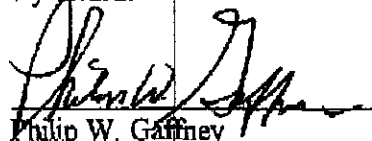
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Philip W. Gaffney	-	Non-Public Arbitrator, Presiding Chairperson
Joseph J. Cassidy	-	Non-Public Arbitrator
Harry D. Frisch, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Philip W. Gaffney
Non-Public Arbitrator, Presiding Chairperson



Signature Date

Joseph J. Cassidy
Non-Public Arbitrator

Signature Date

Harry D. Frisch, Esq.
Non-Public Arbitrator

Signature Date

January 28, 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Philip W. Gaffney	-	Non-Public Arbitrator, Presiding Chairperson
Joseph J. Cassidy	-	Non-Public Arbitrator
Harry D. Frisch, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

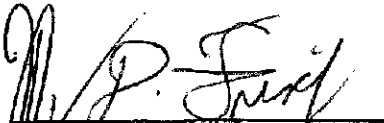
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Philip W. Gaffney
Non-Public Arbitrator, Presiding Chairperson

Signature Date

Joseph J. Cassidy
Non-Public Arbitrator

Signature Date



Harry D. Frisch, Esq.
Non-Public Arbitrator

1/19/2005

Signature Date

January 28, 2005
Date of Service (For NASD Dispute Resolution use only)

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Philip W. Gaffney
Non-Public Arbitrator, Presiding Chairperson

Signature Date



Joseph J. Cassidy
Non-Public Arbitrator

1/26/05

Signature Date

Harry D. Frisch, Esq.
Non-Public Arbitrator

Signature Date

January 28, 2005
Date of Service (For NASD Dispute Resolution use only)