

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Ted Foster and Patricia Foster

and

02-06456
Omaha, Nebraska

Name of Respondents

Piper Jaffray & Co. n/k/a
U.S. Bancorp Piper Jaffray
Kelley Tatreau

Nature of the Dispute: Customers vs. Member and Associated Person

REPRESENTATION OF PARTIES

Ted Foster and Patricia Foster ("Claimants") were represented by Gail E. Boliver, Esq., Boliver Law Firm, Omaha, Nebraska.

U.S. Bancorp Piper Jaffray and Kelley Tatreau ("Respondents") were represented by Jeffrey J. Kalinowski, Esq., Blackwell, Sanders, Peper, Martin LLP., St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about October 28, 2002. The Submission Agreement of Claimants Ted Foster and Patricia Foster was signed on or about October 17, 2002.

The Statement of Answer was filed by Respondent U.S. Bancorp Piper Jaffray on or about March 10, 2003. The Submission Agreement of Respondent U.S. Bancorp Piper Jaffray was signed on or about January 28, 2003. Respondent Kelley Tatreau did not file a Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; negligence; Violations of Nebraska Securities Acts; Violations of NASD Rules of Supervision and Suitability; misrepresentation; negligence supervision; and, breach of contract. The causes of action relate to the order execution of Level 3 stocks, First American Funds Strategy Growth and Income Fund and other common stocks. Claimants alleged that Respondents mismanaged their retirement accounts by failing to recommend suitable products that led to huge losses.

Unless specifically admitted in their Answer, Respondents U.S. Bancorp Piper Jaffray and Kelley Tatreau denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants fail to state a claim upon which relief can be granted; Claimants' damages, if any, were caused by the acts or omissions of third parties over which Respondents' had no control; Claimants' claims are barred by the doctrine of waiver, estoppel, acquiescence, ratification and laches; Claimants knew, or should have known, or otherwise had access to information regarding their respective investments and the status of their accounts and did not object to the transactions in their accounts; Claimants, in fact, expressly ratified the transactions in their accounts; Claimants received account statements and confirmations and did not object to the transactions in their account, therefore, Claimants' claims are barred; The applicable federal and state statutes of limitation bar Claimants' claims; The negligence and/or fault of Claimants bar Claimants' claims in whole or in part; Claimants failed to exercise due diligence in connection with making the investments complained of in the Statement of Claim; Claimants failed to mitigate their damages, if any; Claimants lack standing to assert all or part of the claims asserted herein; and, Claimants are not the real parties in interest with respect to all or part of the claims asserted herein.

RELIEF REQUESTED

Claimants requested an award in the amount of \$725,000.00 as compensatory damages, plus costs, expert fees, attorney's fees and such other damages as to the Panel may deem appropriate under the facts of this case.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs, attorneys' fees and further relief as may be deemed just and proper under the circumstances of this case.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Kelley Tatreau did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Claimants submitted a Motion for Recusal of Arbitrator W. Russell Bowie, Esq. on or about March 5, 2004. The Respondents submitted their response to the motion on or about March 9, 2004. Arbitrator W. Russell Bowie, Esq. declined to withdraw and remained on the Panel.

Claimants filed their Motion to Recuse/Remove Arbitrator Russell Bowie on or about June 2, 2004. Respondents filed their Response to the Motion on or about June 3, 2004. The Director of Arbitration denied the Claimants' request to remove Arbitrator Bowie from the Panel on or about June 7, 2004.

Respondents U.S. Bancorp Piper Jaffray and Kelley Tatreau filed their Pre-hearing Brief on or about May 19, 2004.

At the hearing, Mr. Gail Boliver, Esq., claimants' attorney, did not accept the composition of the Panel. He renewed his Motion for Recusal of Arbitrator Bowie. The Panel did not rule on the motion since they have no authority pursuant to Rule 10308(d)(2) of the Code of Arbitration Procedure.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims asserted in this matter are denied in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kelley Tatreau's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Kelley Tatreau must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. 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.
4. 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 = \$375.00

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. In this matter, the member firm is U.S. Bancorp Piper Jaffray.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	<u>4,000.00</u>
Total Member Fees	\$	7,000.00

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

2	Pre-hearing sessions with Panel	x	1,200.00	\$	2,400.00
	July 8, 2003	1	Session		
	July 21, 2003	1	Session		
1	Pre-hearing session with One Arbitrator		450.00	\$	450.00
	April 1, 2004	1	Session		
8	Hearing sessions	x	1,200.00	\$	9,600.00
	June 8, 2004	2	Sessions		
	June 9, 2004	2	Sessions		
	June 10, 2004	2	Sessions		
	June 14, 2004	2	Sessions		
	Total Forum Fees			\$	<u>12,450.00</u>

The Arbitration Panel has assessed \$6,225.00 of the forum fees to Ted Foster and Patricia Foster.

The Arbitration Panel has assessed \$6,225.00 of the forum fees to U.S. Bancorp Piper Jaffray.

Fee Summary

Claimants, Ted Foster and Patricia Foster, jointly and severally, shall be and hereby are liable for:

Initial Filing Fee	= \$	375.00
<u>Forum Fees</u>	= \$	<u>6,225.00</u>

Total Fees	= \$	6,600.00
<u>Less payments</u>	= \$	<u>-1,575.00</u>
Balance Due NASD Dispute Resolution	= \$	5,025.00

Respondent, U.S. Bancorp Piper Jaffray, shall be and hereby is liable for:

Member Fees	= \$	7,000.00
<u>Forum Fees</u>	= \$	<u>6,225.00</u>
Total Fees	= \$	13,225.00
<u>Less payments</u>	= \$	<u>-7,000.00</u>
Balance Due NASD Dispute Resolution	= \$	6,225.00

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

ARBITRATION PANEL

Thomas J. Tarsney, Esq. - Public Arbitrator, Presiding Chair
W. Russell Bowie, Esq. - Public Arbitrator
Loren E. Dessonville, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Thomas J. Tarsney, Esq.
Thomas J. Tarsney, Esq.
Public Arbitrator, Presiding Chair

07/09/04
Signature Date

/s/ W. Russell Bowie, Esq.
W. Russell Bowie, Esq.
Public Arbitrator

07/05/04
Signature Date

/s/ Loren E. Dessonville, Esq.
Loren E. Dessonville, Esq.
Non-Public Arbitrator

07/07/04
Signature Date

07/09/04
Date of service

NASD Dispute Resolution
Arbitration No. 02-06456
Award Page 2 of 5

Total Fees	= \$	6,600.00
Less Payments	= \$	1,575.00
Balance Due NASD Dispute Resolution	= \$	5,025.00

Respondent U.S. Bancorp Piper Jaffray, shall be and hereby is liable for:

Member Fees	= \$	7,000.00
Forum Fees	= \$	6,225.00
Total Fees	= \$	13,225.00
Less Payments	= \$	7,000.00
Balance Due NASD Dispute Resolution	= \$	6,225.00

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

ARBITRATION PANEL

Thomas J. Tarsney, Esq. - Public Arbitrator, Presiding Chair
W. Russell Bowie, Esq. - Public Arbitrator
Loren E. Deasonville, Esq. - Non-Public Arbitrator

Concurring Arbitrators:


Thomas J. Tarsney, Esq.
Public Arbitrator, Presiding Chair


Signature Date

W. Russell Bowie, Esq.
Public Arbitrator

Signature Date

Loren E. Deasonville, Esq.
Non-Public Arbitrator

Signature Date

Date of service

NASD Dispute Resolution
 Arbitration No. 02-06456
 Award Page 3 of 5

Total Fees	= \$	6,600.00
<u>Less payments</u>	= \$	<u>-1,575.00</u>
Balance Due NASD Dispute Resolution	= \$	5,025.00

Respondent U.S. Bancorp Piper Jaffray, shall be and hereby is liable for:

Member Fees	= \$	7,000.00
<u>Forum Fees</u>	= \$	<u>6,225.00</u>
Total Fees	= \$	13,225.00
<u>Less payments</u>	= \$	<u>-7,000.00</u>
Balance Due NASD Dispute Resolution	= \$	6,225.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 1833(g) of the Code.

ARBITRATION PANEL

Thomas J. Tarsney, Esq. - Public Arbitrator, Presiding Chair
 W. Russell Bowie, Esq. - Public Arbitrator
 Loren E. Dessonville, Esq. - Non-Public Arbitrator

Concurring Arbitrators

Thomas J. Tarsney, Esq.
 Public Arbitrator, Presiding Chair


 W. Russell Bowie, Esq.
 Public Arbitrator

Signature Date


 Signature Date

Loren E. Dessonville, Esq.
 Non-Public Arbitrator

Signature Date

Date of service

NASD Dispute Resolution
Arbitration No. 02-06456
Award Page 5 of 5

Total Fees	= \$	6,600.00
Less payments	= \$	<u>-1,575.00</u>
Balance Due NASD Dispute Resolution	= \$	5,025.00

Respondent, U.S. Bancorp Piper Jaffray, shall be and hereby is liable for:

Member Fees	= \$	7,000.00
Forum Fees	= \$	<u>6,225.00</u>
Total Fees	= \$	13,225.00
Less payments	= \$	<u>-7,000.00</u>
Balance Due NASD Dispute Resolution	= \$	6,225.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10338(g) of the Code.

ARBITRATION PANEL

Thomas J. Tarsney, Esq. - Public Arbitrator, Presiding Chair
W. Russell Bowie, Esq. - Public Arbitrator
Loren E. Dessonville, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Thomas J. Tarsney, Esq.
Public Arbitrator, Presiding Chair

Signature Date

W. Russell Bowie, Esq.
Public Arbitrator

Signature Date

Loren E. Dessonville
Loren E. Dessonville, Esq.
Non-Public Arbitrator

7/7/2004
Signature Date

Date of service