

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Tiger 12 Investment Club,
the Elizabeth W. Martin Trust, and
Sammie J. and Maxine Rhoades

Case Number: 02-07406

Name of the Respondents

U.S. Bancorp Piper Jaffray, Inc.,
Kurt Johnson, and
Frederick A. Magerkurth

Hearing Site: Kansas City, Missouri

Type of Controversy: Customer v. Member Firm and Associated Persons

REPRESENTATION OF PARTIES

Claimants Tiger 12 Investment Club ("Tiger 12"), the Elizabeth W. Martin Trust ("Martin Trust"), and Sammie J. and Maxine Rhoades ("Rhoades"), hereinafter collectively referred to as "Claimants," were represented by Mark D. Wasserstrom, Esq. with offices located in Kansas City, Missouri.

Respondents U.S. Bancorp Piper Jaffray, Inc. ("U.S. Bancorp Piper Jaffray"), Kurt Johnson ("Johnson"), and Frederick A. Magerkurth ("Magerkurth"), hereinafter collectively referred to as "Respondents," were represented by Jeffrey J. Kalinowski, Esq. of the firm Blackwell, Sanders, Peper Martin, LLP located in St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: December 9, 2002.

Claimant Tiger 12 signed the Uniform Submission Agreement: February 23, 2002.

Claimant Martin Trust signed the Uniform Submission Agreement: February 23, 2002.

Claimants Rhoades signed the Uniform Submission Agreement: February 23, 2002.

Joint Statement of Answer filed by Respondents on or about: February 27, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: Unauthorized Trading, unsuitability, churning, *respondeat superior*, negligence and/or willful and reckless conduct, conduct the proximate cause of injury.

The causes of action relate to Eloquent, Inc., Stratos Lightwave, Inc., Media 100, Inc., America Online, Nortel, and Digimarc Corporation, MM stocks

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimants fail to state a claim upon which relief can be granted.
2. Claimants' damages, if any, were caused by the acts or omissions of third parties over which Respondents had no control.
3. 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 its respective investments and the status of its accounts and did not object to the transactions in its accounts. Claimants, in fact, expressly ratified the transactions in its accounts.
4. Claimants received account statements and confirmations and did not object to the transactions in its account; therefore, Claimants' claims are barred.
5. The applicable federal and state statutes of limitation bar Claimants' claims.
6. The negligence and/or fault of Claimants bar Claimants' claims in whole or in part.
7. Claimants failed to exercise due diligence in connection with making the investments complained of in the Statement of Claim.
8. Claimants failed to mitigate its damages, if any.
9. Claimants' claim for punitive damages is barred since any award of punitive damages would violate the Respondents' constitutional rights under the due process clause of the Fourteenth Amendment and the excessive penalties clause of the Eighth Amendment of the United States Constitution.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages (Tiger 12)	\$ 64,416.29
Compensatory Damages (Martin Trust)	\$ 76,308.92
Compensatory Damages (Rhoades)	\$ 919,718.00
Compensatory Damages (Rhoades)	\$ 300,000.00
Margin interest paid (Rhoades)	\$ 59,682.00
Punitive Damages (Tiger 12)	\$ 150,000.00
Punitive Damages (Martin Trust)	\$ 150,000.00
Punitive Damages (Rhoades)	\$1,000,000.00
Pre and post award interest	9% per annum
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	any relief the panel deems just and equitable

Respondents requested:

Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	denial and dismissal of claims

OTHER ISSUES CONSIDERED AND DECIDED

Respondent U.S. Bancorp Piper Jaffray, Inc., Kurt Johnson, and Frederick A. Magerkurth did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

AWARD

After considering the pleadings, 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. Respondents U.S. Bancorp Piper Jaffray, Inc. and Kurt Johnson are jointly and severally liable for and shall pay to Claimants Sammie J. and Maxine Rhoades the sum of \$50,000.00 as compensatory damages, plus 9% interest accruing from April 1, 2000 until payment of the award.
2. Respondents U.S. Bancorp Piper Jaffray, Inc. and Kurt Johnson are jointly and severally liable for and shall pay to Claimants Sammie J. and Maxine Rhoades the sum of \$10,000.00 as attorney's fees. Upon review of the submissions presented by the parties, the he panel finds authority to grant attorney's fees.
3. Any and all claims asserted by the Tiger 12 Investment Club against U.S. Bancorp Piper Jaffray, Inc., Kurt Johnson, and Frederick Magerkurth are denied.
4. Any and all claims asserted by the Elizabeth W. Martin Trust against U.S. Bancorp Piper Jaffray, Inc., Kurt Johnson, and Frederick Magerkurth are denied.
5. Any and all claims asserted by Sammie J. and Maxine Rhoades against Frederick Magerkurth are denied.
6. Except as specified herein, parties shall each bear their own costs, including attorney's fees.
7. Any and all relief not specifically addressed herein, including punitive damages, 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 = \$500.00

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, U.S. Bancorp Piper Jaffray, Inc. is assessed the following fees:

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00
Total	= \$8,550.00

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:

Two (2) Pre-hearing sessions with Panel at \$1,200.00	= \$ 2,400.00
Pre-hearing conferences:	
June 13, 2003	1 session
November 14, 2003	1 session
Six (6) Hearing sessions at \$1,200.00	= \$ 7,200.00
Hearing Dates:	
December 1, 2003	2 sessions
December 2, 2003	2 sessions
December 3, 2003	2 sessions
Total Forum Fees	= \$ 9,600.00

The Panel has assessed \$9,600.00 of the forum fees to U.S. Bancorp Piper Jaffray, Inc.

FEE SUMMARY

1. Claimants, Tiger 12 Investment Club, the Elizabeth W. Martin Trust, and Sammie J. and Maxine Rhoades, are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 1,800.00
Refund Due from NASD Dispute Resolution	= \$ 1,300.00

2. Respondent U.S. Bancorp Piper Jaffray is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 9,600.00
Total Fees	= \$18,150.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 9,600.00

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

ARBITRATION PANEL

James C. Morrow, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard H. Potter	-	Public Arbitrator
Michael E. Nelson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ James C. Morrow

01/22/04

James C. Morrow, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/ Richard H. Potter

01/22/04

Richard H. Potter
Public Arbitrator

Signature Date

/s/ Michael E. Nelson

01/22/04

Michael E. Nelson
Non-Public Arbitrator

Signature Date

01/23/04

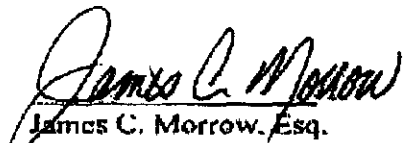
Date of Service (For NASD Dispute Resolution office use only)

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Richard H. Potter
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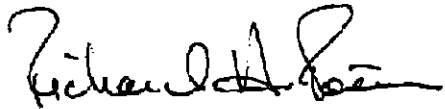
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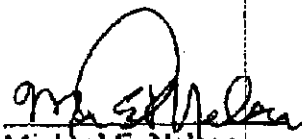
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