

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

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In the Matter of the Arbitration Between

Name of Claimant

Cecelia Randall

vs.

02-07812  
Omaha, Nebraska

Names of Respondents

U.S. Bancorp Piper Jaffray, Inc.,  
Michael S. Wetrich and Michael D. Cole

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**NATURE OF DISPUTE**

Customer vs. Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

Cecelia Randall ("Claimant") was represented by Thomas W. Clayton, Esq., of Sioux Falls, South Dakota.

U.S. Bancorp Piper Jaffray, Inc. ("Piper Jaffray"), Michael S. Wetrich ("Wetrich"), and Michael D. Cole ("Cole"), hereinafter collectively referred to as ("Respondents"), were represented by Steven M. Phillips, Esq., of Anthony Ostlund & Baer, P.A., Minneapolis, Minnesota.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 27, 2002. The Submission Agreement of Claimant, Cecilia Randall, was signed on December 18, 2002. Claimant's Motion to Amend Statement of Claim was filed on or about June 16, 2003. Claimant's Amended Statement of Claim was filed on or about July 21, 2003. The Claimant's Objection to Respondents' Motion to Change Venue was filed on or about March 7, 2002.

The Joint Statement of Answer was filed by Respondents, U.S. Bancorp Piper Jaffray, Inc., Michael S. Wetrich and Michael D. Cole, on or about August 11, 2003. The Submission Agreement of Respondent, U.S. Bancorp Piper Jaffray, Inc., was signed on or about January 21, 2003. The Submission Agreement of Respondent, Michael S. Wetrich, was signed on or about February 24, 2003. The Submission Agreement of Respondent, Michael D. Cole, was signed on or about March 20, 2003. Respondents' Motion to Change Venue was filed on or about March 19, 2003. Respondents' Response to Claimant's Motion to Amend was filed on or about July 1, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; unauthorized trading; breach of contract; fraud and deceit; and failure to supervise. The causes of action related to the recommendation and order execution of various stocks such as Enron, AOL, and Corning. Claimant alleged that Respondents unauthorized trading activities of selling off her conservative stocks and purchasing high risk, speculative stocks, options, and mutual funds, and engaging in short-term trading strategies led her to losses in her account.

Unless specifically admitted in their Joint Statement of Answer, Respondents, U.S. Bancorp Piper Jaffray, Inc., Michael S. Wetrich and Michael D. Cole, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's Statement of Claim, in general, and her claim for damages based on "unsuitable" investments, in particular, failed to state a claim upon which relief may be granted; Claimant's claims are barred, in part, by the applicable statutes of limitation and/or repose and by the doctrine of laches; any losses sustained by Claimant were proximately caused by Claimant's express and implied agreements to voluntarily and knowingly assume the risk of losses in her accounts; and Claimant expressly approved and ratified the acts and transactions complained of and upon which recovery is sought and is thus precluded from any recovery under the doctrines of ratification and waiver.

### **RELIEF REQUESTED**

Claimant requested in amount of \$200,000.00 in actual damages, \$150,000.00 in punitive damages, \$10,000.00 in interest, costs and disbursements in this matter.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and expenses in defending this action. In addition, Wetrich and Cole respectfully requested that the arbitration panel expunge from their permanent records any reference to this proceeding.

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

On or about July 15, 2003, the panel ruled that Claimant's Motion to Amend the Statement of Claim is granted.

During the initial pre-hearing conference call on July 14, 2003, Respondents withdrew their Motion to Change Venue.

At the hearing, Respondents orally argued for the panel to grant Respondents, Wetrich and Cole, CRD expungement of the filing of this claim. The Panel 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. 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. Respondents, U.S. Bancorp Piper Jaffray, Inc. and Michael S. Wetrich, are jointly and severally, liable for and shall pay to Claimant, Cecelia Randall, the sum of \$100,000.00 in compensatory damages;
2. Claimant's claims, each and all, against Respondent, Michael D. Cole, are denied and dismissed with prejudice;
3. 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; and
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 the non-refundable filing fee:

Initial claim filing fee	= \$	300.00
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#### **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, Inc.

Member surcharge	= \$	1,700.00
Pre-hearing process fee	= \$	750.00

<u>Hearing process fee</u>	= \$	2,750.00
Total Member Fees	= \$	5,200.00

**Adjournment Fees**

Adjournment granted during these proceedings:

May 10-14, 2004 Hearing Dates, adjournment requested by Claimant (waived by the Panel)	= \$	1,125.00
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**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:

1	Pre-hearing sessions with Panel	x	1125.00	\$	1,125.00
	July 14, 2003	1	session		
1	Pre-hearing session with one Arbitrator	x	450.00	\$	450.00
	November 4, 2003	1	session		
7	Hearing sessions	x	1,1125.00	\$	7,875.00
	March 8, 2004	2	sessions		
	March 9, 2004	3	sessions		
	March 10, 2004	2	sessions		
	Total Forum Fees			\$	<u>9,450.00</u>

The Arbitration Panel has assessed \$ 9,450.00 of the forum fees to U.S. Bancorp Piper Jaffray, Inc.

**Fee Summary**

Claimant, Cecelia Randall, is liable for:

<u>Initial Filing Fee</u>	= \$	300.00
Total Fees	= \$	300.00
<u>Less payments</u>	= \$	<u>-1,425.00</u>
Refund due to Claimant	= \$	1,125.00

Respondent, U.S. Bancorp Piper Jaffray, Inc., is liable for:

Member Fees	= \$	5,200.00
<u>Forum Fees</u>	= \$	<u>9,450.00</u>
Total Fees	= \$	14,650.00

<u>Less payments</u>	= \$	<u>-5,200.00</u>
Balance Due NASD Dispute Resolution	= \$	<u>9,450.00</u>

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

**ARBITRATION PANEL**

Sam Brower, Esq. - Public Arbitrator, Presiding Chair  
Jeffrey M. Bain, Esq. - Public Arbitrator  
William H. O'Donnell - Non-Public Arbitrator

**Concurring Arbitrators:**

<u>/s/ Sam Brower, Esq.</u>	<u>03/16/05</u>
Sam Brower, Esq.	Signature Date
Public Arbitrator, Presiding Chair	

<u>/s/ Jeffrey M. Bain, Esq.</u>	<u>03/18/05</u>
Jeffrey M. Bain, Esq.	Signature Date
Public Arbitrator	

<u>/s/ William H. O'Donnell</u>	<u>03/17/05</u>
William H. O'Donnell	Signature Date
Non-Public Arbitrator	

03/18/05  
Date of service

NASD Dispute Resolution, Inc.  
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Less payments

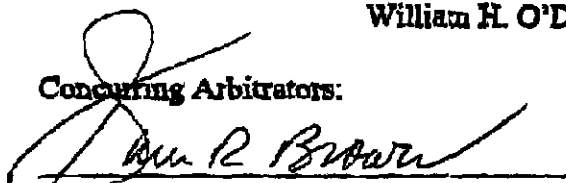
	= \$	<u>-5,200.00</u>
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Jeffrey M. Bain, Esq. - Public Arbitrator  
William H. O'Donnell - Non-Public Arbitrator

Concurring Arbitrators:

  
Sam Brower, Esq.  
Public Arbitrator, Presiding Chair

✓  
3/16/05  
Signature Date

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Jeffrey M. Bain, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
William H. O'Donnell  
Non-Public Arbitrator

\_\_\_\_\_  
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NASD Dispute Resolution, Inc.  
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Jeffrey M. Bain, Esq. - Public Arbitrator  
William H. O'Donnell - Non-Public Arbitrator

Concurring Arbitrators:

Sam Brower, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

March 18, 2005

Jeffrey M. Bain, Esq.  
Public Arbitrator

Signature Date

William H. O'Donnell  
Non-Public Arbitrator

Signature Date

Date of service

NASD Dispute Resolution, Inc.  
Arbitration No. 02-07812  
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3-17-05  
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