

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Don E. Nelsen, Claimant v. Piper Jaffrey & Co. (f/k/a US Bancorp Piper Jaffrey Inc.), Steven Wesley Berglund and Bradford Morgan Vorhees, Respondents

Case Number: 03-03660

Hearing Site: Seattle, Washington

Nature of the Dispute: Customer v. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimant:

Thomas D. Adams, Esq.
Everett, Washington

For Respondents:

Robert J. Bocko, Esq.
Keesal Young & Logan
Seattle, Washington

CASE INFORMATION

Statement of Claim filed: May 14, 2003

Claimant's Uniform Submission Agreement signed: May 14, 2003

Joint Statement of Answer filed by Respondents Piper Jaffrey & Co., Steven Wesley Berglund, and Bradford Morgan Vorhees: July 15, 2003

Respondent Piper Jaffrey & Co.'s Uniform Submission Agreement signed: June 23, 2003

Respondent Steven Wesley Berglund's Uniform Submission Agreement signed but not dated

Respondent Bradford Morgan Vorhees' Uniform Submission Agreement signed: July 1, 2003

CASE SUMMARY

Claimant alleged negligence, breach of fiduciary duty, material omissions, violation of NASD sales practice rules, and failure to supervise. Claimant's allegations involved the purchase of the following securities for his IRA account: Cymer Inc., Datum Inc., Inovex Inc., JPM Co., and Ozemail ADR.

Respondents denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$74,653.38 in compensatory damages, \$38,632.62 in lost opportunity costs, pre-judgment interest at a rate of 5%, and costs, including attorney's fees.

Respondents requested dismissal of Claimant's Statement of Claim in its entirety, expungement of this matter from Respondents Steven Wesley Berglund and Bradford Morgan Vorhees's CRD records, and costs, including forum fees, expenses, and reimbursement of Respondent Piper Jaffrey & Co.'s member surcharge.

OTHER ISSUES CONSIDERED AND DECIDED

Motion to Dismiss

On January 6, 2004, Respondents filed a Motion to Dismiss. On January 27, 2004, Claimant filed a Response to Respondents' Motion to Dismiss. On February 4, 2004, Respondents filed a Reply in Support of Motion to Dismiss. On March 5, 2004, the Panel heard oral argument regarding Respondents' Motion to Dismiss, and on March 11, 2004 and March 12, 2004, respectively, Claimant and Respondents filed written summaries of the oral arguments that they had made at the pre-hearing conference. On March 26, 2004, the Panel deliberated regarding the motion, and on March 27, 2004, it issued an Order: (a) denying Respondents' Motion to Dismiss; (b) ordering Claimant to brief the issue of whether "there is a duty within a broker-dealer once a customer is positioned in a security to inform the customer that the security is not suitable for that customer and if there is such a duty, how long that duty extends" and providing deadlines for Claimant's brief, Respondents' response, and Claimant's reply.

On August 29, 2004, Claimant filed an arbitration brief. On September 17, 2004, Respondents filed a Respondents' Response Brief Regarding Lack of Continuing Duty. On September 29, 2004, Claimant filed a Reply Brief. On October 1, 2004, Respondents filed a Reply in support of their renewed motion to dismiss. On October 28, 2004, the Panel issued an Order denying Respondents' Motion to Dismiss without prejudice to raising the issue addressed in the motion at the close of Claimant's case.

The panel heard evidence over the course of four hearing sessions and heard oral argument regarding Respondents' motion to dismiss on statute of limitations grounds, which the panel deemed to be a motion for a directed award. The panel granted the motion to dismiss the individual Respondents Steven Wesley Berglund and Bradford Morgan Vorhees on the grounds that the relevant statutes of limitation had run.

As to the remaining Respondent Piper Jaffrey & Co., the panel heard oral argument regarding the motion to dismiss this Respondent and elected to allow Claimant to provide evidence and/or law that would establish a sufficient relationship between Claimant and Respondent Piper Jaffrey & Co. so as to toll the commencement of the applicable limitations period until the end of the

of securities transactions that took place from time to time and ended inside the three year period before Claimant filed the claim. Furthermore, Claimant provided evidence that Respondents had provided commission concessions to Claimant and argued that the granting of these commission concessions proved that Respondents were trying to lull Claimant into inactivity regarding any claims he might have had. The law cited by Claimant might allow the Panel to find a continuing relationship sufficient to toll the running of the limitations period.

Upon the Panel's request, Respondent Piper Jaffrey & Co. submitted a reply in which it asserted that the commission concessions proved nothing, and that in any event the law does not support the Claimant's reading of Washington law and comparable out of state cases.

After the Panel's review of the parties' arguments and the evidence, and as the Panel must, construing the evidence and the law in the light most favorable to Claimant, the Panel finds as follows:

As previously ruled in open hearing sessions, Respondents Steven Wesley Berglund and Bradford Morgan Vorhees are hereby dismissed with prejudice, as the relevant statutes of limitation have run in the actions brought against them.

As a matter of law, Claimant has failed to present sufficient evidence to support a finding that the relationship between the parties after the purchases in question was such as to require tolling of the applicable limitations periods. This is not a case where there was a dependency or trust relationship outside a normal broker-customer relationship during the tolling period, and there is no proof whatsoever of any fraudulent motive in the commission concessions provided. Thus, Respondent Piper Jaffrey & Co.'s motion to dismiss is granted.

The parties 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, testimony, and evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

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	= \$ 300.00
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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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Piper Jaffrey & Co. is a party, and the following fees are assessed:

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

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 or the parties and the Panel. The following fees are assessed:

Two (2) pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences:	
December 3, 2003	1 session
March 5, 2004	1 session
Four (4) hearing sessions @ \$1,125.00/session	= \$ 4,500.00
Hearings:	
April 27, 2005	2 sessions
April 28, 2005	2 sessions
Total Forum Fees	= \$ 6,750.00

The Panel assessed \$6,750.00 of the forum fees to Respondent Piper Jaffrey & Co.

Fee Summary

1. Claimant Don E. Nelsen is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
Refund Due Claimant	= \$(1,125.00)

2. Respondent Piper Jaffrey & Co. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 6,750.00</u>
Total Fees	= \$11,950.00
<u>Less payments</u>	<u>= \$(3,600.00)</u>
Balance Due NASD Dispute Resolution	= \$ 8,350.00

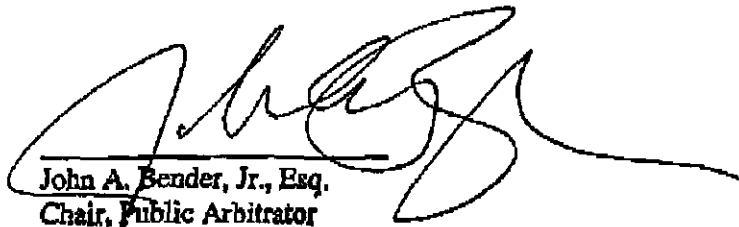
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

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ARBITRATION PANEL

<i>John A. Bender, Jr., Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Lawrence E. Little, Esq.</i>	-	<i>Public Arbitrator</i>
<i>William J. Rex</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures


John A. Bender, Jr., Esq.
Chair, Public Arbitrator

9 June 05
Signature Date

Lawrence A. Little, Esq.
Public Arbitrator

Signature Date

William J. Rex
Non-Public Arbitrator

Signature Date

6/9/05
Date of Service

ARBITRATION PANEL

John A. Bender, Jr., Esq.
Lawrence E. Little, Esq.
William J. Rex

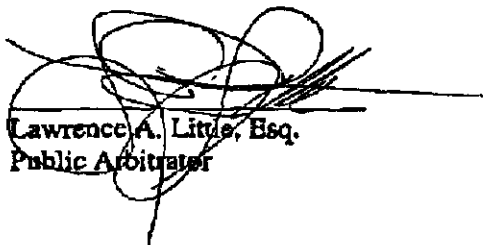
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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

John A. Bender, Jr., Esq.
Chair, Public Arbitrator

Signature Date


Lawrence E. Little, Esq.
Public Arbitrator

6/8/05
Signature Date

William J. Rex
Non-Public Arbitrator

Signature Date

6/9/05
Date of Service

NASD Dispute Resolution
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Lawrence E. Little, Esq.
William J. Rex

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

John A. Bender, Jr., Esq.
Chair, Public Arbitrator

Signature Date

Lawrence A. Little, Esq.
Public Arbitrator

Signature Date

William J. Rex
William J. Rex
Non-Public Arbitrator

6-9-05
Signature Date

6/9/05
Date of Service