

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

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In the Matter of the Arbitration Between

Claimant

American State Bank & Trust of Dickinson

v.

03-04021

Minneapolis, Minnesota

Respondents

US Bancorp Piper Jaffray, Inc.  
and Michael Altringer

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Nature of Dispute: Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

American State Bank & Trust of Dickinson ("Claimant") was represented by Terrance M. Fruth Esq., of Fruth, Jamison & Elsass, P.A., Minneapolis, Minnesota.

US Bancorp Piper Jaffray, Inc. ("US Bancorp") and Michael Altringer ("Altringer"), hereinafter referred to as ("Respondents"), were represented by James K. Langdon, II, Esq. of Dorsey & Whitney, LLP, Minneapolis, Minnesota.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 2, 2003. Submission Agreement of Claimant was signed on or about May 22, 2003.

A Joint Statement of Answer was filed by Respondents US Bancorp Piper Jaffray, Inc. and Michael Altringer on or about August 11, 2003. Submission Agreement of Respondent US Bancorp Piper Jaffray, Inc. was signed on or about June 24, 2003. Submission Agreement of Respondent Michael Altringer was signed on or about August 11, 2003.

**CASE SUMMARY**

Claimant asserted causes of action including the following: breach of fiduciary duty, negligence, common law fraud, respondeat superior, negligent supervision, violations of NASD Conduct Rules, and violations of the North Dakota Securities Act. The causes of action related to Respondents' recommendation and sale of NRG Energy, Inc. ("NRG") high-yield bonds to Claimant. Claimant asserted that Respondents sold it the NRG bonds well above market value, while at the same time Respondent US Bancorp's analysts were downgrading their outlook for NRG and warning other customers not to invest in NRG. Claimant stated that within three months the NRG bonds purchased

had been downgraded to "junk" by Moody's and S&P, and that Claimant suffered heavy losses as a result.

Respondents denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant knowingly assumed the risks of their investment decisions; the recommendations by Altringer were made in good faith and were based on sound facts; Claimant cannot recover against US Bancorp, because it maintained an adequate and reasonable system of supervision and control over its registered representatives, including Altringer, and at all times acted in good faith, in accordance with industry standards of conduct and in compliance with all applicable securities laws and regulations; Claimant's losses were caused by its own investment decisions and general bond market movements for which Respondents are not responsible; and by never having enforced any written investment policy in the past, Claimant had waived any rights and are estopped from making any claim that its alleged written investment policy was violated.

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$603,197 in compensatory damages, plus attorney's fees, interest, costs and any other relief that the Panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents requested that this matter be expunged from Respondent Altringer's permanent registration record maintained by the Central Registration Department ("CRD").

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

At the conclusion of Claimant's case in chief, Respondents made an oral Motion to Dismiss Claimant's claims. After deliberation, the Panel denied Respondents' Motion to Dismiss.

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 originals remain on file with NASD Dispute Resolution ("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. Claimant's claims, each and all, are hereby denied and dismissed with prejudice in their

entirety;

2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Michael Altringer'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 Michael Altringer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, 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 for each claim:

Initial claim filing fee = \$ 375

#### **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 US Bancorp Piper Jaffray, Inc.

|                         |            |
|-------------------------|------------|
| Member surcharge        | = \$ 2,250 |
| Pre-hearing process fee | = \$ 750   |
| Hearing process fee     | = \$ 4,000 |

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

One (1) Pre-hearing session with Panel x \$ 1,200 = \$ 1,200  
Pre-hearing conference: 01/08/2004 1 session

Six (6) Hearing sessions with Panel x \$ 1,200 = \$ 7,200  
Hearing Dates: 06/29/2004 2 sessions  
06/30/2004 2 sessions  
07/01/2004 2 sessions

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Total Forum Fees = \$ 8,400

The Arbitration Panel has assessed \$ 4,200 of the forum fees to American State Bank & Trust of Dickinson.

The Arbitration Panel has assessed \$ 4,200 of the forum fees jointly and severally to US Bancorp Piper Jaffray, Inc. and Michael Altringer.

Fee Summary

Claimant, American State Bank & Trust of Dickinson is liable for:

|                                     |            |
|-------------------------------------|------------|
| Initial Filing Fee                  | = \$ 375   |
| Forum Fees                          | = \$ 4,200 |
| Total Fees                          | = \$ 4,575 |
| Less payments                       | = \$ 2,450 |
| Balance Due NASD Dispute Resolution | = \$ 2,125 |

Respondent, US Bancorp Piper Jaffray, Inc., is liable for:

|                                     |            |
|-------------------------------------|------------|
| Member Fees                         | = \$ 7,000 |
| Total Fees                          | = \$ 7,000 |
| Less payments                       | = \$ 7,000 |
| Balance Due NASD Dispute Resolution | = \$ 0     |

Respondents, US Bancorp Piper Jaffray, Inc. and Michael Altringer are jointly and severally liable for:

|                                     |            |
|-------------------------------------|------------|
| Forum Fees                          | = \$ 4,200 |
| Total Fees                          | = \$ 4,200 |
| Less payments                       | = \$ 0     |
| Balance Due NASD Dispute Resolution | = \$ 4,200 |

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

ARBITRATION PANEL

Arlen G. Restad - Public Arbitrator, Presiding Chair  
Lavon Phillips, Esq. - Public Arbitrator  
Kenneth O. Fossey- Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Arlen G. Restad  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Lavon Phillips, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Kenneth O. Fossey  
Non-Public Arbitrator

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

7/14/04  
Date of Service (NASD use only)

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Lavon Phillips, Esq. - Public Arbitrator  
Kenneth O. Fossey - Non-Public Arbitrator

Concurring Arbitrators:

Arlen G. Restad  
Arlen G. Restad  
Public Arbitrator, Presiding Chair

July 9, 2004  
Signature Date

Lavon Phillips, Esq.  
Lavon Phillips, Esq.  
Public Arbitrator

Signature Date

Kenneth O. Fossey  
Kenneth O. Fossey  
Non-Public Arbitrator

Signature Date

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Lavon Phillips, Esq. - Public Arbitrator  
Kenneth O. Fossey - Non-Public Arbitrator

Concurring Arbitrators:

Arlen G. Restad  
Public Arbitrator, Presiding Chair

Phillips  
Lavon Phillips, Esq.  
Public Arbitrator

Kenneth O. Fossey  
Non-Public Arbitrator

Signature Date

07-08-04  
Signature Date

Signature Date

7/14/04  
Date of Service (NASD use only)

NASD Dispute Resolution  
Arbitration No. 03-04021  
Award Page 5 of 5

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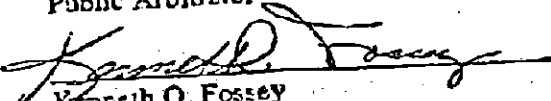
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Lavon Phillips, Esq.  
Public Arbitrator

  
Kenneth O. Fossey  
Non-Public Arbitrator

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

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

7/8/04  
Signature Date

7/14/04  
Date of Service (NASD use only)