

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

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In the Matter of the Arbitration Between

Name of Claimant

The Duell Family Trust and Albert C. and Mary H. Duell, Trustees

and

03-05018  
Phoenix, Arizona

Name of Respondents

U.S. Bancorp Piper Jaffray, Inc.  
Ronald A. Icabone

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

**REPRESENTATION OF PARTIES**

The Duell Family Trust and Albert C. and Mary H. Duell, Trustees ("**Claimant**") was represented by Burton M. Bentley, Esq., Phoenix, Arizona.

U.S. Bancorp Piper Jaffray, Inc. ("**Respondent Piper Jaffray**") and Ronald A. Icabone ("**Respondent Icabone**") (collectively as "**Respondents**") were represented by William D. Nelson, Esq., Rothgerber Johnson & Lyons LLP, Denver, Colorado.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 3, 2003. Motion to Amend Statement of Claim was filed on or about March 26, 2004. Claimant's First Amendment to Statement of Claim was filed on or about April 1, 2004. Submission Agreement of Claimant The Duell Family Trust and Albert C. and Mary H. Duell, Trustees was signed and undated.

Statement of Answer was filed by Respondents U.S. Bancorp Piper Jaffray, Inc. and Ronald A. Icabone on or about September 9, 2003. Statement of Answer to Amended Statement of Claim of U.S. Bancorp Piper Jaffray, Inc. and Ronald Icabone was filed on or about April 28, 2004. Submission Agreement of Respondent U.S. Bancorp Piper Jaffray, Inc. was signed by Mark S. Reed. Submission Agreement of Respondent Ronald A. Icabone was undated.

**CASE SUMMARY**

Claimants asserted the following causes of action: misrepresentation and common law fraud; breach of fiduciary duty; violation of the Arizona Consumer Fraud Act; violation of the Colorado Securities

Act (11-51- §§ 101 through 908; violation of federal and state securities laws; and violation of NASD Rules of Conduct and those of the New York and American Stock Exchanges. Specifically, Claimants alleged that Respondent Icabone made material misrepresentations to induce Claimants to switch their investments from Treasury Bonds to mutual funds.

Respondents denied the allegations set forth in the Statement of Claim. In their Statement of Answer to Amended Statement of Claim, Respondents specifically stated: "Mr. Duell was an investor who took a great deal of time and energy managing his personal accounts. He took the time to make daily phone calls, on average three to four calls per day, to Respondents' office to check on the status of the accounts. Mr. Duell has a level of sophistication that is clearly being downplayed. He made attempts to time the market, increases his exposure to a more risky investment strategy upon acquiring a new and substantial amount of wealth, and invested heavily in speculative and risky stocks".

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

- A. Rescission of all purchases and sales of mutual funds, and Global crossing shares, none of which mutual funds and/or Global Crossing shares were suitable for Claimants ... or in the alternative money damages in the following amounts:
- B. Compensatory damages in the sum of \$452,901 representing Claimants' monetary loss in connection with the purchase and sale of mutual funds;
- C. Additional compensatory damages in the sum of \$53,000 resulting from the purchase and sale of Global Crossing;
- D. Compensatory damages in the sum of \$97,011 for commissions received by respondents;
- E. Exemplary damages in the sum of \$500,000 as a means of punishing Respondents for their egregiously unprofessional handling of Claimants' account, and their failure to protect Claimants from purchases of securities of a highly volatile nature in an obviously fast falling market for the sole purpose of collecting commissions;
- F. Additional compensatory damages in the sum of \$39,671 unreported as debits in Claimants' statements, but built into mutual funds NAV, not readily apparent to the customer as not having been reflected in any document delivered to Claimants; and all other charges, costs and fees related to the purchase and sale of unsuitable securities for Claimants' accounts;
- G. Compensatory and punitive damages allowable pursuant to violation of federal and state of Arizona Securities Acts, according to proof;
- H. Reimbursement for payment of federal and state income taxes paid by Claimants' related to sales of mutual funds in their accounts according to proof;
- I. Costs incurred in bringing these arbitration proceedings;
- J. Claimants' reasonable attorney fees incurred in commencing these proceedings;
- K. For interest at 10% per annum on all awards;

- L. For such other and further relief as the Arbitrators shall deem just and proper, together with interest on all sums awarded from time of loss until paid in full.

Respondents requested that the claims asserted against them be dismissed in their entirety, that Claimants take nothing by their Amended Statement of Claim and that they be awarded their costs and attorneys' fees.

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

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. The claims asserted in this matter shall be and hereby are denied and dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Ronald A. Icabone'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 Ronald A. Icabone 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, not specifically awarded or otherwise provided for above.

### **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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is U.S. Bancorp Piper Jaffray, Inc.

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

#### **Adjournment Fees**

Adjournments requested during these proceedings:

Hearing Date(s), August 9, 2004 – August 12, 2004 adjournment requested by U.S. Bancorp Piper Jaffray, Inc. = \$1,200.00

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

1 Pre-hearing session(s) with Panel	x	1,200.00	\$	1,200.00
January 23, 2004	1 session			
6 Hearing sessions	x	1,200.00	\$	7,200.00
September 13, 2004	2 sessions			
September 14, 2004	2 sessions			
September 15, 2004	2 sessions			
Total Forum Fees			\$	8,400.00

The Arbitration Panel has assessed \$7,800.00 of the forum fees to The Duell Family Trust and Albert C. and Mary H. Duell, Trustees.

The Arbitration Panel has assessed \$600.00 of the forum fees jointly and severally to U.S. Bancorp Piper Jaffray, Inc. and Ronald A. Icabone.

**Fee Summary**

Claimants, The Duell Family Trust and Albert C. and Mary H. Duell, Trustees shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	500.00
<u>Forum Fees</u>	= \$	7,800.00
Total Fees	= \$	8,300.00
<u>Less payments</u>	= \$	-1,700.00
Balance Due NASD Dispute Resolution	= \$	6,600.00

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

Member Fees	= \$	8,550.00
Total Fees	= \$	8,550.00
<u>Less payments</u>	= \$	-8,550.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, U.S. Bancorp Piper Jaffray, Inc. and Ronald A. Icabone, shall be and hereby are jointly and severally liable for:

Adjournment Fee	= \$	1,200.00
<u>Forum Fees</u>	= \$	600.00
Total Fees	= \$	1,800.00
<u>Less payments</u>	= \$	-1,200.00
Balance Due NASD Dispute Resolution	= \$	600.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Pamela M. Katzenberg, Esq. - Public Arbitrator, Presiding Chair  
Joseph F. Gross, Ph.D - Public Arbitrator  
Karen D. Hanson - Non-Public Arbitrator

9/24/04  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 03-05018  
Award Page 6 of 6

Concurring Arbitrators:

Pamela M. Katzenberg, Esq.  
Public Arbitrator, Presiding Chair

Joseph F. Gross, Ph.D.  
Joseph F. Gross, Ph.D.  
Public Arbitrator

Karen D. Hanson  
Non-Public Arbitrator

Signature Date

9/20/2004

Signature Date

Signature Date

Date of Service (For NASD office use only)

09/20/2004 12:43 FAX

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NASD Dispute Resolution  
Arbitration No. 03-05018  
Award Page 6 of 6

Concurring Arbitrators:

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Pamela M. Katzenberg, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Joseph F. Gross, Ph.D  
Public Arbitrator

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

Karen D. Hanson  
Karen D. Hanson  
Non-Public Arbitrator

9-21-04  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)