

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

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In the Matter of the Arbitration Between

Claimants

Randy Pentel and R.P. Air, Inc.

v.

03-05950  
Minneapolis, Minnesota

Respondents

U.S. Bancorp Piper Jaffray, Inc., and Hany Mosad Nada

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Nature of Dispute: Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Randy Pentel and R.P. Air, Inc., hereinafter referred to as "**Claimants**," were represented by Ted S. Meikle, Esq., of Meikle & Taylor, P.A., Minneapolis, Minnesota. Claimant, Randy Pentel, asserted that he was the beneficial owner of an account in the name of Duane M. Freier.

U.S. Bancorp Piper Jaffray, Inc. ("**U.S. Bancorp**") and Hany Mosad Nada ("**Nada**"), hereinafter referred to as "**Respondents**," were represented by Joseph W. Anthony, Esq. and Stephen M. Phillips, Esq., of Anthony Ostlund & Baer, P.A., Minneapolis, Minnesota.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 15, 2003. The Submission Agreement of Randy Pentel was signed on or about August 11, 2003. The Submission Agreement of R.P. Air, Inc., was signed on or about August 11, 2003 by Randy Pentel. The Submission Agreement of Duane M. Freier was signed on or about August 26, 2003.

The Statement of Answer was filed jointly by U.S. Bancorp Piper Jaffray, Inc., and Hany Mosad Nada on or about November 21, 2003.

**CASE SUMMARY**

Claimants asserted causes of action including the following: breach of fiduciary duty, violation of the Minnesota Securities Act, violation of the Minnesota Consumer Fraud Act, negligence, negligent misrepresentations, common law fraud and control person liability. The causes of action related to Respondents' recommendation that Claimants purchase shares of Discrete Logic and Autodesk. Claimants alleged that Respondents misled them as to the financial stability of the two companies and failed to disclose Respondents' relationship with Discrete Logic and Autodesk and Respondents' role in the companies' merger. Claimants asserted that Respondents instituted incentives for their

research to be promoters of the companies selling shares, such as Discrete Logic and Autodesk, rather than providers of independent and unbiased research. According to Claimants, had they known about this relationship, their holdings would not have been overly concentrated and they would not have suffered such a significant loss.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimants failed to state a claim upon which relief can be granted; Claimants' claims may be barred, in whole or in part, by the applicable statutes of limitation and/or repose and/or by the doctrine of laches; any losses sustained by Claimants were proximately caused by Claimants' expressed and implied agreements to voluntarily and knowingly assume the risk of the losses in their accounts; Claimants expressly approved and ratified the acts and transactions complained of and upon which recovery is sought and are thus precluded from any recovery under the doctrines of ratification and waiver; Claimants' alleged losses, if any, were proximately caused by Claimants' own conduct and negligence or contributory negligence, including Claimants' own decisions to buy, hold, sell and/or re-purchase securities, which preclude Claimant from recovering anything from Respondents; Claimants neither relied upon nor were misled by any actionable statements or omissions of Respondents in determining to purchase, hold or sell the securities at issue; and Claimants' claims are barred under the doctrines of estoppel and waiver.

#### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$2,500,000 in compensatory damages, plus interest, costs, attorneys' fees, punitive damages and such other relief 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 the panel order the expungement of any reference to this matter from Nada's registration records maintained by the Central Registration Depository ("CRD").

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

Respondent, U.S. Bancorp Piper Jaffray, Inc., did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, and appeared and testified at the hearing is bound by the determination of the Panel on all issues submitted.

Respondent, Hany Mosad Nada, did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing is bound by the determination of the Panel on all issues submitted.

The panel has determined that although Duane M. Freier filed a submission agreement, he was not named as a party by Claimants in this case. The panel also determined that all claims asserted by Randy Pentel, as beneficial owner of Duane M. Freier's account, would be determined by the panel in this matter, by virtue of Duane M. Freier's Uniform Submission Agreement.

After Claimants closed their case-in-chief, Respondents made an oral Motion for a Directed Verdict. After deliberation, the panel granted Respondents' Motion for a Directed Verdict.

Respondents also moved for an expungement of Hany Mosad Nada's records maintained by CRD. Claimants had no objections to Respondents' request. However, after reviewing the evidence presented and the testimony offered at the Arbitration Hearing, the Panel made the Following Finding of Facts in regard to Respondent Hany Mosad Nada's request for Expungement:

1. Respondent, Hany Mosad Nada, was not involved in the alleged investment-related sales practice violation;
2. Claimants' claims and allegations are false;
3. The expungement relief is meritorious; and
4. The expungement would have no material adverse effect on investor protection, the integrity of the CRD system, or regulatory requirements.

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. Claimants' 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 Hany Mosad Nada'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 Hany Mosad Nada 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 = \$ 500

#### **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	= \$ 2,800
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 5,000

#### **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 the Chairperson x \$ 450 = \$ 450

Pre-hearing conference: 5/14/2004 1 session

One (1) Pre-hearing session with Panel x \$ 1,200 = \$ 1,200

Pre-hearing conference: 04/08/2004 1 session

Twelve (12) Hearing sessions with Panel x \$ 1,200 = \$ 13,500

Hearing Dates:	12/29/2004	2 sessions
	12/30/2004	2 sessions
	12/31/2004	2 sessions
	01/10/2005	2 sessions
	01/11/2005	2 sessions
	01/12/2005	2 sessions

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Total Forum Fees = \$ 15,075

The Arbitration Panel has assessed \$15,075 of the forum fees to Randy Pentel.

**EEE SUMMARY**

Claimants, Randy Pentel and R.P. Air, Inc., are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 500
<u>Total Fees</u>	= \$ 500
<u>Less payments</u>	= \$ 500
Balance Due NASD Dispute Resolution	= \$ 13,875

Claimant, Randy Pentel, is solely liable for:

<u>Forum Fees</u>	= \$ 15,075
<u>Total Fees</u>	= \$ 15,075
<u>Less payments</u>	= \$ 2,900
Balance Due NASD Dispute Resolution	= \$ 12,175

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

<u>Member Fees</u>	= \$ 8,550
<u>Total Fees</u>	= \$ 8,550
<u>Less payments</u>	= \$ 8,550
Balance Due NASD Dispute Resolution	= \$ 0

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**

Thomas M. Gmeinder, Esq. - Public Arbitrator, Presiding Chair  
James H. Colburn - Public Arbitrator  
Larry N. Litt- Non-Public Arbitrator

Concurring Arbitrators:

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Thomas M. Gmeinder, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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James H. Colburn  
Public Arbitrator

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Signature Date

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Larry N. Litt  
Non-Public Arbitrator

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Signature Date

1/26/05  
Date of Service (NASD use only)

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James H. Colburn - Public Arbitrator  
Larry N. Litt - Non-Public Arbitrator

Concurring Arbitrators:

  
Thomas M. Gmeinder, Esq.  
Public Arbitrator, Presiding Chair

1/26/04  
Signature Date

James H. Colburn  
Public Arbitrator

Signature Date

Larry N. Litt  
Non-Public Arbitrator

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