

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Piper Jaffray & Co., Claimant v. Lawrence F. Kipp, Respondent

Lawrence F. Kipp, Counter-Claimant v. Piper Jaffray & Co., Counter-Respondent

Case Number: 04-08848

Hearing Site: San Francisco, California

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Nature of the Dispute:      Member v. Associated Person  
   Associated Person v. Member

**REPRESENTATION OF PARTIES**

For Claimant/Counter-Respondent  
Piper Jaffray & Co. ("Piper Jaffray"):

Nathan P. Brenna, Esq.  
Anthony Ostlund & Baer, P.A.  
Minneapolis, Minnesota

Gordon C. Young  
Keesal, Young & Logan  
San Francisco, California

For Respondent/Counter-Claimant  
Lawrence F. Kipp ("Kipp"):

Scott R. Shewan, Esq.  
Born, Pape & Shewan, LLP  
Clovis, California

**CASE INFORMATION**

Statement of Claim filed: December 27, 2004

Piper Jaffray's Uniform Submission Agreement signed: December 23, 2004

Statement of Answer and Counterclaim filed by Kipp: March 9, 2005

Kipp's Uniform Submission Agreement signed: February 23, 2005

Reply to Counterclaim filed: April 4, 2005

### **CASE SUMMARY**

Piper Jaffray alleged that Kipp, who previously worked for Piper Jaffray, owes a balance on a promissory note.

Kipp denied the allegations of wrongdoing set forth in Piper Jaffray's Statement of Claim and asserted various affirmative defenses. In his Counterclaim, Kipp alleged fraud by intentional misrepresentation, negligent misrepresentation, breach of contract, breach of the implied covenant of good faith and fair dealing, promissory estoppel, and constructive discharge relating to his employment at Piper Jaffray.

Piper Jaffray denied the allegations of wrongdoing set forth in Kipp's Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Piper Jaffray requested \$172,337.20 in compensatory damages, interest at 5.07% beginning from February 17, 2004, and costs, including attorney's fees.

Kipp requested dismissal of Piper Jaffray's Statement of Claim in its entirety, in excess of \$2,000,000.00 in compensatory damages, unspecified punitive and exemplary damages, and costs, including attorney's fees.

Piper Jaffray requested dismissal of Kipp's Counterclaim in its entirety and costs, including attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On March 22, 2005, Piper Jaffray and Piper Jaffray's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On April 20, 2005, Kipp and Kipp's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On November 1, 2006, the second day of the hearing on the merits, the parties jointly requested the recusal of arbitrator Thomas O'Connor and that the remaining two arbitrators decide the merits of this case. Arbitrator Thomas O'Connor granted the parties' request and recused himself from the Panel. The remaining two arbitrators proceeded with the hearing and decided the merits of the case.

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, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Kipp is liable to and shall pay Piper Jaffray the sum of \$195,870.00 in compensatory damages and interest.
- 2) Piper Jaffrey is liable to and shall pay Kipp the sum of \$230,000.00 in compensatory damages.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

## **FEES**

Pursuant to the NASD Code of Arbitration Procedure, 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	= \$ 1,000.00
Kipp's Counterclaim filing fee	= \$ 500.00

### **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 Jaffray is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00
<b>Total Member Fees</b>	<b>= \$ 7,450.00</b>

### **Adjournment Fees**

The following adjournment fees are assessed:

Adjournment of the March 21-24, 2006 hearings Requested by Respondent	= \$ 1,125.00
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The Panel assessed the adjournment fee to Respondent.

### **Forum Fees and Assessments**

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion decided on the papers. A 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 conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: February 28, 2006 1 session	
(1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: October 12, 2005 1 session	
(5) Hearing sessions @ \$1,200.00/session	= \$ 6,000.00

Hearings:                      October 31, 2006    2 sessions  
                                     November 1, 2006   2 sessions  
                                     November 2, 2006   1 sessions

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**Total Forum Fees** **= \$ 7,650.00**

1. The Panel assessed \$3,825.00 of the forum fees to Piper Jaffray.
2. The Panel assessed \$3,825.00 of the forum fees to Kipp.

**Fee Summary**

1. Piper Jaffray is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 7,450.00
Forum Fees	= \$ 3,825.00
Total Fees	= \$12,275.00
<u>Less payments</u>	<u>= \$(9,575.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,700.00</b>
  
2. Kipp is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 3,825.00
Total Fees	= \$ 5,450.00
<u>Less payments</u>	<u>= \$(2,825.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,625.00</b>

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.

**ARBITRATION PANEL**

William J. Petzel	-	Public Arbitrator, Presiding Chair
John T. Collentine	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

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William J. Petzel  
Chair, Public Arbitrator

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Signature Date

  
John T. Collentine  
Public Arbitrator


11-3-06  
Signature Date

11/6/06  
Date of Service

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William J. Petzel	-	Public Arbitrator, Presiding Chair
John T. Collentine	-	Public Arbitrator

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William J. Petzel  
Chair, Public Arbitrator

11-3-06  
Signature Date

John T. Collentine  
Public Arbitrator

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