

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Charles Butts and Janice Butts, Claimants v. Piper Jaffray & Co. and Patrick G. Howell,
Respondents

Case Number: 05-01814

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimants:

In Propria Persona
Fresno, California

For Respondents:

Benjamin W. White, Esq.
Keesal, Young & Logan
San Francisco, California

CASE INFORMATION

Statement of Claim filed: April 4, 2005

Claimants' Joint Uniform Submission Agreement signed: May 16, 2005

Joint Statement of Answer filed by Respondents: July 7, 2005

Respondent Piper Jaffray & Co.'s Uniform Submission Agreement signed: not dated

Respondent Patrick G. Howell's Uniform Submission Agreement signed: not dated

CASE SUMMARY

Claimants alleged breach of oral contract, failure to supervise, failure to execute, misrepresentations, non-disclosures, and omission of facts. Claimants' allegations primarily involved mutual funds, including, but not limited to, the Eaton Vance Prime Rate Reserve Fund. Claimants' allegations also involved the contingent deferred sales charges ("CDSC") on Class B-shares.

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

RELIEF REQUESTED

Claimants requested unspecified compensatory damages and costs.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On December 20, 2005, Respondents filed a Motion to Dismiss the Statement of Claim. On December 26, 2005, Claimants filed an Opposition to the motion. On December 29, 2005, Respondents filed a Reply in support of their motion. On January 4, 2006, the Panel held a pre-hearing conference with the parties to hear oral argument on this motion. After due deliberation, the Panel denied Respondents' Motion to Dismiss.

During the hearing, Claimants made several motions to amend their claim to add new allegations and requests for additional damages. Respondents opposed. After due deliberation, the Panel denied Claimants' motions to amend their claim.

During the hearing, after completion of Claimants' case-in-chief, Respondents renewed their Motion to Dismiss and requested expungement of all references to this matter from Respondent Patrick G. Howell's CRD records. Claimants' opposed. After due deliberation, the Panel granted Respondents' renewed Motion to Dismiss and agreed to recommend expungement.

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) Claimants' claims are dismissed with prejudice.
- 2) The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Patrick G. Howell's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Patrick G. Howell must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure, the Arbitration Panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

- 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 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	= \$ 250.00
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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 Jaffray & Co. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
Total Member Fees	= \$ 4,450.00

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:

(2) Pre-hearing conference sessions with the Panel @ \$1,000.00/session	= \$ 2,000.00
Pre-hearing conferences: September 7, 2005 1 session	
January 4, 2006 1 session	

(2) Hearing sessions @ \$1,000.00/session	= \$ 2,000.00
Hearings: January 24, 2006 2 sessions	

Total Forum Fees	= \$ 4,000.00
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1. The Panel assessed \$2,000.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$2,000.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 250.00
<u>Forum Fees</u>	<u>= \$ 2,000.00</u>
Total Fees	= \$ 2,250.00
<u>Less payments</u>	<u>=(1,250.00)</u>
Balance Due NASD Dispute Resolution	= \$ 1,000.00

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

Member Fees	= \$ 4,450.00
<u>Less payments</u>	<u>=(4,450.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Piper Jaffray & Co. and Patrick G. Howell are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	<u>= \$ 2,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,000.00

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

Michael J. Fish	-	Public Arbitrator, Presiding Chair
Benjamin Slomoff	-	Public Arbitrator
Mark Aaron Jones	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Michael J. Fish
Chair, Public Arbitrator

1/26/06

Signature Date

Benjamin Slomoff
Public Arbitrator

Signature Date

Mark Aaron Jones
Non-Public Arbitrator

Signature Date

1/27/06

Date of Service

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