

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

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In the Matter of the Arbitration Between:

Thomas A. Bingham, Claimant v. Piper Jaffray & Co., and U.S. Bank, a Corporation,  
Respondents

Piper Jaffray & Co., Counter-Claimant v. Thomas Bingham, Counter-Respondent

Case Number: 05-01909

Hearing Site: Phoenix, Arizona

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Nature of the Dispute: Associated Person v. Member and Non-Member  
Member v. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant/Counter-Respondent:  
(hereinafter referred to as Claimant)

Richard S. Berry  
Why Pay a Lawyer?  
A Nevada Corporation  
Tempe, Arizona

For Respondent/Counter-Claimant:  
Piper Jaffray & Co.(hereinafter referred  
to as Respondent) and Respondent  
U.S. Bank

R. Shawn Oller, Esq.  
Littler Mendelson  
Phoenix, Arizona

**CASE INFORMATION**

Statement of Claim filed: April 8, 2005

Claimant's Uniform Submission Agreement signed: April 21, 2005

Statement of Answer and Counterclaim filed by Respondent Piper Jaffray & Co.: July 6, 2005

Respondent Piper Jaffray & Co.'s Uniform Submission Agreement signed: July 12, 2005

Uniform Submission Agreement signed by Respondent US Bank: None submitted

### **CASE SUMMARY**

Claimant alleged breach of contract, breach of covenant of good faith and fair dealing, violation of ERISA, constructive termination, wrongful termination, retaliation and conversion. Claimant's allegations involved the terms of Claimant's employment contract.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

In its Counter-claim, Respondent alleged breach of a Promissory Note Agreement.

Claimant denied the allegations of wrongdoing set forth in the Counterclaim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the sum of \$9,000,000.00, punitive damages in the sum of \$55,000,000.00, and costs, including attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety.

In its Counter-Claim, Respondent requested unspecified compensatory damages, and costs, including attorney's fees.

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

Respondent U.S. Bank did not file with the NASD Dispute Resolution, a properly executed submission agreement and did not submit to arbitration.

On or about July 7, 2006, Respondent U.S. Bank filed a Motion to Dismiss. Claimant filed an opposition to the motion on or about August 3, 2005. On or about September 1, 2005, the Panel dismissed without prejudice Respondent U.S. Bank upon a finding that Respondent U.S. Bank was not a proper party to this arbitration and is not required to submit to arbitration pursuant to the Code of Arbitration Procedure.

On September 23, 2005, Respondent Piper Jaffray & Co. moved the Panel for an Order Dismissing the Statement of Claim. On or about October 10, 2005, Claimant filed a Response to Respondent Piper Jaffray & Co.'s Motion to Dismiss. On October 28, 2005, a telephonic pre-hearing conference was held, attended by the Parties and the Panel. After due deliberation in an executive session, The Panel denied the motion to dismiss First and Second Causes of Action. The Panel dismissed the Third, Fifth and Sixth Causes of Action with prejudice. The Panel dismissed the Fourth Cause of Action for wrongful termination without prejudice.

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) Claimant's claims are denied in their entirety.
- 2) Respondent's Counterclaim is denied in its entirety.
- 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	= \$ 600.00
Respondent's Piper Jaffray & Co. Counterclaim filing fee	= \$1000.00

#### **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 & Co. is a party and the following fees are assessed:

Member Surcharge	= \$ 3,750.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,500.00</u>
<b>Total Member Fees</b>	<b>= \$10,000.00</b>

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:

(1) Pre-hearing conference session with a single arbitrator @ \$450.00 /session	= \$ 450.00
Pre-hearing conference: December 21, 2005	1 session
(4) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 4,800.00
Pre-hearing conferences: September 1, 2005	1 session
October 28, 2005	1 session
November 4, 2005	1 session
February 6, 2006	1 session
(6) Hearing sessions @ \$1,200.00/session	= \$ 7,200.00
Hearings: February 21, 2006	2 sessions
February 22, 2006	2 sessions
February 23, 2006	2 sessions

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<b>Total Forum Fees</b>	<b>= \$ 12,450.00</b>
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The Panel assessed \$12,450.00 of the forum fees to Claimant.

#### Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$12,450.00</u>
Total Fees	= \$13,050.00
<u>Less payments</u>	<u>= \$( 1,800.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 11,000.00</b>

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

Counterclaim Filing Fee	= \$ 1,000.00
<u>Member Fees</u>	<u>= \$10,000.00</u>
Total Fees	= \$11,000.00
<u>Less payments</u>	<u>= \$(12,125.00)</u>
<b>Refund Due Respondent</b>	<b>= \$ (1,125.00)</b>

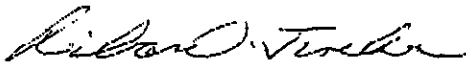
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

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Richard D. Fincher, Esq.	-	Public Arbitrator, Presiding Chair
Robert A. Huber, CPA	-	Public Arbitrator
Richard B. Bequette	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Richard D. Fincher, Esq.  
Chair, Public Arbitrator

3-6-06  
Signature Date

Robert A. Huber, CPA  
Public Arbitrator

Signature Date

Richard B. Bequette  
Non-Public Arbitrator

Signature Date

3/7/06  
Date of Service

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Chair, Public Arbitrator

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Public Arbitrator

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Signature Date

  
Richard B. Bequette  
Non-Public Arbitrator

3/1/06  
Signature Date

3/7/06  
Date of Service


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Richard D. Fincher, Esq.  
Chair, Public Arbitrator

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Signature Date

  
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Robert A. Huber, CPA  
Public Arbitrator

3/8/06  
\_\_\_\_\_  
Signature Date

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Richard B. Bequette  
Non-Public Arbitrator

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

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Date of Service