

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

William H. Lipschultz

90-01830

Name of Respondent(s)

Piper, Jaffray & Hopwood Incorporated
Richard Li

REPRESENTATION

For Claimant: William H. Lipschultz was represented by David P. Pearson, Esq. of Winthrop & Weinstine, St. Paul, Minnesota.

For Respondent: Piper, Jaffray & Hopwood Incorporated and Richard Li were represented by Jeffrey D. Hedlund, Esq. of Faegre & Benson, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: June 28, 1990

Claimant's Submission Agreement signed on: June 21, 1990

Joint Statement of Answer filed by Respondents Piper, Jaffray & Hopwood Incorporated and Richard Li on: September 24, 1990

Respondent Piper, Jaffray & Hopwood Incorporated's Submission Agreement signed on: September 14, 1990 by AnnDrea M. Benson

Respondent Richard Li's Submission Agreement signed on: September 19, 1990

HEARING INFORMATION

Pre-Hearing Conference: None Held

Hearing Dates/Sessions: August 27, 1991 for two (2) sessions
October 29, 1991 for one (1) session

Hearing Location: Minneapolis, Minnesota

CASE SUMMARY

Claimant William H. Lipschultz ("Lipschultz") alleged that Respondents Piper, Jaffray & Hopwood Incorporated ("Piper") and Richard Li ("Li") purchased put options in the market for Claimant's option account on October 21, October 22 and October 23, 1987, without the approval of or notification to Lipschultz, in order to satisfy margin calls made in Lipschultz's account on the

aforesaid dates. Lipschultz further alleged that Respondents failed to give due and appropriate notice of the margin calls made in Lipschultz's account on the above dates and failed to permit Lipschultz to deliver money or securities to cover the calls, which Claimant was financially capable of doing. Pursuant to these allegations, Claimant asserted claims based upon breach of contract; negligence; and violation of industry rules regarding margin calls.

Respondents Piper and Li denied the material allegations of the Statement of Claim, alleging that:

1. Li advised Lipschultz of the house margin calls on October 19 or 20, 1987 and that Lipschultz instructed Li to purchase put options to meet the calls and to not sell the stock held in the account;
2. Two Federal margin calls, issued on October 26, 1987, were wired to Li, who communicated the information to Lipschultz as soon as possible. The calls were met by purchasing back put options; and
3. Lipschultz never advised Li that he intended to meet margin calls by depositing money or securities.

In addition, Respondents asserted the following affirmative defenses:

1. The Statement of Claim failed to state a claim upon which relief can be granted;
2. The claims are barred, in whole or in part, by Lipschultz's contributory negligence, his failure to mitigate damages and by the doctrines of waiver, estoppel, ratification and laches;
3. To the extent that any party is responsible for Lipschultz's alleged damages, such responsibility lies with parties other than Respondents; and
4. Respondents acted at all times in accordance with the rights of Piper under the Margin Agreement signed by Lipschultz.

RELIEF REQUESTED

Claimant William H. Lipschultz requested entry of an award against Respondents Piper and Li in the sum of \$35,113.11 plus interest, attorneys' fees and costs in amounts to be proven at hearing.

Respondents Piper and Li requested that the Statement of Claim be dismissed and denied in its entirety and that Claimant reimburse them for their costs in defending this arbitration proceeding in a sum to be proven at hearing.

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 originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby dismissed and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

The National Association of Securities Dealers, Inc. shall retain the Claim filing fee of \$120.00 and the Hearing session deposit of \$400.00 previously deposited by the Claimant William H. Lipschultz. Respondent Piper Jaffray & Hopwood Incorporated is liable for and shall pay to the NASD forum fees in the sum of \$400.00. Respondent Richard Li is liable for and shall pay to the NASD forum fees in the sum of \$400.00.

Fees are payable to the National Association of Securities Dealers, Inc.

BY THE ARBITRATION PANEL

Dated:

D. Randall Blohm

D. Randall Blohm, Esq.
Public Arbitrator
Chairperson

11-11-91

James H. Colburn
Public Arbitrator

Kenneth O. Fossey
Industry Arbitrator