

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Catherine P. Smith

No. 92-03795

Name of Respondent

Piper, Jaffray & Hopwood, Incorporated

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**REPRESENTATION OF PARTIES**

For Claimant: Daniel L. Fowler, Esq. of Watson, Ess, Marshall & Enggas. Kansas City, Missouri.

For Respondent: Ronald C. Spradley, Esq. of Spradley & Riesmeyer, Kansas City, Missouri.

**CASE INFORMATION**

Statement of Claim filed: November 6, 1992.

Claimants Submission Agreement signed on: October 15, 1992.

Statement of Answer filed by Respondent, Piper, Jaffray & Hopwood, Incorporated on or about: December 14, 1992.

Respondent Piper, Jaffray & Hopwood, Incorporated's Submission Agreement signed on: December 14, 1992.

**HEARING INFORMATION**

Hearing date: April 14, 1993. Two (2) sessions.

Hearing Location: Kansas City, Missouri.

### CASE SUMMARY

Claimant, Catherine P. Smith ("Claimant") alleged unauthorized trading and negligence by Respondent, Piper, Jaffray & Hopwood, Incorporated ("PJH"). The allegations arose out of transactions relating to Ameribanc stock. Claimant stated that in connection with a merger between Mercantile Bankshares ("MB") and Ameribanc, shareholders in Ameribanc were to be given a choice of selling the Ameribanc stock to MB, or trading Ameribanc for MB stock. Claimant was a shareholder in Ameribanc. Claimant allegedly told John Beachy, a registered representative of PJH, that she wished to exchange her stock. Claimant asserted that she had not received the required form to initiate the exchange. Claimant alleged that due to that fact, a form had been out to MB stating she had made "no election" without her consent, authorization or knowledge. Claimant stated that her shares had been cashed out, precluding her from making her election to exchange her stock.

In its Answer, PJH denied each and every material allegation in the Statement of Claim. In addition, PJH set forth the following affirmative defenses:

1. Respondent acted only as a bailee of Claimant's Ameribanc stock certificate, at Claimant's request and insistence, and without remuneration, and never provided any broker or investment adviser services with respect to said stock.
2. Claimant's claim is barred by her own conduct giving rise to the legal and equitable defenses of waiver, estoppel, contributory negligence, comparative fault, assumption of risk, and mutual mistake.
3. Claimant's claim is barred by the lack of any causal connection between Claimant's failure to properly submit her election form and letter of transmittal for her Ameribanc shares, prior to the April 22, 1992 deadline and any act, omission, or other conduct by PJH.
4. Claimant's claim is barred by virtue of the fact that she received and completed an election form and Letter of Transmittal which she did receive for her Ameribanc shares, and which she did submit to Ameritrust for the merger, but did not comply with the requirements of the Ameribanc-Mercantile merger terms in that she did not submit her certificate for Ameribanc shares with the election Form and Letter of Transmittal she signed and submitted.
5. Claimant's claim is barred by her failure to mitigate damages.
6. Claimant's claim is barred by virtue of the fact that, after April 22, 1992 deadline had passed, there was nothing PJH did, failed to do, or could have done, that made any difference in whether or not Claimant would receive MB stock in exchange for her Ameribanc

shares.

### **RELIEF REQUESTED**

Under Counts I and II of her Statement of Claim, Claimant requested an Award against PJH ordering PJH to rescind this transaction and restore Claimant's stock interest, and to pay Claimant \$40,000.00, the damages she incurred, together with interest from and after the date of the Award until paid, together with Claimant's costs, the filing fee and hearing session deposit, and Claimant's reasonable attorneys' fees incurred in connection with this arbitration.

PJH requested that the Statement of Claim be dismissed and that PJH receive an Award in its favor, and a determination that all costs and fees be borne by Claimant.

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

The parties have agreed that the Award in this matter may be executed by counterpart copies or at a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the 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. Count I of Claimant's Statement of Claim is hereby denied and dismissed with prejudice.
2. On Count II of Claimant's Statement of Claim, Respondent, Piper, Jaffray & Hopwood, Incorporated is liable for, and shall pay to the Claimant, Catherine P. Smith, the sum of \$36,315.00 with interest at the legal rate of eight (8) percent commencing as of the date the Award is issued.

### **OTHER COSTS**

Each party shall pay its own costs and attorneys' fees, except as set forth more fully below.

### FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

2 hearing sessions X \$600.00 = \$1,200.00

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the nonrefundable filing fee in the amount of \$250.00, and shall refund the hearing session deposit in the amount of \$600.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$1,200.00 are assessed against Respondent.

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

### CONCURRING ARBITRATORS

Dated:

April 27, 1993

/s/Bernard D. Craig, Jr.  
Bernard D. Craig, Jr.  
Presiding Chair  
Public Arbitrator

April 28, 1993

/s/Robert E. Eisler, Jr.  
Robert E. Eisler, Jr.  
Public Arbitrator

April 27, 1993

/s/James D. Swope  
James D. Swope  
Industry Arbitrator

Date of Service by the NASD:

April 29 1993