

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Piper Jaffray Inc.

93-00238

Name of Respondent

Gregory L. Boderman

REPRESENTATION

For Claimant at the hearing: Joseph W. Anthony, Esq. of Fruth & Anthony, Minneapolis, Minnesota.

For Respondent at the hearing: Stephen B. Young, Esq. of Hillstrom Bale Anderson Young, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: January 21, 1993. Claimant's Submission Agreement signed on: January 11, 1993.

Statement of Answer and Counterclaim filed by Respondent on: May 3, 1993.

HEARING INFORMATION

Hearing Date/Sessions: September 28, 1993 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant, Piper Jaffray, Inc. ("Piper") alleged that Respondent, Gregory Boderman ("Boderman") owes money to Piper from an outstanding margin account balance. Piper further alleged that the securities which Boderman maintained in his account with Piper began to decline in value, and in response to the decline in value, Piper sent maintenance calls to Boderman. Piper alleged that when Boderman did not provide additional cash or collateral to meet his

obligations for the maintenance calls, pursuant to the terms of the margin agreement. Piper sold Boderman's securities and applied the proceeds to the margin debt.

Respondent Boderman alleged that Piper is responsible for the loss in his account and that Piper could have mitigated Boderman's loss by allowing him a reasonable length of time to sell the Lifecore stock in his account at the higher prices. In his counterclaim, Boderman alleged that 1. Boderman's losses in his account were caused by Piper's breach of contract to provide him with regular access to the analysis and comments regarding Lifecore; 2. Piper breached its duty to keep Boderman properly informed; 3. Piper knowingly caused the market for Lifecore to drop unreasonably and did not allow Boderman time to sell after the market had stabilized in mitigation of his losses.

In the response to the counterclaim, Piper alleged that Boderman knowingly undertook the risk of investing in a speculative security and that he multiplied the risk of investing in a speculative security by borrowing from Piper substantial sums against the equity in his account.

RELIEF REQUESTED

Claimant requested damages in the amount of \$26,033.45, plus interest at the contract rate, costs, disbursements, and expenses. Claimant also requested that the counterclaim be dismissed in its entirety.

Respondent requested an award of damages in the amount of \$31,922.01 which reflects the value of 5,750 shares of Lifecore Biomedical at the closing price of trading at \$14.00 per share on September 30, 1992 less the debit balance on the account of said date together with interest at the contract rate; for title to 2,285 shares of Lifecore stock; and for costs, disbursements and expenses.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Gregory Boderman did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the Code and having appeared and testified at the hearing, is bound by the determination of the panel.

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

1. Respondent Gregory Boderman shall be and hereby is liable for and shall pay to the Claimant, Piper Jaffray, Inc., damages in the amount of Twenty Seven Thousand Three Hundred Seventy Eight Dollars and Eighty Cents (\$27,378.80);
2. The Claimant's request for interest is denied;
3. Respondent Gregory Bodermans' counterclaims are denied and dismissed;
4. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically set forth below under Forum Fees.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

2 sessions X \$600 = \$1200 minus hearing session deposit of \$600 = net \$600.

The NASD shall retain the nonrefundable filing fee in the amount of \$500 and the hearing session deposit in the amount of \$600 which were both previously deposited with the NASD by the Claimant, Piper Jaffray, Inc.

Additional forum fees are assessed against Respondent, Gregory Boderman in the amount of \$720 which represents the additional hearing session fee of \$600 and the nonrefundable filing fee in the amount of \$120 which was owed at the time of filing the counterclaim.

The additional forum fees which were assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

1-10-94

s/s - James A. Lundberg Esq.
James A. Lundberg, Esq.
Presiding, Public Arbitrator

1-25-94 s/s James P. Trainor, Jr.
James P. Trainor, Jr.
Public Arbitrator

1-10-94 s/s James W. Rustad
James W. Rustad
Industry Arbitrator

Date Award Served By The NASD: 1-25-94