

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Harv L. Jeppsen

vs.

NASD #93-01030

Name of Respondents

**Piper, Jaffray & Hopwood, Inc.
Don J. Larkin
George A. Barker**

REPRESENTATION

**For Claimant: David W. Scofield, Esq., Parsons, Davies, Kinghorn & Peters of Salt Lake City,
Utah**

**For Respondents: Donald L. Dalton, Esq., Van Cott, Bagley, Cornwall & McCarthy of Salt
Lake City, Utah**

CASE INFORMATION

Statement of Claim filed: March 17, 1993

Claimant's Submission Agreement signed: March 12, 1993

Statement of Answer filed by Respondents on: May 27, 1993

Respondents' Submission Agreements signed on: May 26, 1993

HEARING INFORMATION

Prehearing Conference(s) Date(s)/(Sessions): None

Hearing Date/(Sessions): November 16, 1993 - (2)
November 17, 1993 - (2)
November 18, 1993 - (2)
November 19, 1993 - (2)
November 22, 1993 - (2)

Hearing Location: Salt Lake City

CASE SUMMARY

Claimant alleged and sought: relief under 18 U.S.C. Section 1962(c), Section 12(2) of the Securities Act of 1933, 15 U.S.C. Section 771(2), under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78j(b), and Rule 10b-5 promulgated by the Securities and Exchange Commission thereunder, 17 C.F.R. Section 240.10b-5 and under the state law of common law fraud, breach of fiduciary duty and/or confidential relationship, common law fraud, negligence, aider and abetter and conspiracy theories, state Blue Sky Laws, the Utah Securities Act, Utah Code Ann. Section 61-1-22. The claims relate to various securities unspecified in the Statement of Claim.

Claimant further alleged the following: that he was a self-employed carpet layer with a high school education throughout his 22 months of contact with Respondent George Barker (Barker); that he had no investment experience and did not own a home; that he advised Barker when they met in March of 1986 that he knew nothing about stocks; that Barker gained Claimant's trust and told Jeppsen that he would take care of him by doing what he did for his other customers; that Claimant invested \$125,000 with Barker; and months after Barker transferred Jeppsen's account from Hutton to Piper, Jaffray & Hopwood, Inc. (PJH), Claimant invested another \$100,000 with Barker at PJH.

Respondents denied all substantive allegations of the Statement of Claim and alleged: that this dispute was precipitated by the stock market "crash" of October 19, 1993; that Claimant had previously traded with his broker for eleven months before the "crash"; that Jeppsen told Barker from the outset that he was investing for trading profits and he could afford to lose upwards of \$250,000 and was willing to risk that entire amount to increase his returns; that Claimant sought Barker's recommendations and was explained a strategy which Barker employed for his other customers.

Respondents further alleged that Jeppsen did not rely exclusively on Barker's recommendations as he also made his own investment decisions; that Claimant also wanted to aggressively invest in options; that the vast majority of purchases in Claimant's account were held for 90 days or more and 12% were held for 90 days or less. Respondents further alleged that 21% were held for 30 days or less with only one day trade which is not consistent with the pattern of a churned account. Respondents also alleged that Jeppsen received confirmations and account statements for all of the ten months before the "crash"; and that the investments made were suitable for

Claimant's objective and income.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages of \$811,542;
2. Treble damages;
3. Interest from January 1, 1988 to the date of Award at the legal rate of 10% per annum, also to be trebled;
4. Attorneys' fees;
5. Punitive damages of not less than \$5 million against PJH and \$250,000 each against Larkin and Barker;
6. Further consequential damages to be proved at the arbitration 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

The panel, having found by clear and convincing evidence that Barker exercised discretion over the account of Jeppsen, without authority, that Jeppsen neither authorized nor ratified the transactions that resulted in the losses, either in advance or through confirmation and/or account statements, and that the Respondents engaged in conduct giving rise to the claim which manifests a knowing and reckless indifference toward and disregard of the rights of others, makes the following award in favor of Claimant Harv L. Jeppsen, and against Respondents as follows:

1. Against Respondents Piper, Jaffray & Hopwood, Inc., Don J. Larkin and George A. Barker, jointly and severally:
 - a. Damages of \$603,000.00, together with interest at the rate of ten per cent (10%) per annum from January 1, 1988, until paid.
 - b. Attorney's fees and costs of \$388,541.55, in accordance with Utah Securities Act, Section 61-1-22, U.C.A.
2. Against Respondent Don J. Larkin, punitive damages in the amount of \$250,000.00, in accordance with Crookston v. Fire Insurance Exchange, 817 P.2d 789 (Utah 1991) and Utah Securities Act, Sections 61-1-22, U.C.A. and 78-18-1, U.C.A.

3. Against Respondent George A. Barker, punitive damages in the amount of \$250,000.00, in accordance with Crookston v. Fire Insurance Exchange, 817 P.2d 789 (Utah 1991) and Utah Securities Act, Sections 61-1-22, U.C.A. and 78-18-1, U.C.A.
4. Claimant's request for punitive damages against Piper, Jaffray & Hopwood, Inc. is denied.
5. The parties shall each bear their respective costs.

OTHER COSTS

None

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc. shall refund the \$1,500 hearing session deposit previously deposited by the Claimant. Forum fees assessed against:

All Respondents, jointly and severally, in the amount of \$15,000 calculated as follows:
10 hearing sessions at \$1,500/hearing session, equals \$15,000.

Fees are payable to the National Association of Securities Dealers.

ARBITRATION PANEL

<u>Name</u>	<u>Public/Industry</u>
George H. Speciale	Public
Parker M. Nielson	Public
David Pingree, Jr.	Industry

Concurring Arbitrators' Signatures

David R. Pingree Jr. 13 Jan 1994

Served: 01/20/94

Date of Decision: _____