

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

Theodore Halligan

Case Number 93-04439

**Name of Respondents**

Piper Jaffray, Inc.  
Marvin Geisness

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**REPRESENTATION**

For Claimant Theodore Halligan ("claimant") appeared Kathleen M. O'Connell, Esq., with the law firm of Murphy & O'Connell, New York City, New York.

For Respondents Piper Jaffray, Inc. (hereinafter "Piper") and Marvin Geisness (hereinafter "Geisness") appeared Jill L. Rosenberg, Esq. with the law firm of Orrick Herrington & Sutcliffe, New York City, New York.

**CASE INFORMATION**

The Statement of Claim was filed on October 26, 1993.

Claimant's Submission Agreement was signed on October 11, 1993.

Respondent's Statement of Answer was filed on December 28, 1993.

Respondent Geisness' Submission Agreement was signed on December 22, 1993.

Respondent Piper Jaffray's Submission Agreement was executed on December 2, 1993 by AnnDrea M. Benson, Managing Director and Deputy General Counsel of Piper.

**HEARING INFORMATION**

Hearing Dates/ Sessions:	September 26, 1994	-	Two Sessions
	September 27, 1994	-	Two Sessions

October 26, 1994	-	Two Sessions
October 27, 1994	-	Two Sessions
October 28, 1994	-	Two Sessions
December 1, 1994	-	Two Sessions
December 2, 1994	-	Two Sessions
December 5, 1994	-	Two Sessions
December 6, 1994	-	Two Sessions
February 22, 1995	-	Two Sessions
February 23, 1995	-	Two Sessions
February 24, 1995	-	Two Sessions
March 20, 1995	-	Two Sessions
March 21, 1995	-	Two Sessions
March 22, 1995	-	Two Sessions
April 24, 1995	-	Two Sessions
April 25, 1995	-	Two Sessions
April 26, 1995	-	Two Sessions
May 17, 1995	-	Two Sessions
May 18, 1995	-	Two Sessions
May 19, 1995	-	Two Sessions
July 10, 1995	-	Two Sessions
July 11, 1995	-	Two Sessions
July 12, 1995	-	Two Sessions
October 16, 1995	-	Two Sessions
October 17, 1995	-	Two Sessions
October 18, 1995	-	One Session
October 23, 1995	-	Two Session

The hearings were held in New York City, New York.

#### **CASE SUMMARY**

Claimant alleged the he first became employed by respondent Piper in 1973. Prior to claimant's employment with respondent Piper had allegedly hired several other salesmen in an attempt to penetrate the Northeastern United States, but each of claimant's predecessors failed where claimant allegedly succeeded. For a period of 19 years, claimant was allegedly responsible for attracting and retaining the major institutional accounts ultimately acquired by respondent Piper in New York City and Connecticut. At the end of 1989, claimant was allegedly advised that another salesman, Marvin Geisness, would be assigned to work with him as part of a sales team in the New York/ Connecticut area. Despite claimant's initial resistance, claimant agreed to enter into a commission arrangement with Piper which called for claimant and Geisness to share commissions from all new and existing Piper accounts in the New York/ Connecticut region.

Claimant alleged that on information and belief the real reason for the sales team arrangement was to provide Geisness with access to claimant's client base in New York and Connecticut. Moreover, respondent Geisness' interest and activity allegedly centered upon attempting to

substitute himself as the contact person in claimant's major accounts, in furtherance of respondent's illegal conspiracy to oust claimant. Claimant also alleged that respondent Geisness began to denigrate claimant's role in the New York office, by telling principals at certain of claimant's accounts that claimant was getting old and that he had been sent in by respondent Piper to look over claimant's shoulder.

Claimant asserted that in or about April of 1990, he underwent surgery as a result of having cancer. During this period, respondent Geisness allegedly told several of claimant's customers that claimant was seriously ill and not expected to return to work. More than a year later, in October of 1991, claimant had additional surgery and was absent for approximately two weeks. Claimant alleged that he made a rapid recovery and returned to work, resuming his full schedule. Thereafter, in August of 1992, the Chairman and CEO of Piper allegedly requested claimant's resignation during a luncheon meeting. Claimant refused. In or about November of 1992, claimant was allegedly directed to write to Piper customers and tell them he was resigning, but claimant again refused. Claimant's attorney advised in writing of Claimant's intent to commence an ADEA action if Piper forced claimant out. Piper's counsel responded to this letter stating that Piper would only continue to employ claimant for a limited period of months and would only continue to employ claimant for a limited period of months and then only upon condition that he agree to accept a considerably reduced salary. Claimant allegedly rejected this demotion and was ultimately fired on December 23, 1992. Following claimant's discharge, Piper allegedly filed a false U-5 which alleged that claimant voluntarily resigned.

Claimant alleged that as a result of the wilful and deliberate, illegal and tortious actions of the respondents including, but not limited to, age discrimination, wrongful discharge, intentional infliction of emotional harm and mental distress, fraud and deceit, he has suffered financial damages and has been damaged in his business and professional career.

Respondents denied all allegations of wrongdoing asserted against each of them in the statement of claim. Respondent Piper denied that it unlawfully discharged claimant or discriminated against him on account of his age. Claimant was allegedly presented with three employment options from which he was free to choose: (a) a change in his sales partnership percentage, (b) dissolution of the sales partnership with respondent Geisness and a reduced number of accounts, or (c) retirement. Respondents maintained that these options were posed to claimant, not because of his age, but rather because Piper senior management was dissatisfied with claimant's performance under the existing employment arrangement. Claimant allegedly elected to voluntarily resign.

Respondent Piper denied that it wrongfully discharged claimant, intentionally subjected him to emotional harm and distress or committed fraud and deceit with respect to his employment. Respondent Piper also maintained that it took steps to correct deficiencies in claimant's performance and improve sales in the New York market in which claimant worked.

Respondent Geisness denied that he tortiously interfered with claimant's commission arrangement with Piper or committed fraud and deceit by forming a sales partnership or "team" with claimant in which they pooled sales revenues and shares commissions. Respondent Geisness was one of many institutional sales people who was assigned to work with claimant over the course of his

employment in an effort to bolster institutional sales in the accounts assigned to claimant by Piper. Claimant allegedly frustrated Geisness' attempts to increase sales and team revenues and develop business with new and existing Piper accounts in the New York market.

Additionally, respondent Geisness denied that he defamed or intentionally inflicted emotional distress upon claimant by making false statements about claimant's age and/or health.

**RELIEF REQUESTED**

Claimant requested an award against Piper Jaffray, Inc. as follows:

1. For illegal and wilful discharge of claimant from his position as institutional stock salesman, in violation of the Age Discrimination in Employment Act, the sum of \$500,000.00 in actual damages representing lost income consisting of commissions and other employee benefits for the fiscal year beginning October 1, 1992 and ending September 30, 1993, together with liquidated damages in an equal amount of \$500,000.00 as provided under the ADEA where as here, the act of discrimination was wilful, or a total of \$1,000,000.00 in back pay and other compensation for the fiscal year October 1, 1992 through September 30, 1993.
2. In addition to the foregoing, for illegal discharge of claimant in violation of the ADEA, the sum of \$2,000,000.00 representing front pay or commissions and employee benefits which claimant would have earned but for respondent's illegal discharge, over the four fiscal years beginning on October 1, 1993 and ending on September 30, 1997.
3. For wrongful discharge of Defendant, the sum of \$2,500,000.00 in damages representing lost compensation and future earnings.
4. For intentional infliction of emotional harm, distress and mental suffering, damages in the sum of \$1,000,000.00.
5. For fraud and deceit in inducing claimant to enter into an agreement under which he agreed to share his commission earnings with Marvin Geisness, based upon misrepresentations made by Piper Jaffray, Inc., damages in the sum of \$2,500,000.00.
6. Punitive damages in respect to claimant's claims for fraud and emotional distress in the sum of \$2,500,000.00, together with
7. An amount equal to the full amount of attorneys' fees, expenses and costs expended by claimant in pursuit of these claims, as provided by law; 29 U.S.C. Sec. 626 (b), incorporating by reference Sec. 16(b) Fair Labor Standards Act.

Claimant requested an award against Marvin Geisness as follows:

1. Damages in the sum of \$2,500,000.00 for tortious interference with claimant's contract

of employment.

2. Damages in the sum of \$2,500,000.00 for defamatory remarks which injured client in his business or profession.
3. Damages in the sum of \$1,000,000.00 for intentional infliction of emotional harm, distress and mental suffering.
4. Damages in the sum of \$2,500,000.00 for conspiring with Piper Jaffray to defraud and deceive the claimant.
5. Punitive damages in the sum of \$2,500,000.00 in respect of claimant's claims for emotional distress, fraud and deceit and tortious interference with contract.
6. An award equal to the amount of attorneys' fees, costs and disbursements expended in connection with the pursuit of this claim.

Respondents requested an award dismissing the statement of claim and directing claimant to pay respondents their reasonable attorneys' fees, costs and disbursements.

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

At the hearing on October 16, 1995, the panel was advised that Mr. Theodore Halligan died on October 9, 1995 and that his Executrix, Mrs. Irene Halligan, would continue pursuing all of his claims in this arbitration.

#### **AWARD**

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

1. All claims against respondents Piper Jaffray, Inc. and Marvin Geisness be and hereby are denied.
2. All claims against respondents Piper Jaffray, Inc. and Marvin Geisness for punitive damages be and hereby are denied.
3. All claims against respondents Piper Jaffray, Inc. and Marvin Geisness for attorneys' fees be and hereby are denied.
4. Each party shall bear their respective costs, except that respondent Piper Jaffray shall reimburse to claimant the sum of \$2,000.00 representing forum fees previously deposited by the claimant with the NASD, Inc.

**FORUM FEES**

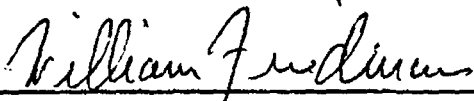
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

53 sessions x \$1,500.00 = \$79,500.00 - 1,500.00 hearing sessions deposit = \$78,000.00

Respondent Piper Jaffray, Inc. be and hereby is liable and shall pay to the NASD, Inc. the sum of \$78,000.00 representing all outstanding forum fees assessed by the arbitrators in this matter.

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

**Concurring Arbitrators' Signatures:**



William Friedman  
Public Arbitrator

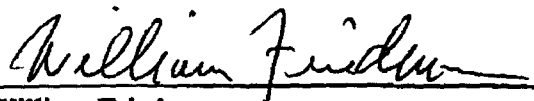
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Ann C. Northern  
Public Arbitrator

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Christopher E. O'Brien  
Industry Arbitrator

I, William Friedman, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.



William Friedman

Date of Decision: March 19, 1996

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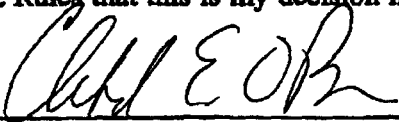
**Concurring Arbitrators' Signatures:**

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William Friedman  
Public Arbitrator

\_\_\_\_\_  
Ann C. Northern  
Public Arbitrator

  
\_\_\_\_\_  
Christopher E. O'Brien  
Industry Arbitrator

I, Christopher E. O'Brien, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.

  
\_\_\_\_\_  
Christopher E. O'Brien

Date of Decision: March 19, 1996

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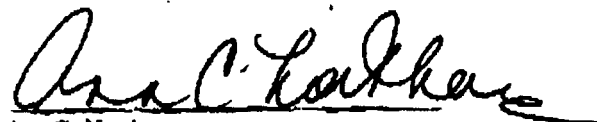
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### Concurring Arbitrators' Signatures:

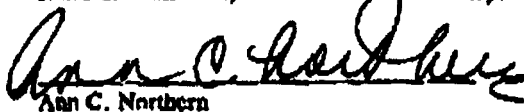
William Friedman  
Public Arbitrator



Ann C. Northern  
Public Arbitrator

Christopher E. O'Brien  
Industry Arbitrator

I, Ann C. Northern, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules that this is my decision in the above-captioned matter.



Ann C. Northern

NASD Date of Decision: March 19, 1996