

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Dorothy Hollensteiner  
James Hollensteiner - Power of Attorney

94-00892

Name of Respondents

Piper Jaffray Inc.  
William J. Burger

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 9, 1994, Claimant Dorothy Hollensteiner, through her representative, James Hollensteiner, who held a power of attorney over her accounts, alleged that Respondent Piper Jaffray Inc. ("PJI"), through its representative, Respondent William Burger ("Burger"), engaged in unsuitable and unauthorized stock purchases in IES Industries Inc., Northern States Power Co., Pacific Gas and Electric Co. and Western Resources Inc. with Mrs. Hollensteiner, at a time when she was incapacitated to make such decisions. James Hollensteiner further alleged that on April 13, 1993, Burger had a telephone conversation with Mrs. Hollensteiner, while her other son, Walter, was a party on the line, during which Burger sold her approximately \$25,000.00 in stocks. James Hollensteiner contended that at this time, Mrs. Hollensteiner was almost 91 years of age, legally blind and hard of hearing, and suffered from advanced dementia. James Hollensteiner further contended that he first learned of the transaction when the notice of payment due arrived, and that when he queried Mrs. Hollensteiner about the transaction, she had no recollection as to the substance of the transaction. James Hollensteiner alleged that Mrs. Hollensteiner did not have the available funds to cover the transaction, so he borrowed the money, paid Piper Jaffray Inc. to avoid problems for Burger because he was a friend of Walter Hollensteiner, but instructed Burger to reverse the transaction. James Hollensteiner further alleged that Mrs. Hollensteiner had not done business with Burger in over a year and never for such a high amount, and that this should have alerted Burger to proceed with caution. James Hollensteiner contended that his brother, Walter, had limited knowledge of his mother's financial situation. James Hollensteiner further contended that when he told Burger that Mrs. Hollensteiner was unable to comprehend the type of investment purchase he transacted with her, Burger agreed. As a result of the above, James Hollensteiner alleged that the Claimant has suffered a loss for which the Respondents should be held liable.

Respondents Piper Jaffray Inc. and William Burger, through their representative and in-house counsel, Mark S. Reed, Esq., maintained that the investments purchased by Mrs. Hollensteiner were appropriate in light of her investment objectives, security holdings and financial situation, as confirmed by her son, Walter, an individual with securities industry experience and the third party in the telephone conversation

at the time of the transaction. Respondents further maintained that Walter was unaware of his mother's declining health, that Mrs. Hollensteiner was provided with various research information concerning each investment, and that the transactions were discussed with her and her son Walter before they were entered. As a result of the above, Respondents maintained that they should not be held liable.

#### **RELIEF REQUESTED**

Claimant Dorothy Hollensteiner requested \$1,466.23 in actual damages, plus \$7,500.00 in punitive damages and costs.

Respondents Piper Jaffray Inc. and William Burger requested that the claims of the Claimant Dorothy Hollensteiner be dismissed.

#### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Thomas P. Ward, Esq. was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Dorothy Hollensteiner on July 28, 1994, and by the Respondent William Burger on May 25, 1994, and by the Respondent Piper Jaffray Inc. on September 13, 1994 .

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Prior to the determination on the merits, Richard Estenson was removed as a Respondent in this matter.
2. Respondents William Burger and Piper Jaffray Inc. are jointly and severally liable and shall pay to the Claimant Dorothy Hollensteiner \$1,466.23 in actual damages.
3. Respondents William Burger and Piper Jaffray Inc. are jointly and severally liable and shall pay to the Claimant Dorothy Hollensteiner interest at the rate of 10% per annum from April 13, 1993 to the date of payment of this Award pursuant to Illinois Securities Law, Section 13.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Dorothy Hollensteiner shall be retained by the NASD, Inc. Respondents William Burger and Piper Jaffray Inc. are jointly and severally liable and shall pay to the Claimant Dorothy Hollensteiner \$150.00 as reimbursement for the filing fees.

**AFFIRMATION**

STATE OF *ILLINOIS*

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ss:

COUNTY OF *COOK*

I, *Thomas P. Ward*, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

*Thomas P. Ward*

Signature of Arbitrator

DATE OF DECISION: December 15, 1995