

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

94-02226

Names of Respondents

REPRESENTATION

Respondents, Piper Jaffray, Inc. and Roman Gadaskin were represented by Rebecca E. Bender, Esq. of Rebecca E. Bender & Associates, Minneapolis, Minnesota.

CASE INFORMATION

Claimant, Alexander Patsenker's Submission Agreement was signed on April 12, 1994.

A Joint Statement of Answer was filed with the NASD by Respondents, Piper Jaffray, Inc. and Roman Gadaskin on October 3, 1994.

Respondent, Piper Jaffray, Inc.'s Submission Agreement was signed on september 27, 1994 by Mark S. Reed and Respondent, Roman Gadaskin's Submission Agreement was signed on September 29, 1994.

HEARING INFORMATION

A pre-hearing conference was held on June 9, 1995 for one (1) hearing session.

The hearing took place on: July 24, 1995 for two (2) hearing sessions;
July 25, 1995 for two (2) hearing sessions;
and, July 26, 1995 for two (2) hearing sessions.

The hearing location was Minneapolis, Minnesota.

CASE SUMMARY

Claimant, Alexander Patsenker ("Patsenker") alleged that Respondents, Piper Jaffray, Inc. ("Piper Jaffray") and Roman Gadaskin ("Gadaskin") violated the rule of the National Association of Securities Dealers, Inc. and the New York Stock Exchange, sold unsuitable securities, breached fiduciary duties owed to Patsenker, misrepresented securities sold to Patsenker and that Piper Jaffray failed to properly supervise Gadaskin. Patsenker alleged that he was a Russian citizen who came to the United States on a business visa to purchase an interest in an American business. Patsenker opened a securities account at Piper Jaffray by depositing \$496,000 which represented his entire liquid net worth and the bulk of his total net worth of \$800,000. Patsenker alleged that he had no prior investment experience and no knowledge of securities prior to opening the account at Piper Jaffray. Patsenker alleged that the monies on deposit at Piper Jaffray were placed in a money market fund to be available for use in acquiring a business interest. Patsenker alleged that this fact was conveyed to Gadaskin.

Patsenker alleged that Gadaskin began trading the account by purchasing securities on an unauthorized basis. This trading continued at a fast pace and in approximately ten (10) months the account generated \$35,000 in commissions by placing more than 145 stock and options trades and caused a loss of in excess of \$170,000 of the original funds deposited. This activity was alleged to be unsuitable in light of Patsenker's stated investment objectives.

Respondents, Piper Jaffray and Gadaskin alleged that Patsenker had no problem understanding English, was a bright and sophisticated man and was a wealthy businessman with a net worth of over 2 million dollars. Although the initial purchases were made on Gadaskin's recommendation, Piper Jaffray and Gadaskin alleged they were in line with Patsenker's stated investment objectives of growth and income. Additionally, Piper Jaffray and Gadaskin alleged that no purchases were made without the express authorization of Patsenker and Patsenker fully understood the nature of the investments made in his account. Piper Jaffray and Gadaskin alleged that Patsenker received confirmations and monthly statements and never communicated that he did not understand the investment strategy which was being pursued. Piper Jaffray and Gadaskin asserted that the only reason Patsenker was dissatisfied with the trading of his account was that his trading activity was restricted and Piper Jaffray and Gadaskin would not allow Patsenker to continue with the risky trading strategy he wanted to pursue.

RELIEF REQUESTED

Patsenker requested actual damages in excess of \$170,000.00, punitive damages in an amount to be determined by the arbitrators, costs, expenses, pre-judgment interest and for such other relief as the arbitration panel deemed appropriate.

Piper Jaffray and Gadaskin requested dismissal of the claim in its entirety and an award of costs and attorney's fees from Patsenker.

OTHER ISSUES CONSIDERED & DECIDED

A Third party, Morris Liberman, represented by Paul DesHotels, Esq. requested attorney's fees in the amount of \$3,440.00 as sanctions from Respondents as a consequence of having to answer a request for documents and move to quash a subpoena issued by Respondents' counsel. Mr. Liberman requested the sanctions on the basis that the subpoena was overbroad, sought documents and information irrelevant to the claims and defenses and was intended to harass and intimidate Mr. Liberman. The panel received a brief on this issue from Mr. DesHotels and this issue is addressed below in the award section of this document.

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, the evidence presented at the hearing and post hearing submissions of the parties and the non-party regarding the attorney's fee issue, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Piper Jaffray is liable for and shall pay to Patsenker, the sum of Forty-five thousand dollars and no cents (\$45,000.00) as compensatory damages;
2. All other claims for relief asserted against Piper Jaffray by Patsenker are denied and dismissed in their entirety;
3. Patsenker's entire claim for damages from Gadaskin is denied and dismissed in its entirety;
4. Third-party intervenor, Morris Liberman's request for attorney's fees to his attorney, Paul DesHotels, Esq. is denied and dismissed in its entirety; and,
5. Other than forum fees which are addressed below, the parties shall each bear their own costs and expenses including any attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit made with the NASD by Patsenker. Piper Jaffray shall directly reimburse Patsenker for the \$950.00 he paid to the NASD. Piper Jaffray is assessed and shall pay forum fees to the NASD in the amount of \$4,150.00. This sum is calculated at the rate of \$750.00 per hearing session for six (6) hearing sessions and \$300.00 for the single session pre-hearing conference.

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

Concurring Arbitrators' Signatures
Name

/s/ John C. DeMoss
John C. DeMoss, Esq.
Presiding Chairperson
Public Arbitrator

September 29, 1995
Dated

/s/ Frederick P. Kessler
Frederick P. Kessler, Esq.
Panelist
Public Arbitrator

September 29, 1995
Dated

/s/ James Nyquist
James Nyquist
Panelist
Industry Arbitrator

October 1, 1995
Dated

Date Award Served on the Parties: October 4, 1995