

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Roger W. Arvold and Maxine E. Arvold,

Claimants,

v.

No. 95-00090

Piper Jaffray, Inc.,

Respondent.

REPRESENTATION OF PARTIES

Claimants Roger W. Arvold and Maxine E. Arvold were represented by Kevin D. Hoffman, Esq. of Jacobson Harwood Brill & Bennet, P.A. located in Minneapolis, MN.

Respondent Piper Jaffray, Inc. was represented by Lawrence J. Field, Esq. of Leonard, Street & Deinard located in Minneapolis, MN.

CASE INFORMATION

Claimants Roger W. Arvold and Maxine E. Arvold's joint Statement of Claim was filed on or about January 6, 1995. Claimants Roger W. Arvold and Maxine E. Arvold's joint Submission Agreement was signed on December 27, 1994.

Respondent Piper Jaffray, Inc.'s Statement of Answer was filed on or about February 15, 1995. Respondent Piper Jaffray, Inc.'s Submission Agreement was signed on January 31, 1995 by Mark S. Reed, Vice President and Assistant General Counsel of Piper Jaffray, Inc.

HEARING INFORMATION

A pre-hearing conference was held on: July 30, 1996 for one (1) session.

The hearing was held on: August 27, 1996 for two (2) sessions.

The hearing was held in Minneapolis, MN.

CASE SUMMARY -

Claimants Roger W. Arvold and Maxine E. Arvold ("Claimants") alleged that respondent Piper Jaffray, Inc. ("Respondent") made misrepresentations and omitted material facts by which Respondent induced them to invest in certain funds. According to Claimants, Respondent was informed that they were not experienced investors and that their number one investment objective was to preserve capital and avoid risk, and that monthly income was a second objective. Claimants asserted that Respondent induced them into making the following investments:

<u>Date</u>	<u>Investment</u>	<u>Amount</u>
June, 1992	Institutional Government Income Fund	\$25,000
August, 1992	American Strategic Income Portfolio II	19,500
August, 1992	Institutional Government Income Fund	25,000
August, 1992	Government Income Fund	50,000
August, 1992	utility stocks	25,000
February, 1993	American Strategic Income Portfolio III Fund	24,000

Claimants alleged that Respondent's misrepresented or omitted material information included: that its funds were rated AAA, which was false; that its funds met the investment objective of safety of principal, which was false; that its Institutional Government Income Fund was of low volatility, which was false; that the Government Income Fund held all government bonds/agencies, which was false; and that it failed to disclose that it had invested many of each fund's assets in derivatives and that derivatives are high risk and speculative. Claimants asserted that due to Respondent's improper, illegal, and unsuitable trading practices, they have suffered a loss of over \$30,000.

Claimants made the following legal claims: (1) violation of state securities fraud act, Minn. Stat. § 80A.01 and Minn. Stat. § 80A.03; (2) unsuitability pursuant to Minn. Stat. § 80A.01 and Minn. R. 2875.0910; (3) common law fraud; (4) negligence; and (5) respondeat superior, violation of the duty to supervise brokers and violation of the duty to detect and prevent violations of the law pursuant to Minn. R. 2875.0910, Subp. 3, NASD Rules of Fair Practice, Art. III § 27, N.Y.S.E. Rule 405, and A.S.E. Rule 411.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that this dispute is not now arbitrable, pursuant to Section 12(d) of the NASD Code of Arbitration Procedure, because of a pending federal class action suit. According to Respondents, Claimants losses, if any, are directly attributable to market forces and not to any conduct of Respondents. Respondents further stated that Claimants were fully informed of the risks and types of assets involved with their investments. Respondent contended that it has acted properly at all times and that Claimants are not entitled to recover any damages from it.

RELIEF REQUESTED

Claimants Roger W. Arvold and Maxine E. Arvold requested: an award in the amount of more than \$30,000 for money lost in the investments with respondent Piper Jaffray, Inc.; an award of reimbursement of lost income; and an award for costs and attorney's fees incurred in this arbitration.

Respondent Piper Jaffray, Inc. requested that this case be prevented from going to arbitration, and that, if it did go to arbitration, that the claims asserted against it be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

At hearing, Michael A. G. Korengold of Leonard, Street & Deinard located in Minneapolis, MN, entered as additional counsel, together with Lawrence J. Field, Esq., as representative for respondent Piper Jaffray, Inc.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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) That respondent Piper Jaffray, Inc. is liable for and shall pay claimants Roger W. Arvold and Maxine E. Arvold \$11,920.50 in compensatory damages, plus interest at the statutory rate beginning to accrue on May 1, 1996; and

(2) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing sessions x \$300 = \$300 in forum fees. There was two (2) hearing sessions x \$400 = \$800 in forum fees. Total forum fees are \$300 + \$800 = \$1,100 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$100 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimants Roger W. Arvold and Maxine E. Arvold.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$200 previously paid by respondent Piper Jaffray, Inc.

Claimants Roger W. Arvold and Maxine E. Arvold are liable for and shall pay NASD Regulation, Inc. Office of Dispute Resolution the balance of the postponement fees in the amount of \$180 (= \$200 postponement fees - \$20 payment).

Claimants Roger W. Arvold and Maxine E. Arvold are liable for and shall pay NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$150 (= \$550 half of total forum fees - \$400 hearing session deposit).

Respondent Piper Jaffray, Inc. is liable for and shall pay NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$350 (= \$550 half of total forum fees - \$200 overpayment on previous fees).

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ Earl B. Gustafson
Earl B. Gustafson
Public Arbitrator, Presiding Chair

Oct. 10, 1996

/s/ Douglas G. Plank
Douglas G. Plank
Public Arbitrator

10/18/96

/s/ Harold E. Gierke
Harold E. Gierke
Industry Arbitrator

10/11/96