

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Warren W. Schueneman,

Claimant,

and

No. 96-01283

Piper Jaffray, Inc.,
Peter C. Klatt, and
Steven J. Berghs,

Respondent.

REPRESENTATION OF PARTIES

Claimant Warren W. Schueneman appeared pro se.

Respondents Piper Jaffray, Inc., Peter C. Klatt and Steven J. Berghs were represented in pleadings by Mark S. Reed, Esquire of Piper Jaffray, Inc., located in Minneapolis, Minnesota, and at the hearing by Brian Helberg, Esquire of Piper Jaffray, Inc., located in Minneapolis, Minnesota.

CASE INFORMATION

Claimant Warren W. Schueneman's Statement of Claim was filed on or about March 22, 1996. Claimant Warren W. Schueneman's Reply to the Statement of Answer was filed on or about June 14, 1996. Claimant Warren W. Schueneman's Submission Agreement was signed on March 18, 1996.

Respondents Piper Jaffray, Inc., Peter C. Klatt and Steven J. Berghs' joint Statement of Answer was filed on or about May 29, 1996. Respondent Peter C. Klatt's Submission Agreement was signed on May 23, 1996. Respondent Steven J. Berghs' Submission Agreement was signed on May 23, 1996. Respondent Piper Jaffray, Inc.'s Submission Agreement was signed on May 23, 1996 by Mark S. Reed its Vice President and General Counsel.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on November 22, 1996 for two (2) sessions.

The hearing was held in Minneapolis, Minnesota.

CASE SUMMARY

Claimant Warren W. Schueneman ("Claimant") alleged that respondents Piper Jaffray, Inc., Peter C. Klatt and Steven J. Berghs ("Respondents"), failed to follow a sell order. According to Claimant, he bought 500 shares of Apertus Tech stock at \$10.00 per share and placed a sell order on them at \$9.00 per share, on December 5, 1995, in the event that the stock dropped in value. However, Claimant asserted, Respondents failed to execute this sell order when the stock fell to \$9.00 per share. Claimant also asserted that when he called Respondents for an explanation, respondent Peter C. Klatt stated that he would take full responsibility and believed that the stock had no reason to fall and would go back up. Claimant stated that he also sent several letters to complain about Respondents actions. Claimant contended that Respondents owe him the sale price of the 500 shares of Apertus Tech stock at \$9.00 per share, less commissions.

Respondents denied the allegations set forth in the Statement of Claim. Respondents stated that Claimant decided to continue holding the shares of Apertus stock as they declined below \$9.00 per share. Additionally, Respondents stated that Claimant has had ample opportunity to sell these shares, but has decided to hold them. Respondents made the following affirmative defenses: (1) the Statement of Claim fails to state a claim upon which relief can be granted; (2) Claimant is barred from relief by the equitable doctrines of waiver, estoppel and laches; (3) Claimant is barred from relief because he directed, authorized and consented to holding the Apertus shares as they declined in value; (4) Claimant is barred from relief because his losses resulted from factors outside their control or intervening causes.

RELIEF REQUESTED

Claimant Warren W. Schueneman requested: an award in the amount of \$4,500, less commission; an award of the cash in his money market fund in an amount in excess of \$366; and an award of costs and expenses of the arbitration of this matter.

Respondents Piper Jaffray, Inc., Peter C. Klatt and Steven J. Berghs requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees.

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 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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That other than forum fees, which are addressed below, all 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 \$100 per hearing session and \$100 for each pre-hearing conference, if any. There were no pre-hearing conferences and there was one (1) hearing sessions x \$100 = \$100 in forum fees. Pursuant to §10332(b) of the NASD Code of Arbitration Procedure (the "Code") 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 Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$50 and shall retain as forum fees the hearing session deposit in the amount of \$100 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimant Warren W. Schueneman.

Respondents Peter C. Klatt and Steven J. Berghs are jointly and severally liable and shall reimburse claimant Warren W. Schueneman one-half of his hearing session deposit in the amount of \$50 (= ½\$100 total forum fees).

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

Dated:

/s/ Katherine M. Merrill
Katherine M. Merrill, Esquire
Public Arbitrator, Presiding Chair

1/13/97