

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Elmer Cipala

96-01420

Name of Respondent

Piper Jaffray Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 1, 1996 Claimant Elmer Cipala ("Claimant"), who appeared Pro Se, alleged that Respondent Piper Jaffray Inc. ("Respondent") made unsuitable investment decisions for the Claimant. Claimant further alleged that Respondent's agent Mr. Noelting insisted that the Claimant should purchase the Americas Income Trust Inc. ("XUS") stating that it was very safe and would pay about 8% interest per year without a loss of principal. Claimant asserted that the Respondent was aware that he was 68 years old, retired, dependent on interest income and that his primary goal was preservation of principal. Claimant contended that due to the trust he placed in Mr. Noelting, he purchased 300 shares of XUS at \$15.00 per share on September 21, 1993. Claimant further contended that by June 30, 1994 the price had dropped to \$11.00 and that Mr. Noelting reassured him it was a temporary loss in stock value. Claimant alleged that within a year his investment lost over \$2,000.00 of value falling to \$8.12 on November 30, 1994. Claimant further alleged that on January 24, 1995, Mr. Noelting called him and advised him to sell at \$6 5/8 per share because the interest payout was to be terminated. Claimant asserted that he had made it clear to Noelting that he did not want to lose principal, and as a result, he should not have been sold a stock which had a net loss of \$2,241.51 in a little over a year. Claimant further asserted that due to the wrongdoing of the Respondent, he suffered damages for which the Respondent should be held liable.

Respondent Piper Jaffray Inc., through its representative, Michael A.G. Korengold, Esq., of Leonard, Street and Deinard, maintained that the Claimant had full knowledge of the risks vis-a-vis the prospectus. Respondent also maintained that the prospectus detailed risk areas such as

a change in interest rates, unstable foreign currencies/governments, inflation, governmental deficits and economic growth. Respondent further maintained that the prospectus offered a three page summary section accompanied by an eight page detailed overview of all risk factors. Respondent contended that the XUS prospectus stated that it was designed for aggressive investors because the Fund's primary investment objective was to provide a high level of current income, and its secondary objective was to seek capital appreciation. Respondent contended that the fund's objectives do not support Claimant's statement that he placed a high premium on safety of principal. Respondent also contended that the Fund's prospectus repeatedly cautioned investors that there was no assurance that the objectives would be achieved. Respondent further contended that the prospectus also disclosed that the Fund may invest up to 10% of its assets in "junk bonds" and warned the investors of the volatility of those securities. Respondent maintained that according to the Fund's prospectus, the Claimant's only source of information about XUS was to be the prospectus not representations of a broker. Respondent also maintained that Claimant was put on notice that the fund carried a risk to the principal when the price fell under \$13.00 per share. Respondent further maintained that it committed no wrongdoing and requested that the claims against it be dismissed.

#### **RELIEF REQUESTED**

Claimant Elmer Cipala requested \$2,241.51 in actual and compensatory damages.

Respondent Piper Jaffray Inc. requested that the claims of the Claimant be dismissed.

#### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John C. DeMoss, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Elmer Cipala on April 23, 1996 and by the Respondent Piper Jaffray Inc., on May 10, 1996.

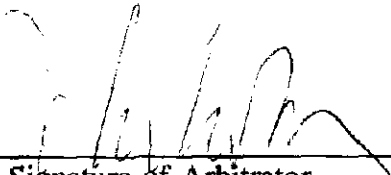
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Piper Jaffray, Inc. is liable and shall pay to the Claimant Elmer Cipala \$1,772.46 in actual damages.
2. The parties shall bear their respective costs.

3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent Piper Jaffray, Inc. is liable and shall pay to the Claimant Elmer Cipala \$50.00 as reimbursement of the filing fee.
4. All other relief requests are denied.

**AFFIRMATION**

I, JOHN C. DeMOSS, 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.

  
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Signature of Arbitrator

DATE OF DECISION: September 13, 1996