

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

William C. Schwenck,

Claimant,

and

No. 96-02754

Piper Jaffray, Inc.,

Respondent.

REPRESENTATION OF PARTIES

Claimant William C. Schwenck was represented by Gail E. Boliver, Esquire of Boliver Law Firm, located in Omaha, Nebraska.

Respondent Piper Jaffray, Inc. was represented by Michael A. G. Korengold, Esquire of Leonard, Street & Deinard, located in Minneapolis, Minnesota.

CASE INFORMATION

Claimant William C. Schwenck's Statement of Claim was filed on or about June 27, 1996. Claimant William C. Schwenck's Submission Agreement was signed on June 21, 1996.

Respondent Piper Jaffray, Inc.'s Statement of Answer was filed on or about August 26, 1996. Respondent Piper Jaffray, Inc.'s Submission Agreement was signed on June 23, 1996 by Ann Drea M. Benson, General Counsel of Piper Jaffray, Inc.

HEARING INFORMATION

A pre-hearing conference was held on February 20, 1997 for one (1) session.

The hearing was held on: March 6, 1997 for two (2) sessions; and March 7, 1997 for two (2) sessions.

The hearing was held in Omaha, Nebraska.

CASE SUMMARY

Claimant William C. Schwenck ("Claimant") brought this action to recover damages sustained in his account with Respondent Piper Jaffray, Inc. ("Respondent" or "Piper Jaffray").

According to Claimant, during 1990, he was offered early retirement and was given the choice of accepting a pension or taking a lump sum distribution. Claimant, who identified himself as an inexperienced and unsophisticated investor, stated that he met with an investment executive at Piper Jaffray to whom he indicated that his investment objectives were preservation of capital and income, in that order of preference. Claimant further stated that according to the investment executive's representations, a Piper Jaffray account would at least equal the income Claimant would receive from the pension, in the amount of \$2,265.00 per month, and that a surplus would probably build up in the Piper Jaffray account. Claimant also reported that, contrary to the investment executive's representation that the amount invested had to continue for five years or until Claimant reached the age 59½, whichever came first, the rule was five years or age 59½, whichever came last; Claimant was born May 12, 1938.

Claimant asserted that the investment executive made three separate proposals, which were represented as being as safe as the U.S. Government, and as having virtually no risk. Claimant stated that, based on these representations, he elected to take the lump sum distribution and to invest with Piper Jaffray.

Claimant reported that in the early years the income was at the agreed level and that, on occasion, the investment executive would make purchase recommendations with the excess cash in the portfolio. According to Claimant, each time he was presented with a recommendation, he followed the advice of the investment executive.

Claimant stated that in early 1994 his account started to fall in value. Claimant further stated that the investment executive kept telling him that interest rates were falling, which was not good for bond funds, and recommended being patient until the interest rates started to rise again.

According to Claimant, he had approximately \$286,433.00 available from his pension rollover funds in April of 1990. Claimant reported that the original portfolio was structured as follows:

1. American Adjustable Rate Term Trust 1995 (Piper Jaffray Fund)
2. American Government Income Portfolio (Piper Jaffray Fund)
3. American Opportunity Income Fund (Piper Jaffray Fund)
4. U.S. Treasury Strips - 1997
5. U.S. Treasury Strips - 1998
6. U.S. Treasury Strips - 1999

By 1994, according to Claimant, his portfolio consisted of the following Piper Jaffray Funds:

1. American Opportunity Income Fund
2. American Government Income Portfolio
3. American Adjustable Rate Term Trust 1999

Claimant asserted that the above products were leveraged, derivative laden, and misrepresented as U.S. Government securities funds.

Claimant asserted the following claims: (1) violation of the Securities Exchange Act of 1934; (2) violations of the NASD Rules of supervision and suitability; (3) violations of the Securities Act of Nebraska 8-1101; and (4) common law violations of misrepresentation, fraudulent concealment, and breach of fiduciary duty.

Respondent denied the allegations set forth in the Statement of Claim. Respondent contended that Claimant's investments in the funds that he held at Piper Jaffray declined in value due to the unprecedented collapse of the bond and debt securities markets.

Respondent argued that the prospectuses pursuant to which Claimant purchased shares of these funds did not state that they were "extremely safe" or that they "would only go down if the U.S. government went down." Rather, according to Respondent, the prospectuses repeatedly and specifically warned him of the significant risks associated with these investments, including the very risks of which Claimant now complains. Respondent further stated that these prospectuses cautioned investors, in no uncertain terms, that an investment in these funds could lose money -- particularly if interest rates were to rise precipitously, as they subsequently did. Respondent asserted that Claimant's losses, if any, resulted from market declines, not from any purported misrepresentations by Piper Jaffray.

RELIEF REQUESTED

Claimant William C. Schwenck requested an award for: compensatory damages in excess of \$100,000; damages for breach of fiduciary duty and failure to supervise; and forum fees, costs, attorney fees, and punitive damages.

Respondent Piper Jaffray, Inc. requested that Claimant William C. Schwenck not be entitled to recover damages from Piper Jaffray, Inc.

OTHER ISSUES CONSIDERED AND 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 the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing as well as the post-hearing submissions, 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 Claimant William C. Schwenck compensatory damages in the amount of \$50,000.
2. That Respondent Piper Jaffray, Inc. is liable for and shall pay Claimant William C. Schwenck attorney's fees in the amount of \$16,667. In deciding to award attorney's fees, the undersigned arbitrators considered the pleadings, the testimony and the evidence presented by the parties; 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 \$750 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) conference \times \$300 = \$300, and there were four (4) hearing sessions \times \$750 = \$3,000 in forum fees. Total forum fees are thus $\$300 + \$3,000 = \$3,300$. 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 § 10322(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant William C. Schwenck.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent Piper Jaffray, Inc.

Respondent Piper Jaffray, Inc. is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$2,550.

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Respondent Piper Jaffray, Inc. is liable for and shall reimburse Claimant William C. Schwenck for his filing fee in the amount of \$200 and for his hearing session deposit in the amount of \$750.

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

Concurring Arbitrators' Signatures

Stephen E. Gehring, Esquire
Stephen E. Gehring, Esquire
Chairperson
Public Arbitrator

April 25, 1997
Dated:

Thomas J. Tarsney, Esquire
Thomas J. Tarsney, Esquire
Panelist
Public Arbitrator

April 25, 1997
Dated:

Joel C. Hansen
Joel C. Hansen
Panelist
Industry Arbitrator

April 24, 1997
Dated:

For NASD use only:
Date Award was served on the parties: April 25, 1997