

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Marty Wick, Claimant vs. Piper Jaffray Inc. (now known as U.S. Bancorp Piper Jaffray Inc.),  
Respondent.

Case Number: 99-01990

Hearing Site: Seattle, Washington

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**REPRESENTATION OF PARTIES**

Claimant, Marty Wick, hereinafter referred to as "Claimant": Christopher B. Wells, Esq., Lane Powell Spears Lubersky LLP, Seattle, Washington

Respondent, Piper Jaffray Inc., now known as U.S. Bancorp Piper Jaffray Inc. ("Piper Jaffray"), hereinafter referred to as "Respondent": Peter R. Boutin, Esq. and Lisa M. Bertain, Esq., Keesal, Young & Logan, San Francisco, California

**CASE INFORMATION**

Statement of Claim filed on or about: April 28, 1999

Claimant's Answer to Piper Jaffray's Counterclaim filed on or about: September 30, 1999

Claimant's Hearing Brief filed on or about: June 1, 2000

Claimant, Marty Wick, signed the Uniform Submission Agreement: April 27, 1999

Statement of Answer and Counterclaim filed by Respondent, Piper Jaffray, on or about: August 19, 1999

Respondent's Arbitration Brief filed on or about: June 1, 2000

**CASE SUMMARY**

Claimant alleged that his claims arise out of Piper Jaffray's problems with proprietary products and further alleged the following claims with respect to his employment with Piper Jaffray: 1) Breach of Conduct Code and Employment Contract; 2) Liability and Punitive Damages Under Minnesota's "Whistle-Blower" Statute; 3) State and Federal Disability Claims; 4) Intentional Interference With Economic Relationship; 5) Defamation; 6) Intentional Infliction of Severe Emotional Distress; and 7) Punitive Damages.

Respondent Piper Jaffray denied Claimant's allegations of wrongdoing and asserted the following affirmative defenses: 1) Claimant's Statement of Claim and each and every cause of action therein fails to state a claim upon which relief can be granted; 2) Claimant's second and third causes of action are barred by all applicable statutes of limitations; 3) Claimant's claims are barred on the equitable ground of laches; 4) Claimant's claim for Breach of Implied Contract is

barred because Claimant may not rely on the terms of an implied contract that contradicts the terms of Claimant's express written at-will agreement with Piper Jaffray; 5) The damages for which Claimant seeks to hold Piper Jaffray liable were proximately caused by Claimant's own failure to mitigate his alleged damages; 6) Claimant's Statement of Claim and each purported cause of action are barred, or any recovery should be reduced, because of Claimant's own negligence and/or fault in connection with the matters alleged; 7) Claimant's disability claim is barred because Claimant failed to exhaust his administrative remedies and by the statute of limitations; 8) Claimant is barred from seeking any damages from purported physical or emotional injuries allegedly suffered as a result of his employment in that the sole and exclusive remedy in this respect is and was governed by the Workers' Compensation Acts in California, Minnesota and Washington; 9) Claimant was an at-will employee who could quit or be terminated at any time, with or without notice, for any reason or for no reason. Indeed, Wick took advantage of his at-will status by quitting on May 2, 1997 to accept a \$350,000 package from Smith Barney; 10) Wick's claims are barred by the doctrine of unclean hands; 11) Punitive damages are not recoverable by Claimant; 12) Claimant's demand includes a prayer for exemplary damages, in violation of the Excessive Fines Clause of the Eighth Amendment to the United States Constitution; 13) Claimant's demand includes a prayer for exemplary damages, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution; 14) Claimant's demand includes a prayer for punitive damages, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and 15) Claimant's purported fourth cause of action for Breach of Implied Contract is barred by the terms of an express contract between the parties.

Piper Jaffray alleged the following claims with respect to its Counterclaim against Mr. Wick: 1) Breach of Contract; 2) Violation of RCW 19.108.020 et seq.; 3) Conversion; 4) Breach of Fiduciary Duty; and 5) Unfair Competition.

Mr. Wick alleged that under the doctrines of waiver, estoppel and unclean hands, Piper Jaffray's mistreatment of Mr. Wick described in the Statement of Claim bars Piper Jaffray from enforcing any aspect of the Employment Agreement and further alleged that Piper Jaffray's inaction after Mr. Wick's termination also prevents Piper Jaffray's recovery under the foregoing and the doctrines of ratification and laches. Mr. Wick further alleged that he is entitled to attorney fees, not only for the reasons set forth in the Statement of Claim, but also because Piper Jaffray has made a specious claim under the Washington Trade Secrets Act, RCW Chapter 19.108. Mr. Wick further alleged that as a result of Piper Jaffray's bad faith prosecution of the trade secrets allegations in its Counterclaim, Mr. Wick is entitled to attorney fees under RCW 19.108.040.

#### **RELIEF REQUESTED**

Claimant requested:

1. Compensatory damages exceeding \$1.5 million;
2. General injury to reputation damages of \$500,000;

3. Punitive damages approximating \$3 million;
4. Attorney fees, costs and forum fees; and
5. Additional relief as determined and awarded by the panel of arbitrators.

Respondent requested that Claimant's claims be dismissed in their entirety and that it be awarded its costs.

Regarding its Counterclaim, Piper Jaffray requested an Award as follows:

1. Damages according to proof;
2. Costs; and
3. Such other relief as the Arbitrators deem proper.

Claimant requested that Piper Jaffray's Counterclaim be dismissed with prejudice and that Claimant be awarded attorney fees under RCW 19.108.040.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Piper Jaffray did not file with NASD Dispute Resolution, Inc. ("NASD-DR") a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimant's claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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.

#### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Piper Jaffray is liable for and shall pay to Claimant, Marty Wick, the sum of \$1,400,000.00 in compensatory damages.

2. Respondent Piper Jaffray is liable for and shall pay to Claimant, Marty Wick, the sum of \$850,000.00 in punitive damages. Punitive Damages are awarded under Minnesota Statutes Section 549.20, Claimant's hearing brief and post-hearing brief and the hearing record taken as a whole based upon evidence presented and legal authorities cited (Minnesota, Washington and other jurisdictions).

3. Respondent Piper Jaffray is liable for and shall pay to Claimant, Marty Wick, the sum of \$300,742.25 in attorney's fees and costs.

4. All other claims by Claimant, including claims for loss of wages, general injury to reputation damages and damages for emotional distress, are denied.

5. Interest on all damages amounts outstanding will be assessed from the effective date of this decision at the "prime lending rate" as reported in the Wall Street Journal.

6. All claims with respect to Piper Jaffray's Counterclaim are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$600.00
Counterclaim filing fee	= \$500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Forum fees associated with these proceedings are based on the hearing session deposit associated with the respective party's claim or counterclaim:

Pre-hearing conferences:	March 3, 2000	1 session
	April 4, 2000	1 session
	May 2, 2000	1 session
Hearing sessions:	June 6, 2000	3 sessions
	June 7, 2000	3 sessions
	June 8, 2000	3 sessions

June 9, 2000	2 sessions
September 25, 2000	2 sessions
September 26, 2000	3 sessions
September 27, 2000	3 sessions
September 28, 2000	3 sessions
September 29, 2000	2 sessions

**Claimant's Assessment:**

One (1) Pre-hearing session x \$1,200.00	= \$ 1,200.00
Two (2) Pre-hearing sessions x \$450.00	= \$ 900.00
Twenty Four (24) hearing sessions x \$1,200.00	= \$28,800.00
Total Forum Fees	= \$30,900.00

The Panel determined that Claimant shall be assessed forum fees at a 50% rate in the amount of \$15,450.00 based on Claimant's hearing session deposit and hearing sessions held.

**Piper Jaffray's Assessment:**

One (1) Pre-hearing session x \$1,000.00	= \$ 1,000.00
Two (2) Pre-hearing sessions x \$450.00	= \$ 900.00
Twenty Four (24) hearing sessions x \$1,000.00	= \$24,000.00
Total Forum Fees	= \$25,900.00

The Panel determined that Piper Jaffray shall be assessed forum fees at a 50% rate in the amount of \$12,950.00 based on Piper Jaffray's hearing session deposit and hearing sessions held.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security. The parties did not incur administrative costs.

**Fee Summary**

1. Claimant, be and hereby is liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$15,450.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$16,050.00
<u>Less payments</u>	= \$ 1,800.00
Balance Due NASD Dispute Resolution, Inc.	= \$14,250.00

2. Respondent, Piper Jaffray, be and hereby is liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 7,600.00
Forum Fees	= \$12,950.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$21,050.00
<u>Less payments</u>	= \$ 9,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$11,950.00

All balances are due to NASD Dispute Resolution, Inc. and are payable within 30 days of the service date of this Award.

Concurring Arbitrators' Signatures



Douglas M. Crow  
Public Arbitrator, Presiding Chair

11-29-00

Signature Date

\_\_\_\_\_  
James L. Connell  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
William Richard Smith  
Industry Arbitrator

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Signature Date

Date Served:

NOV 30 2000

Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.

Arbitration No. 99-01990

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2. Respondent, Piper Jaffray, be and hereby is liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 7,600.00
Forum Fees	= \$12,950.00
<u>Administrative Costs</u>	<u>= \$ 0.00</u>
Total Fees	= \$21,050.00
<u>Less payments</u>	<u>= \$ 9,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$11,950.00

All balances are due to NASD Dispute Resolution, Inc. and are payable within 30 days of the service date of this Award.

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Douglas M. Crow  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

  
James L. Connell  
Public Arbitrator

11 28 00  
Signature Date

\_\_\_\_\_  
William Richard Smith  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

**Date Served:**

NOV 30 2000

\_\_\_\_\_  
Date of Service (For NASD office use only)