

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimants

Cesar and Leonor Maderazo

and

99-05125  
Scottsdale, Arizona

Name of Respondents

Piper Jaffray, Inc. n/k/a U.S. Bancorp Piper Jaffray, Inc.  
Vincent H. Rossi

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**REPRESENTATION OF PARTIES**

Cesar and Leonor Maderazo ("**Claimants**") were represented by Richard G. Himelrick, Esq., Tiffany & Bosco, Phoenix, Arizona.

Piper Jaffray, Inc. n/k/a U.S. Bancorp Piper Jaffray, Inc. ("**Respondent Piper**") and Vincent H. Rossi ("**Respondent Rossi**") were represented by Mark S. Reed, Esq., U.S. Bancorp Piper Jaffray, Inc., Minneapolis, Minnesota.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 15, 1999. Submission Agreement of Claimant Cesar and Leonor Maderazo was signed on November 5, 1999.

Statement of Answer was filed by Respondents Piper Jaffray, Inc. n/k/a U.S. Bancorp Piper Jaffray, Inc. Vincent H. Rossi on or about April 10, 2000. Submission Agreement of Respondent Piper Jaffray, Inc. n/k/a U.S. Bancorp Piper Jaffray, Inc. was signed on January 14, 2000 by Mark S. Reed. Submission Agreement of Respondent Vincent H. Rossi was signed on January 14, 2000.

**CASE SUMMARY**

Claimant submitted the following summary:

In late 1997 claimants were persuaded by their Piper Jaffray broker, Vincent Rossi, to liquidate over \$2.5 million in mutual funds and blue chip growth stocks they had accumulated at Charles Schwab. Later, in early 1998, the proceeds were invested in mutual funds Rossi selected through a Piper Jaffray Advantage wrap account on which claimants paid an annual fee of 1%. Piper Jaffray received dealer concessions of \$26,246 from the

American Funds on the mutual funds. Of this \$26,246, Rossi's payout was \$10,636. Less than nine months after recommending the American Funds, Rossi persuaded claimants to flip them and buy a portfolio of individual stocks. These stocks were bought through a second Piper Jaffray wrap account on which the annual fees were 1.7%. Because the American mutual funds were not held for a year, claimants incurred contingent deferred sales charges of over \$21,000. Wrap fees of \$19,613 were also paid.

Contrary to NASD Rule 2830(n) Piper Jaffray did not send claimants confirmation slips disclosing the contingent deferred sales charges. Nor did respondents verbally explain these contingent sales loads. Additionally, respondents breached paragraph 3(e) of the Advantage account agreement, which required 12b-1 fees like the \$26,000 dealer concession to be credited to the account. In short, respondents failed to disclose the deferred sales charges in accordance with industry rules and then breached the account agreement by failing to credit over \$26,000 in 12b-1 dealer concessions to the account.

The initial liquidation of claimants stocks and mutual funds was a securities switch in which equivalent mutual funds were in many respects traded for one another. The later sale of these mutual funds and subsequent purchase of a new portfolio of individual stocks was another switch of substantially equivalent portfolios. These securities switches were commission driven transactions in which respondents (i) steered claimants into mutual funds which paid them a \$26,000 dealer concession on top of a 1% wrap fee and then (ii) persuaded claimants to liquidate the mutual fund portfolio to switch them into a higher 1.7% Navigator wrap account. If claimants had not been persuaded to sell their initial Schwab positions, they would have realized about \$249,000 over their ending account value when they closed their Piper Jaffray account.

In their Answer, Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that they acted properly at all times with respect to Claimants' accounts and transactions at issue. It was stated that the transactions at issue in this matter were consistent with Claimants' investment objectives and approved by them. It was also stated that Claimants were fully informed as to the fees and expenses associated with both the purchase and liquidation of their mutual fund shares. Respondents further stated that the accounts and transactions were structured in an attempt to minimize the fees and expenses.

### **RELIEF REQUESTED**

Claimant requested disgorgement of all commissions and other fees paid plus the return they would have received if their accounts had been properly managed. An award of costs and reasonable attorneys' fees pursuant to A.R.S. §44-2001(A), interest under A.R.S. §44-1201, and unspecified punitive damages was also requested by Claimants.

Respondents respectfully requested that the Statement of Claim and all claims asserted therein be dismissed with prejudice in their entirety. They further respectfully requested that they be awarded their reasonable attorneys' fees, costs and expenses incurred in defending this matter and such further relief as may be appropriate.

### **OTHER ISSUES CONSIDERED & DECIDED**

A motion to dismiss was made by the Respondents at the conclusion of the Claimants case based upon the grounds of the failure of the Claimants to present evidence sufficient to entitle them to relief. The motion was denied by the panel.

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 Dispute Resolution, Inc. (the "NASD").

### **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. Respondents Piper Jaffray, Inc. n/k/a U.S. Bancorp Piper Jaffray, Inc. and Vincent H. Rossi shall be and hereby are jointly and severally liable for and shall pay to the Claimants the sum of \$78,000. This award of compensatory damages includes interest.
2. Interest on the above stated sum accrues from September 13, 2000.
3. No Punitive nor RICO damages were awarded.
4. Respondents Piper Jaffray, Inc. n/k/a U.S. Bancorp Piper Jaffray, Inc. and Vincent H. Rossi shall be and hereby are jointly and severally liable for and shall pay to the Claimants the sum of \$36,600 as attorney's fees and costs. The authority is by reason of an Arizona statute allowing award of such fees in matters involving contractual disputes. See § 44-2001 (A).
5. Respondents Piper Jaffray, Inc. n/k/a U.S. Bancorp Piper Jaffray, Inc. and Vincent H. Rossi shall be and hereby are jointly and severally liable for and shall pay to the Claimants the sum of \$24,900 as witness fees.
6. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

7. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees not specifically enumerated above.

### **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 = \$300.00

#### **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 Piper Jaffray, Inc. n/k/a U.S. Bancorp Piper Jaffray, Inc.

Member surcharge = \$1,500.00  
Pre-hearing process fee = \$ 600.00  
Hearing process fee = \$2,500.00

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

The Arbitration 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. Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with Panel x \$1,125.00 = \$1,125.00  
Pre-hearing conference(s): May 1, 2000 1 session  
  
Number (#) Hearing sessions x \$1,125.00 = \$6,750.00  
Hearing Date(s): September 11, 2000 2 sessions  
September 12, 2000 2 sessions  
September 13, 2000 2 sessions  
  
Total Forum Fees = \$7,875.00

The Arbitration Panel has assessed \$7,875.00 of the forum fees jointly and severally to Piper Jaffray, Inc. n/k/a U.S. Bancorp Piper Jaffray, Inc. and Vincent H. Rossi.

**Fee Summary**

Claimants, Cesar and Leonor Maderazo, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
Balance to be refunded by NASD Dispute Resolution, Inc.	= \$1,125.00

Respondent, Piper Jaffray, Inc. n/k/a U.S. Bancorp Piper Jaffray, Inc., shall be and hereby is liable for:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= \$ 0.00
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$7,700.00
Balance applied to fees below	= \$3,100.00

Respondents, Piper Jaffray, Inc. n/k/a U.S. Bancorp Piper Jaffray, Inc. and Vincent H. Rossi, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$7,875.00
Total Fees	= \$7,875.00
<u>Less payments</u>	= \$3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$4,775.00

**All balances are due to NASD Dispute Resolution, Inc.**

Dated:

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Samuel L. McClaren, Esq.  
Public Arbitrator, Presiding Chair

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Brian A. Maris  
Public Arbitrator

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Stephen L. Przewlocki  
Industry Arbitrator

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Industry Arbitrator

Oct 6, 2000