

**STATE OF NORTH DAKOTA**  
**COUNTY OF BURLEIGH**

**BEFORE THE**  
**SECURITIES COMMISSIONER**

IN THE MATTER OF )  
 )  
US Bancorp Piper Jaffray, Inc. and ) **CONSENT ORDER**  
Christopher Birmingham )  
 )  
Respondents. )

This Consent Order is being entered by the Securities Commissioner of the State of North Dakota (the "Commissioner"), with the agreement of Respondents U.S. Bancorp Piper Jaffray and Christopher Birmingham, along with all of U.S. Bancorp Piper Jaffray, Inc.'s officers, directors, employees, brokers, affiliated companies, predecessors, successors, agents, and assigns (collectively "Piper"),

**RECITALS**

**WHEREAS**, on or about November 9, 2000, the Commissioner issued an Order against Piper (the "Order") regarding Piper's relationship as an investment broker with Magdalen Stricker ("Stricker");

**WHEREAS**, the Order purported to find violations of North Dakota law on the part of Piper and ordered that Piper pay civil penalties in the sum of \$20,000 as well as the Commissioner's costs of investigation in the amount of \$3,700;

**WHEREAS**, the Order, among other things, set forth the following findings and legal conclusions:

1. Respondent, U.S. Bancorp Piper Affray, Inc. (U.S. Bancorp) is a Minnesota based broker/dealer, which, for all times relevant to this matter, was registered in the state of North

Dakota. Respondent, Christopher Birmingham, is, and for all times relevant to this matter, has been, a North Dakota registered agent of U.S. Bancorp.

2. In June of 1992, Birmingham sold a variable annuity product, issued by the Hartford Life Insurance Co., ("Hartford"), to Ms. Stricker, a North Dakota resident. At the time of the transaction, Ms. Stricker was a 78-year old widow that had no previous investment experience. Ms. Stricker expressed an interest in receiving income from the investment and did receive a monthly distribution from the annuity. The annuity was sold as a long-term investment and carried with it penalties, in the form of a contingent deferred sales charge (CASC), for early withdrawal.

3. In July of 1998, Birmingham contacted Ms. Stricker, then 84 years of age, and recommended that she sell the annuity and purchase other securities. Birmingham stated that completing the transaction would allow Ms. Stricker to have higher income. Ms. Stricker's annuity had grown significantly in tax-deferred value, which would be realized as income in the event of the sale. Additionally, a contingent deferred sales charge of 1% of the initial investment would be charged for any sale of the annuity prior to June of 1999. Mr. Birmingham allegedly did not inform Ms. Stricker that she would pay a sales charge and that she would have significant tax consequences from the sale.

4. Based on Birmingham's recommendations, Ms. Stricker sold the annuity and purchased different securities. The sale of the annuity and subsequent transactions were allegedly not suitable based on the investment objectives and risk temperament of Ms. Stricker.

5. Mr. Birmingham allegedly did not provide Ms. Stricker with all of the relevant information regarding the sale of the annuity and subsequent transactions, and was deceptive in

making the recommendation in that Birmingham suggested that the sale of the annuity and subsequent transactions would permit her to receive higher income than she could have received through the annuity.

6. U.S. Bancorp allegedly failed to properly supervise Birmingham in permitting the sale of the annuity and subsequent transactions without any additional review of or contact with Ms. Stricker. U.S. Bancorp did not seek an explanation of the transaction from Birmingham, nor did it contact Ms. Stricker to ensure that she understood the implications of the sale of the annuity and subsequent transactions.

**WHEREAS**, Piper timely appealed the Order and contested the Commissioner's findings and legal conclusions;

**WHEREAS**, Piper has at all times denied that it engaged in any wrongdoing as alleged in the Order and affirmatively alleged as follows:

1. Ms. Stricker contacted Piper in 1992 regarding the investment of approximately \$75,000. Based upon Piper's advice, Stricker invested \$75,001 in the Hartford variable annuity.

2. Over the next six years, Ms. Stricker withdrew \$465 per month or \$5,580 per year. Accordingly, Ms. Stricker was withdrawing 7.44% on her initial investment on an annual basis.

3. By the summer of 1998, the cash value of the Variable Annuity had also grown in value to approximately \$104,000. Accordingly, in addition to 7.44% in annual withdrawals, the value of the variable annuity had also increased by approximately 41%.

4. Piper alleges that Ms. Stricker was concerned about a potential decline in the value of her annuity and had expressed such concerns to both Hartford and Piper. Piper further

alleges that Ms. Stricker was concerned about leaving assets to her heirs. Because the value of the variable annuity depends on the value of underlying securities, the variable annuity was subject to a potential decline in value. In addition, Ms. Stricker's heirs would have been taxed on the gain in value at the time of her death.

5. Ms. Stricker also allegedly expressed an interest in receiving additional income on a monthly basis as, among other things, her apartment rent had increased over time.

6. With these considerations in mind, Piper recommended that the variable annuity be liquidated in the summer of 1998 and that bonds as well as a collateralized mortgage obligation be purchased. Such investments would generate \$565 per month of income for Ms. Stricker.

7. Exchanging the variable annuity for the other investments did create a tax liability for Ms. Stricker in 1998, which tax was due in 1999. Piper alleges that it advised Ms. Stricker the exchange would be subject to taxation. In addition, Ms. Stricker executed a form to exchange her variable annuity. That form, directly above the signature line, advised Ms. Stricker in writing that the transaction would be subject to taxation.

8. Piper believes that its initial and subsequent investments performed well and were appropriate given Ms. Stricker's needs and concerns.

**WHEREAS**, Piper has reached a resolution of all claims which could have been asserted by Ms. Stricker and a copy of that Settlement Agreement is attached hereto as Exhibit A;

**WHEREAS**, the Commissioner and Piper now desire to fully and finally settle all claims that were or could have been asserted in the Order regarding Piper and Ms. Stricker.

**WHEREAS**, neither this Consent Order nor the resolution provided herein is, may be

construed as, or may be used as, an admission by or against Piper of any liability, fault, or wrongdoing whatsoever.

**ORDER**

The Respondents acknowledge their right to be represented by legal counsel throughout this proceeding, have agreed to an informal disposition of this matter, and have affirmatively waived their right to a hearing before the Commissioner on this matter. The following Order is necessary and appropriate in the public interest.

**NOW, THEREFORE, IT IS ORDERED, THAT:**

1. Respondents shall, contemporaneous with the entry of this order, make a \$10,000 donation to the Securities Protection Fund.
2. Respondents shall, in connection with the Agreement attached hereto and incorporated herein by reference, make payment to Ms. Stricker in the amount of \$13,250.
3. This Order shall be effective upon signature of the Commissioner.

IN TESTIMONY WHEREOF, witness my hand and seal this 8<sup>th</sup> day of May,

2001.



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