
Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Steven Carico,
Claimant

Vs.

Case Number: 01-02611

Stifel, Nicolaus & Co., Inc., and
William G. Nelson,
Respondents.

Hearing Site: Cincinnati, Ohio

REPRESENTATION OF PARTIES

Claimant Steven Carico ("Claimant") was represented by Andrew Stoltmann, Esquire, of Maddox, Koeller, Hargett & Caruso, Chicago, Illinois.

Respondents Stifel, Nicolaus & Co., Inc. ("Respondent Stifel, Nicolaus"), and William Nelson ("Respondent Nelson") were represented by Peter R. Sonderby, Esquire, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about May 15, 2001. Claimant Steven Carico's Submission Agreement was signed on May 12, 2001.

The joint Statement of Answer on behalf of Respondents Stifel, Nicolaus and Nelson was filed on or about July 30, 2001. Forrest M. Smith, First Vice President, signed the Uniform Submission Agreement on behalf of Respondent Stifel, Nicolaus on May 24, 2001. Respondent Nelson did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant alleged that Respondent Nelson, within the scope and course of his employment with Respondent Stifel, Nicolaus, provided him with unsuitable investment recommendations; engaged in unauthorized trading; engaged in excessive trading; engaged in misrepresentations and omissions; committed various violations of the Ohio and Missouri securities acts; violated various Rules of Conduct of the NASD; breached the contract with Claimant; engaged in common law fraud and misrepresentation; breached his fiduciary duty; engaged in constructive

fraud; and that Respondent Stifel, Nicolaus failed to supervise Respondent Nelson. These allegations related to transactions involving stock(s) described further below. Claimant asserts that Respondent Stifel, Nicolaus must be held vicariously liable for the conduct of Respondent Nelson performed within the scope and course of his employment.

Respondents denied Claimant's allegations generally and specifically, and averred that Claimant fully understood and appreciated the risks associated with his investment objectives; that Claimant knowingly created and escalated a margin account to enable him to withdraw money to pay taxes and for other purposes without liquidating positions; that Claimant authorized and approved the transactions in his account only after full disclosure; that Claimant himself "managed" his account; that no inappropriate or unsuitable recommendations were given to Claimant, given his stated goals and objectives; that no fiduciary relationship arose between the parties; that the NASD Rules of Conduct do not create a private right of action as asserted by Claimant; and that claims based upon negligence are not permitted for the recovery of purely economic damages. Respondents also averred that in addition to the foregoing, that Claimant failed to mitigate the damages he claims to have suffered and that he delayed unreasonably in asserting his claims.

RELIEF REQUESTED

Claimant requested in his Statement of Claim an award of actual damages in the amount of \$133,207.00, attorney fees and costs of arbitration, including but not limited to expert witness fees, expenses and accounting fees; recovery of an additional sum of \$18,824.00 representing margin interest charges; disgorgement of commissions; actual damages pursuant to the well-managed portfolio theory; lost interest pursuant to the Ohio Securities Act; pre-and-post award interest at an unspecified statutory rate; and punitive damages.

Respondents demanded that Claimant's claims be denied in their entirety, and that they be awarded the costs incurred in connection with the defense of the claim, including attorney fees, and that all costs of the proceeding be assessed against Claimant. After the commencement of the hearing, however, counsel for respondents advised the Arbitration panel that respondents were withdrawing their claim for attorney fees.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that this Award may be executed in multiple counterpart copies, and that they may receive conformed copies, providing that the original award and signature pages remain on file with NASD Dispute Resolution, Inc.

Respondent Nelson did not file with NASD Dispute Resolution, Inc., a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, is bound by the determination of the Panel on all issues submitted.

Upon consideration of the parties' statements of claim and answer, their pre-hearing memoranda, oral testimony and documentary evidence presented at the hearing, and the parties' post-hearing memoranda, including attachments, the undersigned Arbitrators unanimously find as follows:

In September 1999, Claimant received a lump sum bonus from his employer in the amount of \$400,000.00, to be supplemented by an additional \$100,000.00 to be paid in four equal annual installments. Claimant, whose formal education did not go beyond high school, and whose exposure to, and understanding of, investments and financial management were negligible, sought the advice and guidance of Respondent Nelson with respect to investing the lump sum bonus. It is not disputed that Claimant as well as Respondents were aware that Claimant would be liable for the payment of income taxes on the lump sum portion of the bonus, which would have to be paid in April 2000.

By the end of September 1999, Respondents had established an investment and a margin account for Claimant holding \$150,164.00 in a general money market fund and \$248,368.00 in a high yield bond fund, for a total of approximately \$398,500.00. In less than one month, Respondent Nelson had placed approximately \$317,000.00 of Claimant's funds into a single banking stock involving a micro-capitalized, remote and localized bank in Southwest Oklahoma (Southwest Bancorp). Contemporaneously, Respondent Nelson commenced to establish a margin debit balance for Claimant, which grew from approximately \$83,000.00 to over \$147,000.00 by March 2000.

Also within less than a month after establishing Claimant's account, Respondent Nelson solicited and purchased for Claimant shares of an additional micro-capitalized bank stock for more than \$83,000.00.

In April 2000, Claimant withdrew \$160,000.00 with which to pay his tax liability, such that by late April, Respondent's margin debit balance exceeded \$208,000.00. During this time, Claimant was ignorant of margin investing, having not received any reasonable explanation or disclosure of its associated risks, and was unaware that the agreement used to establish his account initially was routinely used by Respondent Stifel, Nicolaus as a margin account agreement, and was in fact regularly referred to internally as such.

The Arbitrators, having weighed all the written and oral evidence, unanimously determine that Respondent Nelson's investment recommendations to Claimant represented clearly excessive over-concentration, and were unsuitable. The Arbitrators also unanimously conclude that Respondent Nelson's decision to include in Respondent's investment purchases, and to not set aside into a conservative and safe investment, a prudent sum for the payment of Claimant's taxes, and to invest those funds into bank stocks of the degree of volatility and speculation involved, was unsuitable.

Upon consideration of all the written and oral evidence, the Arbitrators further unanimously determine that the use by Respondent Stifel, Nicolaus of the form "CUSTOMER'S AGREEMENT" to establish a margin account is an unfair and deceptive practice. The Arbitrators unanimously determine that the knowing and intentional use of such practices by Respondent Stifel, Nicolaus, when dealing with a customer of Claimant's inexperience and lack of sophistication, evidence a conscious and deliberate disregard of its customer's interests and rights which has a great probability of resulting in significant harm to a customer such as Claimant.

Testimony adduced at the hearing from Stifel, Nicolaus' Branch Manager during the time in question causes the Arbitrators to conclude unanimously that there were comprehensive supervisory procedures in place to have alerted management of the over-concentration of micro-capitalized bank stocks in Claimant's account, as well as unsuitable and excessive margin transactions given Claimant's investment profile. The unrefuted testimony of Respondent Stifel, Nicolaus' Branch Manager clearly established that these supervisory policies and practices were ignored, and had they been followed, the irregularities in the management of Claimant's account ought to have been addressed and rectified. Further testimony adduced from the Branch Manager established that there were no more than four or five account executives at the Stifel, Nicolaus Branch in question, such that the failure to supervise Respondent Nelson, and to avert the mismanagement of Claimant's account, is determined to have been inexcusable.

The failure of Stifel, Nicolaus' management to supervise as required by its internal written procedures evidences a conscious and deliberate disregard of its customer's interests and rights which has a great probability of resulting in significant harm to a customer such as Claimant.

AWARD

Upon consideration of the foregoing, the Arbitrators hereby award in full and final resolution of all issues submitted for determination, as follows:

1. Respondents Stifel, Nicolaus & Co., Inc., and William G. Nelson are jointly and severally liable for, and shall pay to Claimant Steven Carico, the sum of \$87,895.14 in compensatory damages; and
2. Respondent Stifel, Nicolaus & Co., Inc., is solely liable for, and shall pay to Claimant Steven Carico, the sum of \$25,000.00 in punitive damages. Based on the arguments and written submissions, the Panel finds that it has the legal authority to award punitive damages in this case; and

3. Respondent Stifel, Nicolaus & Co., Inc., is solely liable for, and shall pay to Claimant Steven Carico, the sum of \$35,000.00 in attorney fees. Based on the arguments and written submissions, the Panel finds that it has the legal authority to award attorney fees in this case; and
4. Respondent Stifel, Nicolaus & Co., Inc., is solely liable for, and shall pay to Claimant Steven Carico, the sum of \$3,802.00 in expenses incurred in the prosecution of this proceeding; and
5. Respondent Stifel, Nicolaus & Co., Inc., is solely liable for, and shall pay to Claimant Steven Carico, the sum of \$300.00 as reimbursement of the non-refundable filing fee paid by Claimant to NASD Dispute Resolution, Inc.; and
6. The foregoing award, totaling \$151,997.14, shall be paid by electronic funds transfer or by delivery of a check to counsel for Claimant within thirty (30) days from the date of service of this award, after which that sum shall bear simple interest at the annual rate of ten percent (10%) pursuant to Ohio Revised Code § 13443.03 until paid in full; and
7. Any and all relief not specifically addressed herein is denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc., will retain the following non-refundable filing fee:

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 a party.

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

Forum Fees and Assessments

The Panel has the authority to assess 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:

Two (2) Pre-hearing sessions with Panel	x \$1,125	= \$ 2,250.00
Pre-hearing conferences:	December 6, 2001 1 session	
	April 26, 2002 1 session	

Six (6) Hearing sessions x \$1,125 = \$ 6,750.00
Hearing Dates: May 15, 2002 3 sessions
May 16, 2002 3 sessions

Total Forum Fees = \$ 9,000.00

The Panel has assessed all forum fees incurred in this arbitration solely to Respondent Stifel, Nicolaus & Co., Inc.

FEE SUMMARY

1. Claimant Steven Carico is solely liable for:

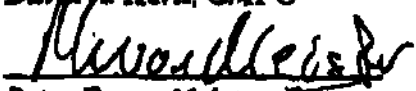
Initial Filing Fee = \$ 300.00
Total Fees = \$ 300.00
Less payments = \$ 1,425.00
Refund Due to Claimant = \$ 1,125.00

2. Respondent Stifel, Nicolaus & Co., Inc., is solely liable for:

Member Fees = \$ 4,600.00
Forum Fees = \$ 9,000.00
Total Fees = \$13,600.00
Less payments = \$ 4,600.00
Balance Due to NASD Dispute Resolution, Inc. = \$ 9,000.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Peter F. von Meister, Esq. - Public Arbitrator, Chairperson
Mitchell B. Goldberg, Esq. - Public Arbitrator
David A. Hertl, CMFC - Non-Public Arbitrator

Peter F. von Meister, Esq. Signature Date
Chairperson 06/26/02

Mitchell B. Goldberg, Esq. Signature Date
Public Arbitrator

David A. Hertl, CMFC Signature Date
Non-Public Arbitrator

Date of Service (For NASD-Dispute Resolution office use only)

NASD Dispute Resolution, Inc.

Arbitration Case #: 01-02611

Page: 6 of 6

Six (6) Hearing sessions x \$1,125

Hearing Dates: May 15, 2002 3 sessions = \$ 6,750.00

May 16, 2002 3 sessions

Total Forum Fees = \$ 9,000.00

The Panel has assessed all forum fees incurred in this arbitration solely to Respondent Stifel, Nicolaus & Co., Inc.

FEE SUMMARY

1. Claimant Steven Carico is solely liable for:

Initial Filing Fee = \$ 300.00

Total Fees = \$ 300.00

Less payments = \$ 1,425.00

Refund Due to Claimant = \$ 1,125.00

2. Respondent Stifel, Nicolaus & Co., Inc., is solely liable for:

Member Fees = \$ 4,600.00

Forum Fees = \$ 9,000.00

Total Fees = \$13,600.00

Less payments = \$ 4,600.00

Balance Due to NASD Dispute Resolution, Inc. = \$ 9,000.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Peter F. von Meister, Esq.

Public Arbitrator, Chairperson

Mitchell B. Goldberg, Esq.

Public Arbitrator

David A. Hertl, CMFC

Non-Public Arbitrator

Peter F. von Meister, Esq.

Signature Date

Chairperson

Mitchell B. Goldberg

6/28/02

Mitchell B. Goldberg, Esq.

Signature Date

Public Arbitrator

David A. Hertl, CMFC

Signature Date

Non-Public Arbitrator

Date of Service (For NASD-Dispute Resolution office use only)

Received Time Jun. 27. 10:17AM