

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Matthew E. Just, Jr.

Case Number: 02-00678

Name of the Respondents  
Stifel, Nicolaus & Co., Inc.,  
Dalyne L. Shinneman,  
Michael E. Schenone,  
Kathleen S. Michael,  
David M. Hogan,  
and Edward L. Poth

Hearing Site: Chicago, Illinois

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**REPRESENTATION OF PARTIES**

Claimants Matthew E. Just, Jr. ("Just") Michael J. Gaertner, Esq. of the firm Lord, Bissell & Brook, LLP located in Chicago, Illinois.

Respondents Stifel, Nicolaus & Co., Inc. ("Stifel Nicolaus"), Dalyne L. Shinneman ("Shinneman"), Michael E. Schenone ("Schenone"), Kathleen S. Michael ("Michael"), David M. Hogan ("Hogan"), and Edward L. Poth ("Poth") hereinafter collectively referred to as "Respondents:" Richard H. Kuhlman, Esq. of the firm Blackwell Sanders Peper Martin located in St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: February 4, 2002.

Claimant Just signed the Uniform Submission Agreement: January 31, 2002.

Statement of Answer filed by Respondents Stifel Nicolaus on or about: April 18, 2002.

Respondent Stifel Nicolaus signed the Uniform Submission Agreement: October 30, 2003.

Respondent Shinneman signed the Uniform Submission Agreement: July 15, 2003.

Respondent Schenone signed the Uniform Submission Agreement: July 15, 2003.

Claimant Just's Request for the Arbitration Panel's Consent to Submit an Amended Statement of Claim filed on or about: May 09, 2003.

Respondents' Response to Claimant Just's Request for the Arbitration Panel's Consent to Submit an Amended Statement of Claim filed on or about: May 22, 2003.

Claimant Just's Reply in Support of His Request for the Arbitration Panel's Consent to Submit an Amended Statement of Claim filed on or about: May 29, 2003.

**CASE SUMMARY**

Claimant Just asserted the following causes of action: breach of fiduciary duty, churning, omissions of facts, suitability, misrepresentations, negligence, failure to supervise and unauthorized trading.

The causes of action relate to investments in stock.

Unless specifically admitted in their Answer Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

- Failure to state a claim upon which relief can be granted.
- Claimant's damages, if any, were caused by the acts or omissions of third parties over which Respondents had no control.
- Claimant's claims are barred by the doctrines of waiver, estoppel, acquiescence, ratification and laches. Claimant knew or should have known or otherwise had access to information regarding his investments and the status of his accounts and did not object to the transactions in his accounts.
- Respondents did not know or, in the exercise of reasonable care, could not have known of the purported facts upon which Claimant bases his claims.
- Claimant received account statements and confirmations and did not object to the transactions in his accounts.
- The applicable federal and state statutes of limitation bar Claimant's claims.
- The negligence and/or fault of Claimant bars Claimant's claims in whole or in part.
- Claimant failed to exercise due diligence in connection with making the investments complained of in the Statement of Claim.
- Claimant failed to mitigate his damages, if any.
- Claimant's claims are barred by reason of second investment decisions made by Claimant with respect to various investments.

**RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$4,000,000.00
Punitive Damages	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	any relief the panel deems just and fair

Respondents requested:

Attorneys' Fees	reasonable
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	denial and dismissal of claim

**OTHER ISSUES CONSIDERED AND DECIDED**

During the arbitration hearings, Respondents Kathleen S. Michael, David M. Hogan, and Edward L. Poth were dismissed from the above-captioned matter.

The panel, through NASD, noticed the parties on June 3, 2003 that it granted Claimant's Request to Amend.

**AWARD**

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

1. With respect to Count II Stifel, Nicolaus & Co., Inc., Dalyne L. Shinneman, and Michael E. Schenone are jointly and severally liable for and shall pay to Matthew E. Just, Jr. the sum of \$1,269.00 as compensatory damages.
2. With respect to any and all other claims asserted by Claimant Matthew E. Just, Jr. against Stifel, Nicolaus & Co., Inc., Dalyne L. Shinneman, and Michael E. Schenone they are denied and dismissed.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Kathleen S. Michael, David M. Hogan, and Edward L. Poth's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, said Respondents must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Parties shall each bear their own costs, including attorney's fees.
5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

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

Initial claim filing fee	= \$600.00
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**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Stifel, Nicolaus & Co., Inc. is assessed the following fees:

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator at \$450.00 = \$ 450.00  
Pre-hearing conference: January 30, 2003 1 session

One (1) Pre-hearing session with Panel at \$1,200.00 = \$ 1,200.00  
Pre-hearing conference: October 23, 2002 1 session

Sixteen (16) Hearing sessions at \$1,200.00 = \$19,200.00  
Hearing Dates: July 14, 2003 2 sessions  
July 15, 2003 2 sessions  
July 16, 2003 2 sessions  
July 17, 2003 2 sessions  
July 18, 2003 2 sessions  
October 28, 2003 2 sessions  
October 29, 2003 2 sessions  
October 30, 2003 2 sessions

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Total Forum Fees = \$20,850.00

The Panel has assessed \$20,850.00 of the forum fees to Matthew E. Just, Jr.

**FEE SUMMARY**

1. Claimant Matthew E. Just, Jr. is solely liable for:

Initial Filing Fee	= \$ 600.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	<u>= \$20,850.00</u>
Total Fees	= \$22,650.00
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution	= \$20,850.00

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

<u>Member Fees</u>	<u>= \$ 8,550.00</u>
Total Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$ 9,050.00</u>
Refund Due from NASD Dispute Resolution	= \$ 500.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Stuart M. Widman, Esq.	-	Public Arbitrator, Presiding Chairperson
Steven H. Vogel	-	Public Arbitrator
Susan K. Franz	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Stuart M. Widman	12/11/03
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_____ Stuart M. Widman, Esq. Public Arbitrator, Presiding Chairperson	_____ Signature Date
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/s/ Susan K. Franz	12/10/03
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_____ Susan K. Franz Non-Public Arbitrator	_____ Signature Date
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**Partially Concurring and Partially Dissenting Arbitrator's Signature**

/s/ Steven H. Vogel	12/11/03
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_____ Steven H. Vogel Public Arbitrator	_____ Signature Date
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12/11/03

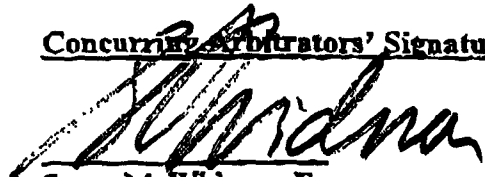
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Date of Service (For NASD Dispute Resolution office use only)

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Stuart M. Widman, Esq.	-	Public Arbitrator, Presiding Chairperson
Steven H. Vogel	-	Public Arbitrator
Susan K. Franz	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Stuart M. Widman, Esq.  
Public Arbitrator, Presiding Chairperson

Dec. 11, 2003  
Signature Date

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Susan K. Franz  
Non-Public Arbitrator

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

Partially Concurring and Partially Dissenting Arbitrator's Signature

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Steven H. Vogel  
Public Arbitrator

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

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Stuart M. Widman, Esq.  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Susan K. Franz  
Non-Public Arbitrator

12-10-2003  
\_\_\_\_\_  
Signature Date

**Partially Concurring and Partially Dissenting Arbitrator's Signature**

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Steven H. Vogel  
Public Arbitrator

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Signature Date

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NASD Dispute Resolution  
Arbitration No. 02-00678  
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Steven H. Vogel	-	Public Arbitrator
Susan K. Franz	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Stuart M. Widman, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Susan K. Franz  
Non-Public Arbitrator

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

Partially Concurring and Partially Dissenting Arbitrator's Signature

  
\_\_\_\_\_  
Steven H. Vogel  
Public Arbitrator

December 10, 2003  
Signature Date

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