

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:)) <u>Name of the Claimants</u>) Diana Lerman and Martin L. Hipschman,) as Co-Trustees for the) Sam Hipschman Trust and Clara Hipschman Trust))) <u>Name of the Respondents</u>) Stifel, Nicolaus & Co., Inc.,) Bernerd H. Feinstein and David M. Hogan)	<u>Case Number:</u> 02-04886 <u>Hearing Site:</u> St. Louis, Missouri
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NATURE OF DISPUTE

Customers vs. Member Firm and Associated Persons

REPRESENTATION OF PARTIES

Frank Susman, Esq. and Melanie R. King, Esq. of the law firm Gallop, Johnson & Neuman, L.C., located in St. Louis, Missouri represented Claimants, Diana Lerman ("Lerman") and Martin L. Hipschman ("Hipschman"), as Trustees for Sam Hipschman Trust and Clara Hipschman Trust, hereinafter referred to as "Claimants."

Lisa A. Nielsen, Esq. of the law firm Greensfelder, Hemker & Gale, located in St. Louis, Missouri, represented the Respondents, Stifel, Nicolaus & Co., Inc. ("Stifel") Bernerd H. Feinstein ("Feinstein") and David M. Hogan ("Hogan"), hereinafter collectively referred to as "Respondents."

CASE INFORMATION

Statement of Claim filed on August 19, 2002. Claimants, Lerman and Hipschman, jointly signed the Uniform Submission Agreement on August 16, 2002. Claimants filed an Amended Statement of Claim on September 30, 2002.

Statement of Answer filed by Respondents, Stifel, Feinstein and Hogan, on November 18, 2002. Respondent Stifel signed the Uniform Submission Agreement on September 3, 2002; Respondent Feinstein signed the Uniform Submission Agreement on October 21, 2002; and Respondent Hogan signed the Uniform Submission Agreement on November 14, 2002.

CASE SUMMARY

Claimants asserted the following causes of action: suitability, churning, failure to supervise, breach of fiduciary duty, negligence, common law fraud and violation of state and federal securities laws. The causes of action relate to losses in the Sam Hipschman Trust and Clara Hipschman Trust Accounts Nos. CN22-4172-7479 and CN12-4172-7436, in which the following stocks were traded: Miss. Valley Bksh; Zoltex; Firstcom; Iomega; Metricom; Compaq;

Lasersight; Silicon Storage; Danskin; Rawlings; Imclone Systems; Moore Medical; Cons. Prod; Danka Business Systems; Western Digital; Best Buy; Telemonde; U.S. Interactive; Metrocall; Vertel; Dauphin Technology; Daltathree.com; Clearworks.net; Emerge Interact.; and People's Bank. Claimants asserted that these investments were unsuitable Claimant's needs and objectives.

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

1. All claims are barred by the statute of limitations.
2. The Hipschmans authorized and instructed the broker for Stifel, Mr. Michael Schwartz ("Schwartz"), to enter into all of the transactions at issue and therefore, claims based on such transactions should be dismissed.
3. The claims asserted in the Statement of Claim are barred by the doctrines of waiver and release.
4. Claimants and the Hipschmans ratified all transactions that took place in their accounts and therefore, Claimants are barred from recovering any alleged losses resulting from such transactions.
5. To the extent that Claimants have suffered any damages, they are the product of the negligent conduct of Claimants or the Hipschmans such that some or all of their recovery is barred by those contributory or comparative negligence acts.
6. Claimants failed to mitigate their alleged damages and therefore, are barred from recovering any damages to the extent that such damages could have been prevented had they fulfilled their duty to mitigate.
7. To the extent Claimants base their claims on the NASD or NYSE rules, such rules do not provide for a private cause of action in favor of Claimants and therefore, such claims should be dismissed.
8. Claimants fail to allege any wrongful conduct on the part of Mr. Hogan or Mr. Feinstein in connection with a specific investment transaction and therefore, Claimants fail to state a claim against Mr. Hogan or Mr. Feinstein. They should be dismissed from this proceeding and the panel should enter an order that the complaint be expunged from Mr. Hogan's and Mr. Feinstein's records.
9. Despite Claimants' allegations to the contrary, at all times relevant herein, Stifel had adequate supervisory mechanisms and safeguards governing the actions of its investment representatives, and, at all times relevant herein, Stifel acted in accordance with these procedures. Accordingly, Stifel, Feinstein and Hogan, are not liable for the losses Claimants allegedly incurred and such claims should be dismissed against Stifel.

RELIEF REQUESTED

Claimants Lerman and Hipschman, as Co-Trustees, requested \$173,963.57 in compensatory damages, unspecified punitive damages, interest, attorney's fees, costs and other relief to which they are justly entitled.

Respondents, Stifel, Feinstein and Hogan, requested that all claims be dismissed in their entirety and costs be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing of this matter, Respondents filed a motion to dismiss claims of federal and Missouri securities law violations and common law fraud. Respondents also moved for the Panel to deny Claimants' request for attorney's fees. Claimants agreed to the dismissal of claims regarding violation of federal and Missouri securities laws and claims on common law fraud, except to the dismissal of unsuitability claims. After reviewing the parties' pleadings and hearing the parties' arguments, the Panel dismissed the federal and Missouri securities law and common law fraud claims, but denied dismissal of claims regarding unsuitability.

After completion of Respondent Hogan's testimony, Claimants voluntarily withdrew all claims against Hogan and requested the Panel to expunge all reference of this arbitration from Respondent Hogan's registration records maintained by the NASD Central Registration Depository ("CRD").

At close of Respondents' case, Respondents requested for dismissal of all remaining claims against Stifel and Feinstein, an award for costs and for expungement of this matter from Respondent Feinstein's CRD record.

The parties 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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Any and all claims asserted by Claimants, Diana Lerman and Martin L. Hipschman, as Co-Trustees for the Sam Hipschman Trust and Clara Hipschman Trust, are denied.
2. Any and all claims asserted against Respondents, Stifel, Nicolaus & Co., Inc. and Bernerd H. Feinstein, are dismissed.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Bernerd H. Feinstein's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-90 and 99-54, Respondent Feinstein must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent David M. Hogan's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-90 and 99-54, Respondent Hogan must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees, except as specified herein.
6. 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 = \$ 300.00

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 persons at the time of the events giving rise to the dispute. Accordingly, Stifel, Nicolaus & Co., Inc. is a party.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

September 21-22, 2004, adjournment by Respondent,

Stifel, Nicolaus & Co., Inc.

= \$ 1,125.00

(waived by Arbitrators)

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 arbitrator that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 = \$ 2,250.00

Pre-hearing conferences: May 8, 2003 1 session
January 15, 2004 1 session

Eight (8) Hearing sessions @ \$1,125.00 = \$ 9,000.00

Hearing Dates: September 20, 2004 1 session
February 14, 2005 2 sessions
February 15, 2005 2 sessions
February 16, 2005 2 sessions
February 17, 2005 1 session

Total Forum Fees = \$11,250.00

The Panel assessed 100% of the total forum fees in the amount of \$11,250.00 jointly to Claimants, Diana Lerman and Martin L. Hipschman, as Co-Trustees for the Sam Hipschman Trust and Clara Hipschman Trust.

FEE SUMMARY

1. Claimants Lerman and Hipschman are jointly liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= <u>\$11,250.00</u>
Total Fees	= \$11,550.00
<u>Less payments</u>	= <u>\$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$10,125.00

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

Member Fees	= \$ 5,200.00
<u>Less payments</u>	= <u>\$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Mark R. Lee	-	Public Arbitrator, Presiding Chairperson
Keith D. Patten, Esq.	-	Public Arbitrator
M. Eileen Dorsey, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures/s/ Mark R. Lee

Mark R. Lee
Public Arbitrator, Presiding Chairperson

2/28/05

Signature Date

/s/ Keith D. Patten, Esq.

Keith D. Patten, Esq.
Public Arbitrator

3/1/05

Signature Date

/s/ M. Eileen Dorsey, CFP

M. Eileen Dorsey, CFP
Non-Public Arbitrator

3/1/05

Signature Date

3/2/05

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

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NASD Dispute Resolution
 Arbitration No. 02-04886
 Award Page 5

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 Public Arbitrator, Presiding Chairperson

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 Keith D. Patten, Esq.
 Public Arbitrator

3/1/05

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 Non-Public Arbitrator

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NASD

NASD Dispute Resolution
 Arbitration No. 02-04886
 Award Page 5

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