
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Carol A. Finnegan

Case Number: 02-07016

Names of the Respondents
Stifel, Nicolaus & Co., Inc.
Century Securities Associates, Inc.
John Bergeron
Steve Plauche

Hearing Site: New Orleans, LA

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

For Carol A. Finnegan, hereinafter referred to as "Claimant": E. Clifton Hodge, Jr., Esq. and Stratton Bull, Esq., Phelps Dunbar LLP, Jackson, Mississippi.

For Stifel, Nicolaus & Co., Inc. ("Stifel"), Century Securities Associates, Inc. ("Century"), John Bergeron ("Bergeron"), and Steve Plauche ("Plauche"), hereinafter collectively referred to as "Respondents": Thomas K. Potter, III, Esq. and Stacie M. Hollis, Esq., Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P., New Orleans, LA.

CASE INFORMATION

Statement of Claim filed on or about: November 20, 2002.

Claimant signed the Uniform Submission Agreement: November 19, 2002.

Respondents' Statement of Answer and Respondents Bergeron and Plauche's Counterclaim filed on or about: January 20, 2003.

Respondent Stifel signed the Uniform Submission Agreement: December 10, 2002.

Respondent Century signed the Uniform Submission Agreement: December 10, 2002.

Respondent Bergeron signed the Uniform Submission Agreement: December 26, 2002.

Respondent Plauche signed the Uniform Submission Agreement: December 26, 2002.

Respondent Stifel's Motion to Dismiss Respondent Stifel ("First Motion to Dismiss") filed on or about: November 21, 2003.

Claimant's Response to the First Motion to Dismiss filed on or about: December 5, 2003.

Respondent Stifel's Reply in Support of the First Motion to Dismiss filed on or about: December 11, 2003.

Respondents' Motion to Dismiss All Respondents ("Second Motion to Dismiss") filed on or about: November 21, 2003.

Claimant's Response to the Second Motion to Dismiss filed on or about: December 4, 2003.

Respondents' Reply in Support of the Second Motion to Dismiss filed on or about: December 11, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; failure to disclose; breach of fiduciary duty; and, negligence. The causes of action relate to the purchase of unspecified securities products in Claimant's account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In their Counterclaim, Respondents Bergeron and Plauche asserted that Claimant knew or reasonably should have known that their complaint would result in reportable events resulting in unwarranted cost and damage to Respondents Bergeron and Plauche's reputations.

In the First Motion to Dismiss, Respondent Stifel asserted the following: it did not owe Claimant any sales practice duties; it did not owe Claimant any duty of disclosure; it did not owe Claimant any fiduciary duty; any negligence claim fails as a matter of law; and, clearing firms do not act as "control persons."

In response to the First Motion to Dismiss, Claimant asserted that no agreement with, or inaction by Claimant relieved Respondent Stifel of any of the obligations and duties it owed to her arising out of the business relationship it established with Claimant.

In the Second Motion to Dismiss, Respondents asserted the following: the securities traded in Claimant's account were suitable; Respondents owed no fiduciary or special duty to Claimant; Respondents fully disclosed all necessary and relevant information; Respondents were not negligent in their handling of Claimant's account; and, Claimant suffered no damages.

In response to the Second Motion to Dismiss, Claimant asserted the following: the recommendations of Respondents were negligent and imprudent; Respondents failed to disclose material facts; and, Claimant was damaged by Respondents.

RELIEF REQUESTED

Claimant requested compensatory damages of \$642,000.00 plus the money Claimant would have reasonably made with a prudent investment strategy, reimbursement of commissions, losses, tax penalties, and taxes, attorneys' fees, expenses, punitive damages, and all other general and equitable relief that the facts warranted.

Respondents requested dismissal of the Statement of Claim, assessment of all costs and forum fees against Claimant, attorneys' fees, and such general and equitable relief as the undersigned arbitrators (the "Panel") deemed just under the circumstances. In their Counterclaim, Respondents Bergeron and Plauche requested unspecified damages and expungement of all references to the above-captioned arbitration from Respondents Bergeron and Plauche's registration records maintained by the NASD Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

On or about December 22, 2003, the Panel issued an order which granted the First Motion to Dismiss and denied the Second Motion to Dismiss.

Claimant appeared by video deposition due to illness with the agreement of Claimant's and Respondents' counsel. The video deposition was taken to preserve Claimant's testimony pursuant to the Panel's order dated June 30, 2003.

At the end of Claimant's case-in-chief, both Claimant and Respondents made oral "Motions for Directed Verdict" which the Panel treated as motions for summary judgment. The Panel deliberated for one hour. Claimant's Motion was denied as premature. Respondents' Motion was denied as unsupported by the 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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents Century, Bergeron, and Plauche are liable, jointly and severally, and shall pay to Claimant compensatory damages in the sum of \$151,654.62 plus interest at the rate of 8.00% per annum accruing from the date of the Award until the date of payment of the Award.

Claimant's request for attorneys' fees is denied because the statute cited by Claimant, Miss. Code section 75-71-717, is inapplicable.

Respondents Century, Bergeron, and Plauche are liable, jointly and severally, and shall pay to Claimant the sum of \$375.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Respondents Bergeron and Plauche's counterclaim is dismissed, with prejudice.

Respondents Bergeron and Plauche's request for expungement was not properly before the Panel and is denied as presented.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and Respondents Century, Bergeron, and Plauche's request for attorneys' fees, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 375.00
Counterclaim filing fee	= \$ 250.00

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. Accordingly, Respondents Stifel and Century are member firms and parties.

Respondent Stifel:

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$4,000.00
Total Member Fees	= \$7,000.00

Respondent Century:

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$4,000.00
Total Member Fees	= \$7,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were granted during these proceedings for which fees were assessed.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 the Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences:	
July 31, 2003	1 session
December 22, 2003	1 session
Seven (7) Hearing sessions @ \$1,200.00	= \$ 8,400.00
Hearing Dates:	
January 21, 2004	2 sessions
January 22, 2004	2 sessions
January 23, 2004	3 sessions
Total Forum Fees	= \$10,800.00

The Panel has assessed the total forum fees of \$10,800.00 jointly and severally to Respondents Century, Bergeron, and Plauche.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 375.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent Stifel is solely liable for:

<u>Member Fees</u>	= \$ 7,000.00
<u>Total Fees</u>	= \$ 7,000.00
<u>Less payments</u>	= \$ 7,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent Century is solely liable for:

<u>Member Fees</u>	= \$ 7,000.00
<u>Total Fees</u>	= \$ 7,000.00
<u>Less payments</u>	= \$ 7,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents Bergeron, and Plauche are jointly and severally liable for:

<u>Counterclaim Filing Fee</u>	= \$ 250.00
<u>Total Fees</u>	= \$ 250.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 250.00

Respondents Century, Bergeron, and Plauche are jointly and severally liable for:

<u>Forum Fees</u>	= \$10,800.00
<u>Total Fees</u>	= \$10,800.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$10,800.00

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

ARBITRATION PANEL

Clinton W. Shinn	-	Public Arbitrator, Presiding Chairperson
Linda A. Liljedahl, Esq.	-	Public Arbitrator
Robert E. Graves, J.D.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Clinton W. Shinn
Public Arbitrator, Presiding Chairperson

Signature Date

/s/
Linda A. Liljedahl, Esq.
Public Arbitrator

Signature Date

/s/
Robert E. Graves, J.D.
Non-Public Arbitrator

Signature Date

February 20, 2004
Date of Service (For NASD Dispute Resolution office use only)

Feb. 20, 2004 10:11AM

NASD, BOCA RATON

NO: 072

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Robert E. Graves, J.D.	-	Non-Public Arbitrator

Concurring Arbitrators' SignaturesClinton W. ShinnClinton W. Shinn
Public Arbitrator, Presiding ChairpersonFeb. 20, 2004

Signature Date

Linda A. Liljedahl, Esq.
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Public ArbitratorSignature DateRobert E. Graves, J.D.
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Public Arbitrator, Presiding Chairperson

Signature Date



Linda A. Liljedahl, Esq.
Public Arbitrator



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Linda A. Liljedahl, Esq.

Public Arbitrator

Robert E. Graves, J.D.

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Clinton W. Shinn

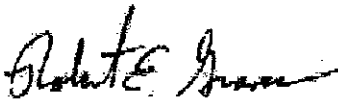
Signature Date

Public Arbitrator, Presiding Chairperson

Linda A. Liljedahl, Esq.

Signature Date

Public Arbitrator



2/20/04

Robert E. Graves, J.D.

Signature Date

Non-Public Arbitrator

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