

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

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In the Matter of the Arbitration Between:

Richard E. Saunders and Anita L. Saunders, Claimants v. Phillips & Company Securities, Inc.,  
Sanders L. Vogel, Timothy C. Phillips, Steven Christopher Clark and James T. Smith,  
Respondents

Case Number: 02-07611

Hearing Site: Salt Lake City, Utah

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Nature of Dispute: Customers v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimants:

Patrick Baldwin, Esq.  
Christine McNamara, Esq.  
Baldwin and McNamara  
Menlo Park, California

For Respondents:

Curt Roy Hinline, Esq.  
Dorsey & Whitney LLP  
Seattle, Washington

**CASE INFORMATION**

Statement of Claim filed: December 16, 2002

Claimants' Joint Uniform Submission Agreement signed: December 6, 2002

Joint Statement of Answer filed by Respondents: March 21, 2003

Respondent Phillips & Co. Securities, Inc.'s Uniform Submission Agreement signed: March 21, 2003

Respondent Sanders L. Vogel's Uniform Submission Agreement signed: March 21, 2003

Respondent Timothy C. Phillips's Uniform Submission Agreement signed: March 21, 2003

Respondent Steven Christopher Clark's Uniform Submission Agreement signed: March 21, 2003

Respondent James T. Smith's Uniform Submission Agreement signed: March 21, 2003

### **CASE SUMMARY**

Claimants alleged breach of contract, breach of fiduciary duty, unsuitability, churning, intentional misrepresentation, negligence, negligent infliction of emotional distress, violation of state and federal laws as well as NASD and NYSE Rules, and failure to supervise. Claimants' allegations concerned the purchase on margin of securities including, but not limited to Yahoo! Inc., Amazon.com, Inc., Level 3 Communications, Inc., PSINet, Inc., Priceline.com, Inc., Drugstore.com, Inc., E-stamp Corp., Immunex Corp., Nortel Networks, Net2Phone, Sun Microsystems, Nokia, Sprint, and Millenium Pharmaceutical. Claimants' dispute also involved the purchase of mutual funds, including but not limited to the Willamette Technology Fund, the Willamette Small Cap Growth Fund, the Willamette Global Health Sciences Fund, and the Willamette Value Fund.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$455,353.00, punitive damages, rescission of the disputed investments, and costs, including attorney's fees.

Respondents requested dismissal with prejudice of the Claimants' Statement of Claim and costs, including attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On November 4, 2003, Claimants dismissed Respondent Timothy C. Phillips without prejudice from this action.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

**AWARD**

After considering the pleadings and the Parties request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants and Respondents have entered into a confidential settlement agreement.
2. Respondents Phillips & Company Securities, Inc., Sanders L. Vogel, Steven Christopher Clark and James T. Smith are dismissed with prejudice.
3. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Timothy C. Phillips' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Timothy C. Phillips 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 Respondents Sanders L. Vogel's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Sanders L. Vogel must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Steven Christopher Clark's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Steven Christopher Clark must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
6. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent James T. Smith's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent James T. Smith must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
7. The parties shall bear their respective costs, including attorney's fees.
8. All other relief requested and not expressly granted is denied.

## FEEES

**Pursuant to the Code, the following fees are assessed:**

### Filing Fees

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

**Initial claim filing fee** = \$ 300.00

## Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Phillips & Co. Securities, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
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Pre-Hearing Process Fee	= \$ 750.00
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**Hearing Process Fee** = \$2,750.00

<b>Total Member Fees</b>	<b>= \$5,200.00</b>
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### **Adjournment Fees**

**The following adjournment fees are assessed:**

March 2–5, 2004 adjournment requested by Claimants = Waived

### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel or the parties and the Chair. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$1,125.00

Pre-hearing conference:	October 7, 2003	1 session
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<b>Total Forum Fees</b>	<b>= \$1,125.00</b>
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1. The Panel assessed \$562.50 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$562.50 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

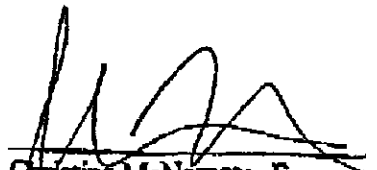
Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$(1,425.00)
<b>Refund Due Claimants</b>	<b>= \$ (562.50)</b>
  
2. Respondent Phillips & Co. Securities, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
  
3. Respondents Phillips & Co. Securities, Inc., Sanders L. Vogel, Timothy C. Phillips, Steven Christopher Clark, and James T. Smith are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 562.50
Less payments	= \$ (0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 562.50</b>

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

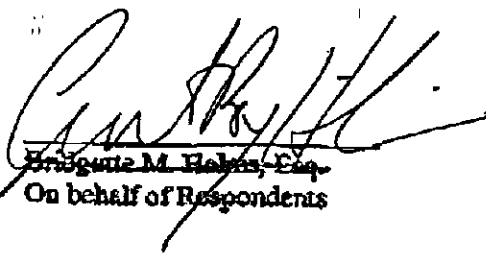
Party Signatures



Christine McNamara, Esq.  
On behalf of Claimants

12/12/04

Signature Date



Brigitte M. Helms, Esq.  
On behalf of Respondents

12/21/04

Signature Date


Curt Roy Hiveline

**ARBITRATION PANEL**

*Kevin D. Swenson, Esq.*  
*Jeffrey W. Shields, Esq.*  
*Neal W. Stephenson*

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*Public Arbitrator, Presiding Chair*  
*Public Arbitrator*  
*Non-Public Arbitrator*

  
Kevin D. Swenson, Esq.  
Chair, Public Arbitrator

2-24-05  
Signature Date

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Jeffrey W. Shields, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Neal W. Stephenson  
Non-Public Arbitrator

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

March 7, 2005  
Date of Service

ARBITRATION PANEL


*Kevin D. Swenson, Esq.*  
*Jeffrey W. Shields, Esq.*  
*Neal W. Stephenson*

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*Public Arbitrator, Presiding Chair*  
*Public Arbitrator*  
*Non-Public Arbitrator*

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Kevin D. Swenson, Esq.  
Chair, Public Arbitrator

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Signature Date

  
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Jeffrey W. Shields, Esq.  
Public Arbitrator

2/25/05  
Signature Date

\_\_\_\_\_  
Neal W. Stephenson  
Non-Public Arbitrator

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

March 7, 2005  
Date of Service



ARBITRATION PANEL

<i>Kevin D. Swenson, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Jeffrey W. Shields, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Neal W. Stephenson</i>	-	<i>Non-Public Arbitrator</i>

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Kevin D. Swenson, Esq.  
Chair, Public Arbitrator

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Signature Date

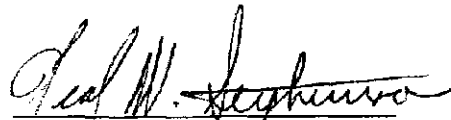
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Jeffrey W. Shields, Esq.  
Public Arbitrator

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Signature Date

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Neal W. Stephenson  
Non-Public Arbitrator

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2/25/05  
Signature Date

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March 7, 2005  
Date of Service