

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

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In the Matter of the Arbitration Between:

Name of the Claimants

Case Number: 03-01862

John F. Green, IV and Karen Green

Name of the Respondents

Hearing Site: Chicago, Illinois

Stifel, Nicolaus & Co., Inc.,  
and Kevin S. Fitzpatrick

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**NATURE OF THE DISPUTE**

Customer v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

James Eccleston, Esq. and Stephen S. Berkeley, Esq., of the firm Shaheen, Novoselsky, Staat & Filipowski represented Claimants John F. Green, IV and Karen Green ("Green").

Kenneth Berg, Esq. and Peter R. Sonderby, Esq., of the firm Ulmer & Berne, LLP represented Respondents Stifel, Nicolaus & Co., Inc. ("Stifel Nicolaus") and Kevin S. Fitzpatrick ("Fitzpatrick"), hereinafter collectively referred to as "Respondents."

**CASE INFORMATION**

Claimants filed the Statement of Claim filed on or about March 17, 2003. Claimants each signed an undated Uniform Submission Agreement.

Respondents filed a Joint Statement of Answer on June 10, 2003. Respondent Stifel Nicolaus signed the Uniform Submission Agreement: March 26, 2003, and Respondent Kevin S. Fitzpatrick signed the Uniform Submission Agreement on June 15, 2003.

**CASE SUMMARY**

The Greens asserted the following causes of action: fraud within the meaning of the federal securities laws, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder and the Illinois Securities Act of 1953;

misrepresentations and omissions of material facts in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act; breach of fiduciary duty; negligence and violation of the NASD and NYSE by recommending unsuitable securities and engaging in excessive trading; negligent misrepresentation and omission; breach of contract; control person liability; failure to supervise; and *respondeat superior*.

The causes of action relate to investments in technology and small-cap stocks in their non-managed joint account including: Teleservices Internet Group, Cisco Systems, LSI Logic, Oracle, Hearme, Chief Consol Mining, Co., Legato Systems, and Rare Medium Group, among others. The causes of action also relate to unspecified stocks in the managed accounts; technology and small-cap stocks in the non-managed IRA; large-cap and S&P 500 stocks, with a concentration in the technology sector, in the Wrap IRA; small-cap and mid-cap stocks in the Oak Ridge IRA. Lastly, the causes of action relate to investments in equity portfolios for the trust account: First Trust UIT Communications portfolio and the Van Kampen Equity Select Growth Fund.

The Stifel Nicolaus account numbers are: 3693-1137, 3693-1139, 3693 1141, 3693-1143, 3692-1145, 3693-1147, 3693-1135, 3693-1528.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to set forth a basis upon which relief can be granted; Claimants expressly ordered, approved, participated in and ratified the transactions of which they complain in the Statement of Claim. Accordingly, these claims are barred by the doctrines of waiver, estoppel, and ratification; any diminution in the value of Claimants' investments made through Respondents were caused in whole or in part by the general decline in the investment markets, the economy and/or other events outside the control of Respondents; Claimant's relationship with Respondents was contractual in nature and, therefore, the claims sounding in tort are barred as a matter of law inasmuch as tort claims may not be asserted for purely economic losses of the type for which Claimants seek recovery; the claims that Claimants purpose to assert pursuant to the Illinois Securities Act are barred as a consequence of Claimants' failure to tender rescission as required by that statute; the claims asserted herein are barred, in whole or in part, by the applicable statutes of limitation; the claims that are asserted herein are barred by Claimants' own failure to minimize or mitigate their losses; Claimants' claims are barred as a result of their failure to exercise due diligence and their failure to timely disaffirm the transactions and acts complained of in the Statement of Claim despite the fact that they knew or should have know of the transactions; Claimants are contractually barred from asserting any claim against Respondents based upon allegations that the portfolios managed by the account managers chosen by Claimants were too risky for Claimants by their signing an acknowledgement of that fact; and Claimants are barred by the doctrine of laches from asserting these claims as a result of their unexplained and unreasonable delay in asserting the claims.

### **RELIEF REQUESTED**

Claimant Green requested compensatory damages in the amount of \$460,522.00, punitive damages, prejudgment interest, reasonable attorney's fees, costs, and any such relief the panel deems just and equitable.

Respondents requested denial the claims.

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

The Panel recognizes both parties' merits and fault in this matter.

### **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. Respondent Stifel, Nicolaus & Co., Inc. is solely liable for and shall pay to Claimants John F. Green, IV and Karen Green the sum of \$200,000.00 as compensatory damages.
2. Except for the forum fees associated with this matter, which are specified herein, the parties shall bear their own costs, including attorney's fees.
3. 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 person at the time of the events giving rise to the dispute. Accordingly, Stifel Nicolaus, as a party, is assessed the following fees:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00
Total	= \$ 5,200.00

**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 Panel at \$1,125.00 = \$ 1,125.00

Pre-hearing conference: September 19, 2003 1 session

Ten (10) Hearing sessions at \$1,125.00 = \$11,250.00

Hearing Dates:	July 27, 2004	2 sessions
	July 28, 2004	2 sessions
	August 19, 2004	2 sessions
	August 20, 2004	2 sessions
	August 25, 2004	2 sessions

Total Forum Fees = \$12,375.00

The Panel assessed \$6,187.50 of the forum fees to John F. Green, IV and Karen Green and assessed \$6,187.50 of the forum fees to Stifel, Nicolaus & Co., Inc.

**FEE SUMMARY**

Claimant John F. Green, IV and Karen Green are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 6,187.50
Total Fees	= \$ 6,487.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 5,062.50

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

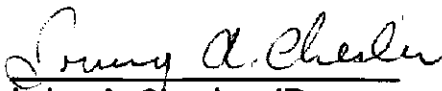
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 6,187.50
Total Fees	= \$11,387.50
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 6,187.50

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


**ARBITRATION PANEL**

Irving A. Chesler, JD	-	Public Arbitrator, Presiding Chairperson
Susanne J. Hollander	-	Public Arbitrator
Robert J. Larson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Irving A. Chesler, JD  
Public Arbitrator, Presiding Chairperson

8-25-04  
Signature Date

  
Susanne J. Hollander  
Public Arbitrator

8-25-04  
Signature Date

  
Robert J. Larson  
Non-Public Arbitrator

8-25-04  
Signature Date

8-26-04  
Date of Service (For NASD Dispute Resolution office use only)