

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant/Counter-Respondent  
Stifel Nicholas & Company, Inc.

v.

04-01515  
Denver, Colorado

Respondent/Counter-Claimant  
Stephen W. Powell

and

Third-Party Claimant  
Stephen W. Powell

v.

Third-Party Respondent  
Alan Stevens

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Nature of Dispute: Member v. Associated Person;  
Associated Person v. Member and  
Associated Person v. Associated Person

**REPRESENTATION OF PARTIES**

Stifel Nicholas & Company, Inc. ("Stifel") and Alan Stevens ("Stevens") were represented by Bradford E. Dempsey, Esq., and John V. McDermott, Esq., of Holme Roberts & Owen, LLP, Denver, Colorado.

Stephen W. Powell ("Powell") was represented by Russell K. Bean, Esq., of Krys Boyle, P.C., Denver, Colorado.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 3, 2004. The Submission Agreement of Claimant was signed on or about March 3, 2004.

A Statement of Answer, Counterclaim and Third-Party Claim was filed by Respondent, Stephen W. Powell, on or about April 28, 2004.

Third-Party Respondent, Allan Stevens, filed a Response to the Third-Party Claim of Stephen W. Powell on or about June 8, 2004. Alan Stevens did not file a Uniform Submission Agreement.

### **CASE SUMMARY**

Stifel asserted that Powell was in breach of a promissory note that became due and payable upon his termination from Stifel.

In Powell's Counterclaim and Third-Party Claim he asserted causes of action including the following: wrongful termination, tortious interference with business relations, conversion and defamation. The causes of action related to Powell's allegation that he was fired by Stifel Nicholas so that Stifel Nicholas could steal his book of business and coerce those customers into selling their holdings in Peregrine Pharmaceuticals, which according to Powell, was not in the customers' best interest. Powell alleged that when he declined to issue a blanket sell recommendation to his customers, he was told to resign or be terminated. Powell alleged that since he was terminated without cause, Stifel should not be entitled to collect on the promissory note.

Stifel denied the allegations set forth in Powell's Counterclaim and asserted defenses including the following: Powell's Counterclaim failed to state a claim upon which relief can be granted and Powell's wrongful termination claim is barred by the statute of frauds.

Stevens denied the allegations set forth in the Third-Party Claim and incorporated the defenses as set forth in Stifel's Response to Powell's Counterclaim.

### **RELIEF REQUESTED**

Stifel requested an award of \$117,871.47 in compensatory damages, plus interest, attorneys' fees, costs, and any relief the panel deemed appropriate.

Powell requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees. In his Counterclaim and Third-Party Claim, Powell request an award of unspecified damages, punitive damages, costs, attorneys' fees and any other relief the panel deemed just and proper.

Stifel requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Stevens requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Stephen W. Powell and Alan Stevens did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and are bound by the determination of the arbitration panel on all issues submitted.

Prior to the hearing, the parties fully and finally settled all claims between them. On or about August 23, 2005, the parties submitted a Stipulated Motion for Entry of Award asked for the panel incorporate the terms of their agreement requested that it be entered.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings and the parties' submissions and representations, including the parties' Stipulated Motion for Entry of Award, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

1. Stephen W. Powell, is liable for and shall pay to Stifel Nicholas & Company, Inc., the sum of \$50,959.28 (Fifty Thousand Nine Hundred Fifty Nine Dollars and Twenty Eight Cents) reflecting principal and accrued interest for the breach of the promissory note;
2. Stephen W. Powell, hereby consents and stipulates that he is liable for and shall pay to Stifel Nicholas & Company, Inc., interest on the above-stated sum at the rate of 9% per annum from August 23, 2005, through and including the date this Award is paid in full;
3. Stephen W. Powell's Counterclaim against Stifel Nicholas & Company, Inc., and Third-Party Claim against Alan Stevens, are denied with prejudice in their entirety;
4. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, are denied with prejudice; and
5. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee	= \$ 1,000
Third-Party Claim/Counterclaim filing fee	= \$ 250

**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. In this matter, the member firm is Stifel Nicholas & Company, Inc.

Member surcharge	= \$ 1,700
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 2,750

**Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$ 450	= \$ 450
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Pre-hearing conference:	02/14/2005	1 session
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Two (2) Pre-hearing sessions with Panel x \$ 1,125	= \$ 2,250
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Pre-hearing conferences:	08/04/2004	1 session
	01/24/2005	1 session

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Total Forum Fees	= \$ 2,700
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The Arbitration Panel has assessed \$ 900 of the forum fees to Stifel Nicholas & Company, Inc.

The Arbitration Panel has assessed \$ 900 of the forum fees to Stephen W. Powell.

The Arbitration Panel has assessed \$900 of the forum fees to Alan Stevens.

Pursuant to Rule 10332(g) of NASD Code of Arbitration Procedures all hearing session deposits are retained.

**FEE SUMMARY**

Claimant/Counter-Respondent, Stifel Nicholas & Company, Inc., is liable for:

Initial Filing Fee	= \$ 1,000
Member Fees	= \$ 5,200
Forum Fees	= \$ 900
<u>Retention of Hearing Session Deposit</u>	<u>= \$ 225</u>
Total Fees	= \$ 7,325
<u>Less payments</u>	<u>= \$ 7,325</u>
Balance Due NASD Dispute Resolution	= \$ 0

Respondent/Counter-Claimant/Third-Party Claimant, Stephen W. Powell, is liable for:

Counterclaim/Third-Party Claim Filing Fee	= \$ 250
Forum Fees	= \$ 900
<u>Retention of Hearing Session Deposit</u>	<u>= \$ 100</u>
Total Fees	= \$ 1,250
<u>Less payments</u>	<u>= \$ 1,250</u>
Balance Due NASD Dispute Resolution	= \$ 0

Third-Party Respondent, Alan Stevens, is liable for:

<u>Forum Fees</u>	<u>= \$ 900</u>
Total Fees	= \$ 900
<u>Less payments</u>	<u>= \$ 0</u>
Balance Due NASD Dispute Resolution	= \$ 900

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

ARBITRATION PANEL

William F. Skewes, Esq. - Public Arbitrator, Presiding Chair  
Samuel L. McClaren, Esq. - Public Arbitrator  
Cletus E. Byrne, Jr. - Non-Public Arbitrator

Concurring Arbitrators:

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William F. Skewes, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Public Arbitrator

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4/11/06  
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Date of Service (NASD use only)

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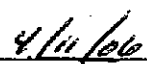
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