

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Stifel, Nicholas & Company, Inc.

v.

04-02871

Denver, Colorado

Respondent

William J. Brown

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Nature of Dispute: Member v. Associated Person

**REPRESENTATION OF PARTIES**

Stifel, Nicholas & Company, Inc. ("Claimant") was represented by Bradford E. Dempsey, Esq., of Holme Roberts & Owen, LLP.

William J. Brown ("Respondent") was represented by Andrew I. Friedman, Esq., Denver, Colorado.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 15, 2004. The Submission Agreement of Claimant was signed on or about April 15, 2004.

The Statement of Answer was filed by Respondent on or about August 20, 2004. The Submission Agreement of Respondent was signed on or about August 20, 2004.

Respondent filed a Motion for Summary Judgment on or about February 14, 2005. Claimant filed an Opposition to Respondent's Motion on or about February 28, 2005. Respondent filed a Reply to his Motion on or about March 2, 2005.

**CASE SUMMARY**

Claimant asserted the following cause of action: breach of a promissory note. The cause of action related to Claimant's allegation that Respondent breached a promissory note dated April 16, 2001, hereinafter referred to as the "Note." Claimant alleged that Respondent failed to honor the terms of the Note after his departure on February 23, 2003.

Respondent denied the allegations set forth in the Statement of Claim and asserted that Claimant informed him that the Note could be repaid by the future commissions of his clients, if he were to sign an agreement not to transfer his clients and their assets from Claimant. After doing so,

Respondent asserted that Claimant reversed its agreement and demanded the remaining balance on the Note.

### **RELIEF REQUESTED**

Claimant requested an award of the principal owing under the Note in the amount of \$58,266.74, plus interest, attorneys' fees, costs and any other relief the panel deemed just and equitable.

Respondent 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**

At the start of the arbitration hearing, April 6, 2005, the panel denied Respondent's Motion for Summary Judgment.

On or about April 7, 2005, Claimant filed a Motion to Take Judicial Notice. Claimant submitted a response in opposition on or about April 8, 2005. Claimant submitted a Notice of Withdrawal of the Motion to Take Judicial Notice on or about April 13, 2005.

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, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
2. 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
3. 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

#### **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	= \$ 1,100
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 1,700

#### **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:

Two (2) Pre-hearing sessions with the Panel x \$ 750 = \$ 1,500

Pre-hearing conferences:	11/08/2004	1 session
	03/07/2005	1 session

Three (3) Hearing sessions with the Panel x \$ 750 = \$ 2,250

Hearing Dates:	04/06/2005	3 sessions
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Total Forum Fees = \$ 3,750

The Arbitration Panel has assessed \$ 1,875 of the forum fees to Stifel, Nicholas & Company, Inc.

The Arbitration Panel has assessed \$ 1,875 of the forum fees to William J. Brown.

**FEE SUMMARY**

Claimant, Stifel, Nicholas & Company, Inc., is liable for:

<u>Initial Filing Fee</u>	= \$ 1,000
<u>Member Fees</u>	= \$ 3,550
<u>Forum Fees</u>	= \$ 1,875
<u>Total Fees</u>	= \$ 6,425
<u>Less payments</u>	= \$ 5,300
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,125

Respondent, William J. Brown, is liable for:

<u>Forum Fees</u>	= \$ 1,875
<u>Total Fees</u>	= \$ 1,875
<u>Less payments</u>	= \$ 0
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,875

**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**

Eugene M. Osman, Esq. – Non-Public Arbitrator, Presiding Chair  
Melanie J. Marmorstein – Non-Public Arbitrator  
Richard M. Reider – Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Eugene M. Osman, Esq.  
Non-Public Arbitrator, Presiding Chair

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

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Melanie J. Marmorstein  
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Richard M. Reider  
Non-Public Arbitrator

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

4/14/05  
Date of Service (NASD use only)

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**Claimant, Stifel, Nicholas & Company, Inc., is liable for:**

<b>Initial Filing Fee</b>	<b>= \$ 1,000</b>
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<b>Total Fees</b>	<b>= \$ 6,425</b>
<b>Less payments</b>	<b>= \$ 5,300</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,125</b>

**Respondent, William J. Brown, is liable for:**

<b>Forum Fees</b>	<b>= \$ 1,875</b>
<b>Total Fees</b>	<b>= \$ 1,875</b>
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Signature Date

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