

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between: )

Name of the Claimants )

Millard Raymond Miller and Rose Nielsen Miller, )  
Individually and as Trustees of the )  
Millard and Rose Miller Living Trust )

Case Number: 04-03049

Hearing Site: St. Louis, Missouri

Name of the Respondent )

Stifel, Nicolaus & Co., Inc. )

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**NATURE OF DISPUTE**

Customers vs. Member Firm

**REPRESENTATION OF PARTIES**

Steven W. Koslovsky, Esq. of Maryland Heights, Missouri, represented Claimants, Millard Raymond Miller and Rose Nielsen Miller ("Miller"), hereinafter referred to as "Claimants."

Jeffrey S. Jamieson, Esq. of the law firm Blackwell, Sanders, Peper, Martin, LLP, located in St. Louis, Missouri, represented the Respondent, Stifel, Nicolaus & Co., Inc. ("Stifel"), hereinafter referred to as "Respondent."

**CASE INFORMATION**

Statement of Claim filed on April 21, 2004. Claimants, Millard Raymond Miller and Rose Nielsen Miller, jointly signed the Uniform Submission Agreement on April 17, 2005 and April 18, 2005, respectively.

Statement of Answer filed by Respondent Stifel on June 9, 2004. Respondent signed the Uniform Submission Agreement on May 4, 2004.

**CASE SUMMARY**

Claimants' asserted the following causes of action: fraud, misrepresentation, negligence, failure to supervise and unauthorized trading. The causes of action relate to various securities, including EMC, Plug, CREE, Global Crossing and Qualcomm stocks. Claimant asserted that these investments, recommended by Respondent's former registered representative, Jacqueline Quicksilver ("Quicksilver") were speculative in nature and unsuitable to Claimants' investment needs and objectives. Claimant further asserted that Respondent failed to supervise its representative in that Quicksilver constituted fraud and misrepresentations on Claimants' accounts.

Unless specifically admitted in its Answer, Respondent Stifel denied the allegations made in the Statement of Claim and asserted the following defenses:

1. As a result of Claimants' failure to notify Stifel of the alleged acts and omissions of which Claimants now complain promptly after receipt of written confirmations, monthly statements and other documents evidencing or setting forth transactions in Claimants' accounts and, in any event, promptly after Claimants discovered or reasonably should have discovered the alleged acts or omissions, Claimants are barred from recovering from Stifel under the doctrines of ratification, account stated, estoppel, waiver and laches because Stifel relied upon the aforesaid silence of Claimants.
2. Claimants failed to act promptly and with due diligence to mitigate Claimants' damages after Claimants knew or should have known of the alleged acts and omissions of which Claimants complain. To the extent Claimant's alleged damages were sustained after such time, Claimants are barred therefore from recovering such damages. In no event are Claimants entitled to recover damages sustained after Claimants' accounts with Stifel were closed.
3. By failing to exercise the degree of care over their affairs and investments which an ordinarily prudent investor would exercise, Claimants caused or contributed to cause the alleged damages of which Claimants complain herein and are thus barred by their contributory negligence from recovering such alleged damages from Stifel.
4. The Claimants were aware from the outset of the risks of profit and loss associated with investing in securities and voluntarily assumed such risk. The Claimants' knowing and voluntarily assumption of such risk was the sole and proximate cause of Claimants' alleged damages.
5. The damages allegedly suffered by Claimants were caused, if at all, by unforeseeable market factors and conditions affecting the value of securities in Claimants' accounts for which Stifel is not liable or responsible.
6. Some, if not all, of Claimants' claims are barred by the applicable statutes of limitations.
7. The Statement of Claim and each count thereof fails to state a claim against Stifel upon which relief can be granted.
8. Some, if not all, of Claimants' claims are barred by the doctrine of accord and satisfaction.
9. Some of Claimants' claims are barred by the doctrine of payment.

#### **RELIEF REQUESTED**

Claimants Miller requested \$150,000.00 in compensatory damages, \$350,000.00 in punitive damages, plus interest and attorney's fees.

Respondent Stifel requested that Claimants' claims be dismissed; that relief be denied; that Respondent be awarded fees and costs; and for such other and further relief as the Panel deems just and proper.

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

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, 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 the Claimants, Millard Raymond Miller and Rose Nielsen Miller, the sum of \$30,000.00 as compensatory damages.
2. Respondent, Stifel, Nicolaus & Co., Inc. is solely liable for and shall pay the Claimants, Millard Raymond Miller and Rose Nielsen Miller, the sum of \$30,000.00 as punitive damages. In deciding to award punitive damages, the Panel considered the pleadings filed by counsel, as well as the arguments presented on behalf of the parties, and determined that authority existed for an award of punitive damages to the Claimants.
3. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
4. 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
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#### **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 & Co., Inc. is a party and is assessed the following:

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

#### **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 @ \$1,125.00	= \$1,125.00
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Pre-hearing conference: September 20, 2004 1 session	
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Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
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Hearing Date): May 24, 2005 2 sessions	
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May 25, 2005 2 sessions	
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Total Forum Fees	= \$5,625.00
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1. The Panel assessed 50% of the total forum fees in the amount of \$2,812.50 jointly to Claimants, Millard Raymond Miller and Rose Nielsen Miller.
2. The Panel assessed 50% of the total forum fees in the amount of \$2,812.50 solely to Respondent, Stifel, Nicolaus & Co., Inc.

**FFS SUMMARY**

## 1. Claimants are jointly liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$3,112.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$1,687.50

## 2. Respondent is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$2,812.50</u>
Total Fees	= \$8,012.50
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$2,812.50

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

**ARBITRATION PANEL**

John R. Loss	-	Public Arbitrator, Presiding Chairperson
Leah M. Balk-Teitelbaum	-	Public Arbitrator
Edwin R. Cohen	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**/s/ John R. Loss

John R. Loss  
Public Arbitrator, Presiding Chairperson

5/26/05

Signature Date

/s/ Leah M. Balk-Teitelbaum

Leah M. Balk-Teitelbaum  
Public Arbitrator

5/26/05

Signature Date

/s/ Edwin R. Cohen

Edwin R. Cohen  
Non-Public Arbitrator

5/26/05

Signature Date

5/26/05

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

NASD Dispute Resolution  
 Arbitration No. 04-03049  
 Award Page 4 of 4

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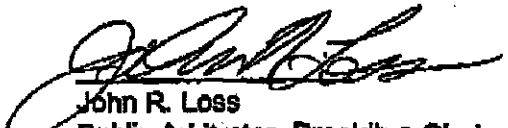
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### Concurring Arbitrators' Signatures

  
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 Public Arbitrator, Presiding Chairperson

5/26/05  
 Signature Date

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 Leah M. Balk-Teitelbaum  
 Public Arbitrator

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John R. Loss  
Public Arbitrator, Presiding Chairperson

Leah M. Balk-Teitelbaum  
Public Arbitrator

Edwin R. Cohen  
Non-Public Arbitrator

Signature Date

Signature Date

Signature Date

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

NASD Dispute Resolution  
 Arbitration No. 04-03048  
Award Page 4 of 4

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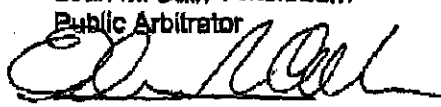
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 John R. Loss  
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