

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Dorothy Zotta, individually and as personal  
representative of the Estate of Albert Zotta

Claimants

and

Stifel Nicolaus & Company, Inc. and  
Norbert Krekeler

Respondents

A W A R D  
NASD No.  
88-02407

CASE SUMMARY

In a claim filed with the NASD on or about July 27, 1988, Claimant Dorothy Zotta, individually and as the personal representative of the estate of Albert Zotta ("Zotta") alleged that Respondents Stifel Nicolaus & Company, Inc. ("Stifel") and Norbert Krekeler ("Krekeler") violated NYSE and NASD rules by investing Zotta's funds in unsuitable low priced equity securities given Zotta's conservative investment objectives, churned Zotta's account to generate excessive commissions for Stifel and Krekeler, misrepresented or omitted material facts stated to Zotta in violation of Section 10(b) of the Securities Exchange Act of 1934 and rule 10(b-5) promulgated thereunder and Section 17(a) of the Securities Act of 1933. Stifel was also alleged to have improperly supervised Krekeler in connection with his servicing of Zotta's account.

Stifel and Krekeler specifically denied the allegations of unsuitable trading, churning and fraud. Stifel and Krekeler alleged that the trading in and for Zotta's account was consistent at all times with Zotta's instructions. Stifel and Krekeler also alleged that their conduct did not violate NYSE or NASD rules and asserted that Zotta's claims were time barred by the 2 year statute of limitations set forth in Mo. Rev. Stat. Section 409.411(e). Additionally, Stifel and Krekeler asserted the affirmative defenses of ratification, estoppel and waiver.

#### RELIEF REQUESTED

Zotta sought actual damages of \$75,000 from Stifel and Krekeler, jointly and severally, plus costs of bringing the claim and such other relief as is just and proper.

Stifel and Krekeler requested dismissal of the claim and an award to them from Zotta for the costs and expenses incurred to defend the claim.

#### OTHER ISSUES

On December 12, 1989 at the start of the second day of the hearing, Stifel's counsel moved to bar any evidence on Claimants' claims of common law fraud, breach of contract and breach of fiduciary duty because these theories of liability were not set forth in the statement of claim. The panel considered the arguments of both counsel, took the matter under advisement and determined to decide the motion with the merits of the case.

#### AWARD

On Monday and Tuesday, December 11 and 12, 1989 in St. Louis, Missouri, during a hearing lasting five sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on July 22, 1988 by Claimant Dorothy Zotta, on December 6, 1988 by David M. Hogan, Vice President and Compliance Director on behalf of Respondent Stifel Nicolaus and on December 16, 1988 by Respondent Norbert Krekeler.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted against Stifel Nicolaus and Krekeler in Zotta's statement of claim shall be and are hereby dismissed in their entirety;
2. The additional claims objected to at the hearing by Stifel and Krekeler's counsel as untimely because they were not in the written statement of claim were also considered by the panel. Pursuant to the panel's ruling to decide the motion with the case these claims shall be and are also hereby dismissed in their entirety;
3. The parties shall each bear their respective costs and expenses including any attorneys' fees incurred in this matter;

4. Pursuant to Section 30(b) of the NASD Code of Arbitration Procedure, the NASD shall retain the \$100 postponement fee deposited by Stifel to receive a postponement of a previously scheduled hearing date in this matter; and

5. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees the \$500.00 filing fee previously deposited with the NASD by the Claimant and no additional forum fees are assessed against any party.

By the Panel

Dated: January 20, 1990

/S/ George W. Kasserman, Jr.  
Presiding Chairman

Dated: January 11, 1990

/S/ Charles E. Jones

Dated: January 10, 1990

/S/ William J. Westphal