

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Louis Goldman, and
Sylvia Goldman,
Claimants,

v.

No. 94-00615

Stifel, Nicolaus & Co., Inc.,
Advest, Inc.,
Rowland, Simon & Co., and
Newhard Cook & Co., Inc.,
Respondents.

REPRESENTATION OF PARTIES

Louis Goldman and Sylvia Goldman ("**Claimants**") were initially represented by Bruce I. Garfield of Investors Arbitration Services, Inc, Woodland Hills, California. Claimants were later represented by Stuart R. Berkowitz, Esq., of Platke & Berkowitz, St. Louis, Missouri.

Stifel Nicolaus & Co., Inc. ("**Stifel**") was represented by Rochelle S. Hall, Esq., St. Louis, Missouri.

Advest, Inc. ("**Advest**") was represented by Paul A. Grana, Esq., St. Louis, Missouri.

Rowland, Simon & Co. ("**Rowland**") was represented by H. Clay Billingsly, Esq., of Klutho, Cody & Kilo, P.C., St. Louis, Missouri.

Newhard Cook & Co., Inc. ("**Newhard**") was not represented in this arbitration.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about February 14, 1994. Claimants' Submission Agreements were signed on February 14, 1994, March 18, 1994. Claimants' amended statement of claim was filed on or about October 13, 1995.

Stifel's Statement of Answer was filed on or about July 15, 1994. Stifel's Submission Agreement was signed on July 15, 1994. Stifel's Answer to Claimants' First Amended Statement of Claim was filed on or about November 13, 1995.

Advest's Statement of Answer was filed on or about July 14, 1994. Advest's Submission Agreement was signed on June 20, 1994. Advest's Statement of Answer to Claimants' First Amended Statement of Claim was filed on or about November 8, 1995.

Rowland's Answer was filed on or about March 14, 1995. Rowland's Submission Agreement was signed on March 13, 1995.

HEARING INFORMATION

Respondents Rowland and Stifel settled with the Claimants, and were dismissed prior to the start of the hearing in this matter. Respondents Rowland and Stifel did not participate in the hearing.

The hearing was held on January 9, 1996 in St. Louis, Missouri for a total of two (2) sessions.

CASE SUMMARY

Claimants alleged that: In May of 1987, they were approached by Steven and Jeanne Isserman (the "Issermans") concerning Option I, L.P., and that Claimants were never supplied with a private placement memoranda; the Issermans had informed Claimants that the partnership would be investing in secure investments, later confirmed in writing; in 1988, the Issermans approached the Claimants to invest in a winter amusement park called the Landing; in November of 1988, Rowland was acquired by Stifel and Claimants' accounts were acquired by Stifel; Stifel had a successor fiduciary duty to take control of Claimants' account, determine if any improper investments had been made, and if so, to redress any breach of trust; and that Stifel failed to do this, and breached its duty as a successor fiduciary, in that the Isserman's had unlawfully diverted IRA money out of Claimants' account. Claimants further alleged that: In May of 1989, Louis Goldman's account was transferred to Newhard where Steve Isserman had become a broker; at Newhard, Steve Isserman placed the IRA money into Option I from which he was able to embezzle and steal Claimants' funds; in October of 1989, Newhard was acquired by Advest along with Claimants accounts; Advest repeatedly represented to the Claimants that Steven Isserman had become a broker with Advest by repeatedly printing his name on Claimants' monthly statements; Advest had a successor fiduciary identical to Stifel, which it breached; it was not until the summer of 1992 that Claimants realized that their IRA accounts had been looted by the Issermans and the investment in the Landing had become worthless due to its bankruptcy; Stifel and Advest have refused to even acknowledge that they ever held Claimants' IRA accounts or that Steve Isserman had ever been associated with them; Stifel and Advest had breached their duties as successor fiduciaries and negligently and carelessly led Claimants to believe that Steve Isserman was employed by them, the Claimants were unable to take any steps to mitigate their damages.

Unless otherwise admitted, Advest denied the allegations set forth in the Statement of Claim and First Amended Statement of Claim. Advest specifically stated that: Claimants do not allege any wrongdoing in their accounts while those accounts were at Advest; Advest never made any

representation to the Claimants endorsing the Issermans, never showed the Issermans as their account executives and, in fact, never hired either of the Issermans; Claimants waited five (5) years subsequent to being told by Jeanne Isserman that "we are not affiliated with Advest" to file a claim against Advest the claim should be barred on the basis of estoppel and laches; Advest is not liable for any wrongdoing which may have occurred while Claimants' accounts were at Newhard and in light of the fact that the arbitral procedure does not have jurisdiction over a claim for successor liability, any attempt to claim successor liability should be barred; Claimants' losses are actionable against persons and entities other than Advest; and the fact that Claimants have suffered these losses and may have no solvent party to pursue is no justification to use imaginative arguments to attempt to impose liability on Advest when such liability clearly does not exist.

RELIEF REQUESTED

Claimants requested that the Respondents be held jointly and severally liable for Claimants total loss of \$198,561, for attorneys' fees, costs, and any other relief that the panel determines to be just and appropriate.

Advest requested that Claimants' claim be dismissed prior to hearing.

OTHER ISSUES CONSIDERED & DECIDED

Concurrent with the filings of their Statements of Answer to the Statement of Claim and First Amended Statement of Claim, Stifel, Advest and Rowland filed Motions to Dismiss Claimants' claims. After review of the original motions, the motions filed with the amended pleadings, the responses, and deliberation, the arbitrators determined to take the motions under advisement to be decided with the case.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the 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:

Claimants claims are, and each of them, denied with prejudice.

Each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$750 = \$1,500 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimants.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$200 previously paid by Stifel and Advest.

Pursuant to §45 of the Code, Rowland and Newhard are liable for, and shall pay to the NASD the sum of \$200 (each) as an assessment of the member surcharge.

Additional forum fees in the amount of \$750 are assessed against Advest.

Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

Charles Clardy
Charles Clardy
Public Arbitrator, Presiding Chair

s/s

March 1, 1996

Joseph W. Twombly
Joseph W. Twombly
Public Arbitrator

s/s

February 29, 1996

Marvin L. Frazier, Jr.
Marvin L. Frazier, Jr.
Industry Arbitrator

s/s

March 1, 1996