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AWARD 10/06

NASD Regulation, Inc. Office of Dispute Resolution

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Securities Dealers, Inc.

In the Matter of the Arbitration Between

1996

Stifel, Nicolaus & Co., Inc.,

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Claimant,

v.

No. 95-0502 1

Robert M. Cochran,

Respondent.

REPRESENTATION OF PARTIES

Claimant Stifel, Nicolaus & Co., Inc. was represented by Tom Archer, Esq. and Dan O'Neill, Esq. of Bryan Cave LLP located in St. Louis, MO. At hearing, Charles R. Hartman III, Esq., General Counsel for Stifel, Nicolaus & Co., Inc., entered appearance as additional counsel for claimant Stifel, Nicolaus & Co., Inc.

Respondent Robert M. Cochran was represented by Drew Neville of Linn & Neville located in Oklahoma City, OK. Respondent Robert M. Cochran personally appeared commencing September 18, 1996.

CASE INFORMATION

Claimant Stifel, Nicolaus & Co., Inc.'s Statement of Claim was filed on or about October 18, 1995. Claimant Stifel, Nicolaus & Co., Inc.'s Submission Agreement was signed on October 17, 1995 by Charles R. Hartman, General Counsel of Stifel, Nicolaus & Co., Inc.

NASD Regulation, Inc. Office of Dispute Resolution has no record of a Statement of Answer by respondent Robert M. Cochran. NASD Regulation, Inc. Office of Dispute Resolution has no record of a properly executed Submission Agreement by respondent Robert M. Cochran.

HEARING INFORMATION

The hearing was held on: September 16, 1996 for two (2) sessions;
September 17, 1996 for two (2) sessions;
September 18, 1996 for two (2) sessions;
September 19, 1996 for three (3) sessions; and
September 20, 1996 for two (2) sessions.

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The hearing was held in St. Louis, MO.

CASE SUMMARY

Claimant Stifel, Nicolaus & Co., Inc. ("Claimant") alleged that respondent Robert M. Cochran ("Respondent") breached contractual and other duties in his former position of Executive Vice President for Respondent, whereby Respondent headed Claimant's Oklahoma City Public Finance Office. According to Claimant, Respondent was terminated due to his breach of duties as an officer and of the express terms of his employment contract. Claimant asserted that since Respondent's termination, the Securities and Exchange Commission ("SEC") has concluded an investigation of Claimant's operations directly attributable to Respondent, which resulted in a fine against Claimant and Claimant's repayment of allegedly illegal profits in three transactions. Claimant also alleged that Respondent overdraw his compensation, failed to repay a sizeable advance, and made improper loans to his immediate supervisor. Claimant made the following legal claims: (1) breach of contract, excess compensation; (2) amounts due under promissory note; (3) breach of duty, right to indemnity; and (4) breach of covenant not to compete, action for accounting and disgorgement.

NASD Regulation, Inc. Office of Dispute Resolution has no record of a Statement of Answer by Respondent.

RELIEF REQUESTED

Claimant Stifel, Nicolaus & Co., Inc. ("Claimant") requested: an award in the amount of \$888,027 in principal and \$75688.45 in interest, as of October 15, 1995, plus an additional \$180.71 in interest accruing daily, for advances made under a written employment contract which were never earned; an award in the amount of \$550,000 in principal and \$133,649.40 in interest, as of October 15, 1995, plus an additional \$128.86 in interest accruing daily, for a series of promissory notes executed under the employment agreement, which became due when Claimant's chief executive officer made a good faith determination that grounds existed to terminate this agreement for cause; an award of a sum not yet quantified for damages including legal fees, other costs and expenses, and indirect costs, as well as for claims by others against Claimant that were not yet ripe and for which Claimant reserved all of its rights with regard to any such claims against respondent Robert M. Cochran ("Respondent"); and that Respondent be required to make an accounting to Claimant to identify and disclose all income or other remuneration that Respondent has obtained in connection with violations of his contractual obligations not to compete, and to require Respondent to disgorge to Claimant all such sums.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Robert M. Cochran did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration

pursuant to § 1020 1 of the NASD Code of Arbitration Procedure (the "Code") and having appeared and presented evidence at the hearing, is bound by the determination of the arbitration panel on all issues submitted.

On or about September 9, 1996, Respondent filed a request for a postponement of this arbitration on the basis that neither Respondent nor his counsel has had adequate time to prepare for the arbitration due to the criminal trial of United States v. Robert M. Cochran, and also on the basis that Respondent is a **defendant/counterclaimant** in the case of John DeSiva v. Cochran, in Nantucket, Massachusetts set for trial on September 16, 1996. Following careful consideration of the facts and arguments, the panel found insufficient showing had been made for a postponement, denied Respondent's request, and ordered the hearing to proceed as scheduled.

On or about September 12, 1996, Claimant filed a Motion for partial Award. Due to the timing of the filing, the parties were notified that the motion would be taken up at the hearing scheduled for September 16, 1996. On or about September 13, 1996, Respondent renewed his request for a continuance of the hearing set for September 16, 1996. Due to the timing of the filing, the parties were notified that the request would be taken up at the beginning of the hearing.

On September 16, 1996, Drew Neville, Esq. appeared on Respondent's behalf. Mr. Neville reasserted Respondent's request for a continuance because Respondent and counsel were not prepared to go forward, and that Respondent could not be present due to a court order to appear at the DeSiva trial beginning September 16, 1996. After hearing argument from the parties, the panel gave Mr. Neville 15 minutes to try to obtain a copy of the DeSiva court Order setting the date for the hearing, a copy of the written postponement request to the court in DeSiva, and the Order of the Court denying the request. After the break, Mr. Neville could not locate the requested documents. The panel denied the postponement request. However, the panel allowed Mr. Neville to renew the request for continuance at such time as he received the aforementioned documents. Next, Claimant asserted its Motion for Partial Award. After hearing argument from the parties, and deliberation, the panel denied the motion.

Respondent made a motion during the hearing relating to a Joint Defense Agreement ("JDA") that had been entered into by the parties in a prior legal action. The JDA embodied terms precluding parties from using as evidence in any other proceeding any evidence that the other party submitted to it in the prior legal action. Respondent moved for the panel to require both parties to adhere to the terms of a JDA that was entered into previously by the parties in respect to a prior legal action, which embodied terms precluding the parties from using as evidence in other proceedings information supplied to it by the other party. The undersigned arbitrators ruled that the terms of the JDA would be adhered to in hearing, whereby either side would be precluded from introducing evidence against the other secured via the JDA conferences, but that the parties were free to offer evidence independently secured from other sources.

At the close of hearing, claimant Stifel, Nicolaus & Co., Inc. made an oral amendment to the pleadings whereby claimant Stifel, Nicolaus & Co., Inc. withdrew its allegation for alleged breach of covenant not to compete.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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) Respondent Robert M. Cochran is liable for and shall pay claimant Stifel, Nicolaus & Co., Inc. \$552,000 in compensatory damages for its claim of breach of contract/excess compensation.

(2) Respondent Robert M. Cochran is liable for and shall pay claimant Stifel, Nicolaus & Co., Inc. \$550,000 in compensatory damages, plus interest computed at 9% per annum totaling \$169,160 in compensatory interest, for amount due under promissory note; and

(3) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded herein are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were eleven (11) hearing sessions x \$1,000 = \$11,000 in forum fees. Pursuant to §10205(b) 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 §10205(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimant Stifel, Nicolaus & Co., Inc.

Claimant Stifel, Nicolaus & Co., Inc. is liable for and shall pay NASD Regulation, Inc. Office of Dispute Resolution the member surcharge fee in the amount of \$500 pursuant to § 10333 of the NASD Code of Arbitration Procedure.

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Additional forum fees in the amount of \$10,000 (= \$1,000 - \$1,000 hearing session deposit) are assessed against Claimant Stifel, Nicolaus & Co., Inc.

NASD Regulation, Inc. Office of Dispute Resolution shall refund respondent Robert M. Cochran \$1,000 for return of unused postponement fees.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

David A. Nixon
David A. Nixon
Public Arbitrator, Presiding Chair

/s/

October 2, 1996

William M. Holland
William M. Holland
Public Arbitrator

/s/

October 8, 1996

Richard L. Johannesman
Richard L. Johannesman
Industry Arbitrator

/s/

October 3, 1996