

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

Betty Richheimer, individually and as
trustee of the Robert C. Richheimer Trust C,
and the Robert C. Richheimer Trust C

95-06072

Name of Respondents

Stifel, Nicolaus & Co., Inc.;
Christopher J. Whybrow;
Donald W. Meyer

REPRESENTATION

For Claimants: Betty Richheimer ("Richheimer"), individually and as trustee of the Robert C. Richheimer Trust C, and the Robert C. Richheimer Trust C ("Trust"), were represented by David G. Duggan, Esq. of Chicago, Illinois.

For Respondents: Stifel, Nicolaus & Co., Inc. ("Stifel"), Christopher J. Whybrow ("Whybrow") and Donald W. Meyer ("Meyer") were represented by Todd A. Strother, Esq. and Scott E. Early, Esq., of Foley & Lardner, located in Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: December 29, 1995.

Claimant Betty Richheimer's Submission Agreement signed on: November 6, 1995.

Claimant Robert C. Richheimer Trust C's submission agreement signed: January 19, 1996 by John C. Stifel, a trustee of the Robert C. Richheimer Trust C.

Statement of Answer filed by Respondents' on: March 18, 1996.

Respondent Stifel's Submission Agreement signed on: February 5, 1996 by Forrest M. Smith, Vice President, Stifel, Nicolaus & Co., Inc.

Respondent Whybrow's Submission Agreement signed on: February 15, 1996.

Respondent Meyer's Submission Agreement signed on: February 15, 1996.

HEARING INFORMATION

Pre-Hearing Conference: February 25, 1997 with One (1) arbitrator.
Hearing Dates/Sessions: April 10, 1997 for One (1) session;
April 11, 1997 for Two (2) sessions;
April 25, 1997 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants alleged that Respondents disregarded Mrs. Richheimer's precise instructions that she wished to hold the long term municipal bonds in her accounts and sold two issues without her authorization. As related in the Claim, Mrs. Richheimer had contacted Respondents in the summer of 1992 to transfer her accounts and advised that she did not wish to take any capital gain through sale of the bonds unless the securities to be purchased with the proceeds bore a high enough rate of return to compensate for the capital gain tax paid and the loss of tax-free income. In the summer of 1992, Whybrow and Meyer suggested that Mrs. Richheimer sell two bond issues and purchase common stocks with a history of dividend increases and the chance for capital gain, but did not inquire as to the tax basis or the investment objectives. In addition, Respondents suggested the transfer of other holdings and the purchase of life insurance without inquiring as to Mrs. Richheimer's investment objectives. Mrs. Richheimer vetoed the trade, but within a few days after the transfer of the accounts to Stifel, Respondents sold the two bond issues. Based upon the above allegations, the Claimants asserted claims for unauthorized trading; violation of the NASD Rules of Fair Practice; violation of the Illinois Securities Act; violation of §17(a) of the Securities Act of 1933; violation of the Illinois Consumer Fraud Act; violation of the NYSE rules; and common law negligence.

Respondents denied the material allegations of the statement of claim, asserting that:

1. Mrs. Richheimer informed Respondents that she was concerned about decreasing interest rates and the possibility of being forced to reinvest monies at lower rates. In addition, she was concerned that her bond portfolio gave her no hedge against inflation and that she wanted to move some of her bond funds into stocks;
2. The precise tax consequences of the transaction were discussed with Mrs. Richheimer prior to her direction to sell the issues and replace them with equity securities; and
3. Mrs. Richheimer expressly authorized the sale of the two issues.

In addition, Respondents asserted several affirmative defenses, including that the trades were expressly authorized; ratification; set-off; the absence of a private cause of action for violation of the NASD or NYSE rules; and the inability of the Claimants to recover under the Illinois Securities Act.

RELIEF REQUESTED

Claimants requested entry of an award against Respondents of \$114,901.00 in compensatory damages; punitive damages sufficient to deter similar conduct from Respondents; attorneys' fees and costs.

Respondents requested that the claims be denied.

OTHER ISSUES CONSIDERED & DECIDED

During the hearing, Claimants asserted a Motion to Strike the testimony of Attorney Roger Hymen. After considering the parties arguments, the Panel determined that the Motion would be denied.

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 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:

1. The Statement of Claim is dismissed with prejudice and denied in the entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
2. Any relief not specifically awarded is denied.

OTHER COSTS

Respondent Stifel, Nicolaus & Co., Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the member surcharge of \$350.00 required pursuant to Section 10333 of the Code of Arbitration Procedure.

Respondent Stifel, Nicolaus & Co., Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$50.00 as the cost of the speaker phone used in the hearing.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing session x \$300.00 per session = \$300.00; Five (5) hearing sessions x \$750.00 per session = \$3,750.00; Total forum fees = \$4,050.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$200.00 non-refundable claim filing fee and shall retain as forum fees the \$750.00 hearing session deposit previously paid by Claimants. Respondent Stifel, Nicolaus & Co., Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$3,300.00.

Concurring Arbitrators' Signatures

Name

Date

/s/ Bradford S. Allen, Esq.

June 19, 1997

Bradford S. Allen, Esq.

Public Arbitrator

Chairperson

/s/ Mary Beth Wheeler, Esq.

July 9, 1997

Mary Beth Wheeler, Esq.

Public Arbitrator

/s/ Kieran T. Ridge, Esq.

June 18, 1997

Kieran T. Ridge, Esq.

Industry Arbitrator