

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of Arbitration Between

Carmen Snow, Robert H. Keeney,  
Kimberly S. Baumgartner, Melinda A. Keeney,  
and Melissa A. Keeney,

Claimants,

and

No. 95-06095

Stifel, Nicolaus & Co., Inc., and Jason W. Rauschelbach,

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimants, Carmen Snow, Robert H. Keeney, Kimberly S. Baumgartner, Melinda A. Keeney, and Melissa A. Keeney, were represented by Jeffrey J. Lowe, Esquire of Gray & Ritter, P.C., located in St. Louis, Missouri.

Respondent Stifel, Nicolaus & Co., Inc. was represented by Rochelle S. Hall, Esquire, located in St. Louis, Missouri.

Respondent Jason W. Rauschelbach was represented by Mitchell A. Margo, Esquire of Green, Schaaf & Margo, P.C., located in Clayton, Missouri.

### **CASE INFORMATION**

Carmen Snow, Robert H. Keeney, Kimberly S. Baumgartner, Melinda A. Keeney, and Melissa A. Keeney's Statement of Claim was filed on or about December 29, 1995. Carmen Snow, Robert H. Keeney, Kimberly S. Baumgartner, Melinda A. Keeney, and Melissa A. Keeney's First Amended Statement of Claim was filed on or about June 14, 1996. Carmen Snow, Robert H. Keeney, Kimberly S. Baumgartner, Melinda A. Keeney, and Melissa A. Keeney's Second Amended Statement of Claim was filed on or about October 4, 1996.

Carmen Snow, Robert H. Keeney, Kimberly S. Baumgartner, Melinda A. Keeney, and Melissa A. Keeney's Submission Agreement was signed on December 27, 1995.

Stifel, Nicolaus & Co., Inc.'s Statement of Answer was filed on or about March 15, 1996. Stifel, Nicolaus & Co., Inc.'s Statement of Answer to the First Amended Statement of Claim was filed on or about June 28, 1996.

Stifel, Nicolaus & Co., Inc.'s Submission Agreement was signed on January 16, 1996 by Forrest M. Smith, Vice President and Legal Counsel of Stifel, Nicolaus & Co., Inc.

Jason W. Rauschelbach's Statement of Answer was filed on or about March 21, 1996. Jason W. Rauschelbach's Statement of Answer to the First Amended Statement of Claim was filed on or about June 28, 1996.

Jason W. Rauschelbach's Submission Agreement was signed on March 21, 1996.

#### **HEARING INFORMATION**

The hearing was held on: January 29, 1997 for two (2) sessions; and April 24, 1997 for two (2) sessions.

The hearing was held in St. Louis, Missouri.

#### **CASE SUMMARY**

Claimants, Carmen Snow, Robert H. Keeney, Kimberly S. Baumgartner, Melinda A. Keeney, and Melissa A. Keeney (hereinafter collectively referred to as "Claimants") brought this action to recover losses allegedly arising out of certain excessive and inappropriate trading, improper sales practices, misrepresentations and omissions of Stifel, Nicolaus & Co., Inc. ("Stifel") and Jason W. Rauschelbach ("Rauschelbach") when he was employed as a broker at Stifel.

Claimants alleged that Stifel and Rauschelbach (hereinafter collectively referred to as "Respondents") engaged in a course of conduct that caused financial injury to Claimants, which included recommending unsuitable investments, excessive trading, failure to provide full and accurate information regarding the nature and extent of the risks involved in the purchase of certain securities, and failure to supervise. According to Claimants, Carmen Snow ("Snow") invested approximately \$60,000 in a joint account through Rauschelbach in mid-1993, and in July 1993 she informed Rauschelbach that she wanted to invest in safe long term growth stocks. Claimants asserted that Rauschelbach's recommendations and actions bore no relationship to Snow's stated financial goals and objectives. Rauschelbach rarely contacted Claimants before making a trade, and never explained the risks inherent in certain of the purchases. Claimants argued that Respondents' mishandling of the accounts is further evidenced by the excessive trading and the short time during which most stocks were held, which resulted in excessive commissions. In addition, according to

Claimants, the accounts were very heavy on margin and exceeded the NASD markup guideline. Claimants' claims arose out of transactions in securities more fully presented at the hearing.

Claimants made the following legal claims: (1) violation of § 10b of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder against Stifel and Rauschelbach; (2) violation of § 20a of the Securities Exchange Act of 1934 against Stifel; (3) fraud against Stifel and Rauschelbach; (4) negligence against Stifel and Rauschelbach; (5) breach of fiduciary duty against Stifel and Rauschelbach; (6) violation of NASD Rules of Fair Practice against Stifel and Rauschelbach; and (7) statutory fraud pursuant to the Missouri Securities Act.

Stifel denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on its part. Stifel stated that Rauschelbach did not have control or discretion over the account, that Snow initiated or consented to every trade in it, and that Rauschelbach talked to Snow frequently and discussed all trades with her before they were made. According to Stifel, Snow stated that she wanted to invest in securities that had potential for a greater return. Stifel further contended that Snow took an active role in managing her account. Stifel also made the following affirmative defenses: (1) any damages sustained by Claimants were caused by their own actions or market forces beyond Respondents' control; (2) none of the Respondents' actions caused the losses in the Claimants' account; and (3) to the extent Claimants may be attempting to state a cause of action for fraud, they have failed to do so because they have not set forth specific facts underlying the elements of a cause of action for fraud in Missouri.

Rauschelbach denied each allegation in the Statement of Claim and incorporated by reference the Answer of Stifel.

### **RELIEF REQUESTED**

Claimants, Carmen Snow, Robert H. Keeney, Kimberly S. Baumgartner, Melinda A. Keeney, and Melissa A. Keeney requested an award for: lost income, earnings and profits on investments in the approximate amount of \$20,000; all commissions and mark-ups received by Stifel, Nicolaus & Co., Inc. and Jason W. Rauschelbach; punitive damages; attorneys' fees and expenses incurred herein; and pre-judgment interest.

Stifel, Nicolaus & Co., Inc. requested that it be immediately dismissed from this action and that all of its costs be assessed against Claimants, Carmen Snow, Robert H. Keeney, Kimberly S. Baumgartner, Melinda A. Keeney, and Melissa A. Keeney.

Jason W. Rauschelbach requested that he be immediately dismissed from this action and that all of his costs be assessed against Claimants, Carmen Snow, Robert H. Keeney, Kimberly S.

Baumgartner, Melinda A. Keeney, and Melissa A. Keeney.

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

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 the NASD Regulation, Inc. Office of Dispute Resolution.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents, Stifel, Nicolaus & Co., Inc. and Jason W. Rauschelbach, are jointly and severally liable for and shall pay Claimants, Carmen Snow, Robert H. Keeney, Kimberly S. Baumgartner, Melinda A. Keeney, and Melissa A. Keeney, compensatory damages in the amount of \$25,882.10.
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session. There were no pre-hearing conferences and there were four (4) hearing sessions x \$750 = \$3,000 in forum fees. Pursuant to § 10332(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 § 10322(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution 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 Regulation, Inc. Office of Dispute Resolution by Carmen Snow, Robert H. Keeney, Kimberly S. Baumgartner, Melinda A. Keeney, and Melissa A. Keeney.

Carmen Snow, Robert H. Keeney, Kimberly S. Baumgartner, Melinda A. Keeney, and Melissa A. Keeney are jointly and severally liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$750 (= 1/2\$3,000 total forum fees - \$750 hearing session deposit).

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Stifel, Nicolaus & Co., Inc.

Stifel, Nicolaus & Co., Inc. and Jason W. Rauschelbach are jointly and severally liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$1,500 (= 1/2\$3,000 total forum fees).

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

Concurring Arbitrators' Signatures

Mark R. Lee /s/ July 2, 1997

Mark R. Lee  
Chairperson  
Public Arbitrator

Dated:

Bryan Goetz /s/ July 1, 1997

Bryan Goetz  
Panelist  
Public Arbitrator

Dated:

Edwin R. Cohen /s/ July 1, 1997

Edwin R. Cohen  
Panelist  
Industry Arbitrator

Dated: