

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Priscilla Welch and David Welch

and

96-00213

Name of Respondent

Stifel Nicolaus & Co., Inc.
Arnold Hart

REPRESENTATION OF PARTIES

Priscilla Welch and David Welch ("**Claimants**") were represented by Paul G. Bursiek, Esq., Pendleton, Friedberg, Wilson, Hennessey & Meyer, P.C., Denver, Colorado.

Stifel Nicolaus & Co., Inc. ("**Respondent Stifel**") and Arnold Hart ("**Respondent Hart**") were represented by Jeffrey A. Chase, Esq., Jacobs, Chase, Frick, Kleinkopf & Kelley, LLP, Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about . Submission Agreement of Claimants Priscilla Welch and David Welch was signed on August 22, 1995.

Statement of Answer was filed by Respondent Stifel Nicolaus & Co., Inc. on or about February 28, 1996. Submission Agreement of Respondent Stifel Nicolaus & Co., Inc. was signed on February 5, 1996 by Forrest M. Smith. Submission Agreement of Respondent Arnold Hart was signed on February 21, 1996.

HEARING INFORMATION

The hearing was held on Monday, September 9, 1996 in Denver, Colorado for a total of three (3) sessions.

CASE SUMMARY

Claimants alleged that Respondent Hart made unauthorized and unsuitable transactions in their accounts. Claimants also alleged that Respondent Stifel failed to advise them of the long history of customer complaints against Respondent Hart. Specifically, Claimants alleged that during the period from February 1994 through April 1994, Respondent Hart made the following unauthorized and unsuitable trades:

- ▶ purchase of 17,155 shares of Jones Spacelink;
- ▶ purchase of 3,700 shares of MFS Charter Income TR;
- ▶ purchase of 5,850 shares of MFS Multi Market Income TR SBI;
- ▶ purchase of 600 shares of Mentor Income Fund;
- ▶ purchase of 24,112.055 shares of Fidelity Advisor SRII Short Fixed Income Port.; and
- ▶ sale of shares of Prudential High Yield Fund, Class B.

In addition, Claimants alleged that Respondent Hart failed to disclose that he controlled about five per cent or more of Jones Spacelink shares.

Respondents denied the allegations set forth in the Statement of Claim. Specifically, Respondents denied that the trades complained of were either unauthorized or unsuitable. Respondents also denied that Respondent Hart had a "long history of customer complaints" that required disclosure. The following affirmative defenses were asserted by Respondents:

- ▶ the claims are barred by the doctrines of waiver, estoppel, laches and the statutes of limitations;
- ▶ failure to mitigate; and
- ▶ the claims are barred by the doctrine of accord and satisfaction.

RELIEF REQUESTED

Claimants requested an award of damages from all Respondents, jointly and severally in an amount of at least \$29,516.71; and award of damages from Respondent Hart in an amount of \$3,817.93; punitive damages; pre-judgment and post-judgment interest; costs and disbursements including reasonable attorneys' fees; and such other relief as is just and proper.

Respondents requested that the claims asserted against them be denied.

OTHER ISSUES CONSIDERED & 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 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. Respondents Stifel Nicolaus & Co., Inc. and Arnold Hart shall be and hereby are jointly and severally liable for and shall pay to the Claimants Priscilla Welch and David Welch the sum of **two thousand one hundred ninety nine dollars and three cents (\$2,199.03)** as compensatory damages.
2. Respondents Stifel Nicolaus & Co., Inc. and Arnold Hart shall be and hereby are jointly and severally liable for and shall pay to the Claimants Priscilla Welch and David Welch the sum of **four hundred thirty nine dollars and eighty one cents (\$439.81)** as interest.
3. Respondents Stifel Nicolaus & Co., Inc. and Arnold Hart shall be and hereby are jointly and severally liable for and shall pay to the Claimants Priscilla Welch and David Welch the sum of **one thousand five hundred dollars (\$1,500)** as attorneys' fees.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were three (3) sessions x \$400 = \$1,200 in forum fees. Pursuant to §10332(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 §10332(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 \$120 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimants Priscilla Welch and David Welch. Claimants Priscilla Welch and David Welch shall be and hereby are liable for and shall pay to the NASD Regulation Inc. Office of Dispute Resolution the sum of \$200 and Respondents Stifel Nicolaus & Co., Inc. and Arnold Hart shall be and hereby are jointly and severally liable for and shall pay to NASD Regulation Inc. Office of Dispute Resolution the sum of \$600 as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$200. **Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ Edmund Epstein, Esq.

Edmund Epstein, Esq.
Public Arbitrator, Presiding Chair

September 12, 1996

/s/ John L. Worcester

John L. Worcester
Public Arbitrator

September 11, 1996

/s/ Robert S. Paauw

Robert S. Paauw
Industry Arbitrator

September 22, 1996