

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of Arbitration Between

Stifel, Nicolaus & Co., Inc.,

Claimant and Counter-Respondent,

and

No. 96-02227

Joseph J. Weinrich, Sr.,

Respondent and Counter-Claimant.

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### **REPRESENTATION OF PARTIES**

Claimant, Stifel, Nicolaus & Co., Inc., was represented by John W. Shaw and Bryan Cave, Esquires, located in Kansas City, Missouri.

Respondent, Joseph J. Weinrich, Sr., was represented pro se at the hearing and in pleadings by Jane L. Stafford, Esquire of Spencer, Fane, Britt & Browne LLP.

### **CASE INFORMATION**

Stifel, Nicolaus & Co., Inc.'s Statement of Claim was filed on or about May 24, 1996.

Stifel, Nicolaus & Co., Inc.'s Reply to the Counterclaim was filed on or about October 30, 1996.

Stifel, Nicolaus & Co., Inc.'s Submission Agreement was signed on May 20, 1996 by Michael J. Runzi, Legal Counsel and Asst. Vice President of Stifel, Nicolaus & Co., Inc.

Joseph J. Weinrich, Sr.'s Statement of Answer and Counterclaim was filed on or about August 2, 1996.

Joseph J. Weinrich, Sr.'s Submission Agreement was signed on July 30, 1996.

### **HEARING INFORMATION**

A pre-hearing conference was held on February 25, 1997 for one (1) session.

The hearing was held on May 19, 1997 for one (1) session.

The hearing was held in Kansas City, Missouri.

### CASE SUMMARY

Claimant Stifel, Nicolaus & Co., Inc. ("Claimant" or "Stifel") brought this action to recover sums owed, by Joseph J. Weinrich, Sr. ("Respondent"), on a promissory note.

According to Claimant, Respondent was a registered representative of Stifel from November 28, 1988 until he terminated his employment with Stifel on February 12, 1996. Claimant alleged that Respondents executed a promissory note (the "Note") for \$15,000.00 on November 15, 1993 and that, under its terms, \$40,000.00 is now immediately due and owing. Claimant asserted that it has twice demanded that Respondent pay the amount owing on the Note, but Respondent has refused to pay this amount. Claimant further alleged that the Note states that Respondent shall pay any costs and expense, including counsel's fees, incurred by Stifel in connection with the enforcement and collection of the Note. Claimant asserted that the terms of the Note also state that it shall be governed and construed in accordance with the laws of the State of Missouri, and that under Missouri law, V.A.M.S. § 408.020, when no rate of interest is agreed upon, nine percent per annum is allowed as legal interest.

Respondent denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on his part. According to Respondent, Stifel offered him an advance payment of \$50,000 to be set off by bonuses paid for his recruitment and employment of registered representatives with Stifel, and by payment for his referral of corporate finance, municipal finance and similar projects to Stifel. Respondent further stated that it was understood that the advance was to be collected only if he was to receive continued employment and Stifel was to support him in his desire to become a principal with Stifel. Respondent asserted that performance under the Note was impossible because of the adverse publicity Stifel was getting as the result of an Securities and Exchange Commission investigation, which hindered his ability to recruit reputable, if any, registered representatives. Respondent further asserted that Claimant breached the parties agreement by not placing him in a supervisory position upon his obtaining a principal's license, which would have resulted in further set-offs for the production of those individuals recruited. Finally, Respondent argued that he is entitled to set-offs for: just compensation for his recruitment efforts; either a cash stipend in the amount of \$2,000 or a trip for being named a member of the President's Council; his last paycheck in the amount of \$3,900, which was wrongfully withheld; a \$10,000 bonus or off-set for his recruitment of a registered representative; and deferred compensation in the amount of \$10,000, which has not been paid upon his departure.

Respondent brought his counterclaim seeking compensation for breach of agreement and age discrimination.

Respondent again alleged that Claimant breached the parties agreement by failing to make him a supervisor, and he further alleged that Claimant breached this agreement on the basis of his age in

violation of the age discrimination in employment act. Respondent asserted that he was constructively discharged by reason of the age discrimination, in that he was not given the position he was promised as such positions were given to less qualified individuals, and that he suffered the indignities of Claimant's failure to support his application for license as a principal. Consequently, according to Respondent, he lost considerable compensation in the approximate amount of \$300,000 because of Claimant's failure to promote him to supervisor, and in the approximate amount of \$200,000 for Claimant's failure to support his application as a licensed principal.

Stifel denied the allegations set forth in the Counterclaim as they relate to any liability on its part. Stifel denied that any agreement to promote Respondent existed. Stifel further argued that Respondent's claim of age discrimination should be dismissed for his failure to file a timely charge of employment discrimination with the Equal Employment Opportunity Commission as required by 29 U.S.C. § 626(d), and for his failure to receive the required notice of right to sue authorizing this action against Stifel as provided in 29 U.S.C. § 626(e).

#### **RELIEF REQUESTED**

Claimant, Stifel, Nicolaus & Co., Inc., requested an award of \$40,000.00 at 9% beginning February 12, 1996, payment of all costs and expenses incurred by Stifel in connection with the enforcement and collection of the promissory notes, which includes, but is not limited to counsel's fees, filing fees, hearing session deposits and travel expenses. Claimant, Stifel, Nicolaus & Co., Inc., also requested that the Counterclaim be dismissed in its entirety with costs assessed against Respondent, Joseph J. Weinrich, Sr.

Respondent requested an award for: compensatory damages in an approximate amount of \$500,000; a declaration that the promissory note is void, cancelled and of no force or effect; attorneys' fees; and costs, disbursements and expenses.

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

During the opening statement, Claimant, Stifel, Nicolaus & Co., Inc. ("Claimant"), orally moved to strike Respondent, Joseph J. Weinrich, Sr.'s ("Respondent"), Statement of Answer and Counterclaim on the basis that Respondent had failed to file a list of witnesses as well as the list of exhibits. The motion was denied with the provision that Claimant could renew the objection with respect to any particular witness or any particular document and offer any statements of prejudice occasioned by the failure by Respondent to provide a list of witnesses or exhibits.

During Respondent's opening statement, Respondent moved to disqualify the law firm of Claimant because he had previously employed Herbert Kohn and Thomas Van Dyke as his counsel. The two attorneys had been employed by Claimant while they were partners of Linde, Thompson, Fairchild, Langworthy & Kohn. They subsequently became partners of the Bryan, Cave firm. Respondent's motion was denied as being untimely.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. On all of Claimant, Stifel, Nicolaus & Co., Inc.'s claims, the undersigned panel of arbitrators find in favor of Claimant, Stifel, Nicolaus & Co., Inc., and against Respondent, Joseph J. Weinrich, Sr. Claimant, Stifel, Nicolaus & Co., Inc., is awarded damages in the principal sum of \$36,100 together with an additional sum of \$3,856 in interest from February 13, 1996 through May 19, 1997.
2. On Respondent, Joseph J. Weinrich, Sr.'s Counterclaim, the undersigned panel of arbitrators find the issues in favor of Claimant, Stifel, Nicolaus & Co., Inc., and against Respondent, Joseph J. Weinrich, Sr.
3. 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 and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300, and there was one (1) hearing sessions x \$750 = \$750. Total forum fees are thus \$300 + \$ 750 = 1,050. Pursuant to § 10205(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 § 10205(c) of the Code, the 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 \$300 of the hearing session deposit in the amount of \$600 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Stifel, Nicolaus & Co., Inc.

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 \$200 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant, Stifel, Nicolaus & Co., Inc.

Pursuant to § 10205(c) of the Code, the 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 \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Respondent, Joseph J. Weinrich, Sr.

Respondent, Joseph J. Weinrich, Sr., is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution postponement fees in the amount of \$750.

The NASD Regulation, Inc. Office of Dispute Resolution shall reimburse Claimant, Stifel, Nicolaus & Co., Inc. \$300 (= \$1,050 total hearing session fees - \$750 hearing session deposit by Respondent, Joseph J. Weinrich, Sr. - \$600 hearing session deposit by Claimant, Stifel, Nicolaus & Co., Inc.).

Respondent, Joseph J. Weinrich, Sr., is liable for and shall reimburse Claimant, Stifel, Nicolaus & Co., Inc., in the amount of \$300 for the remainder of its hearing session deposit.

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

**Concurring Arbitrators' Signatures**

Mark D. Wasserstrom  
Mark D. Wasserstrom, Esquire  
Chairperson  
Public Arbitrator

/s/

June 5, 1997

Dated:

Arthur F. Dewsberry  
Arthur F. Dewsberry  
Panelist  
Public Arbitrator

/s/

June 11, 1997

Dated:

Jeff Breault  
Jeff Breault  
Panelist  
Industry Arbitrator

/s/

June 5, 1997

Dated: