

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Brian Volmer, and
Melvin G. Volmer,
Claimants,

vs.

No. 96-04068

Stifel, Nicolaus & Co., Inc.,
Respondent.

REPRESENTATION OF PARTIES

Brian Volmer and Melvin G. Volmer ("**Claimants**") represented themselves. At hearing, Brian Volmer appeared on behalf of Claimants along with the assistance of Mr. McHugh, an investment counsellor. Melvin G. Volmer did not appear at the hearing.

Stifel, Nicolaus & Co., Inc. ("**Respondent**") was represented by Rochelle S. Hall, Esq., St. Louis, Missouri.

CASE INFORMATION

Claimant's filed the Statement of Claim on or about January 13, 1997. Claimants signed their Submission Agreement on January 14, 1997.

Respondent filed its Statement of Answer on or about March 17, 1997. Respondent signed its Submission Agreement on February 12, 1997.

HEARING INFORMATION

The Arbitration Panel held a hearing on September 23, 1997 in St. Louis, Missouri for one (1) session.

CASE SUMMARY

In their Statement of Claim, Claimants alleged that: The sales tactics used by Respondent's brokers and Jeff Bebe were unethical and that these practices were supported by and taught by Respondent; and Respondent's broker, Mr. Bebe, gave Claimants inaccurate, misleading information. Claimants also asserted that: Brian Volmer's account with Respondent was opened with the purchase of the initial offering of Anchor Gaming Co. stock; Mr. Bebe did not give him

proper advice when Mr. Bebe told him that Anchor Gaming Co. was going to make a secondary offering and the stock would decline in value; and based on Mr. Bebe's advice, Brian Volmer sold the anchor Gaming Co. stock at 18 7/8 and that he had no intention of selling the stock until he was told by Mr. Bebe that a second issue was imminent.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically asserted that: Claimants are experienced, sophisticated investors confident enough in their own expertise to disregard their broker's advice; Mr. Bebe passed along his opinion that was reasonably based on his knowledge of the market for Anchor gaming Co. stock; Claimant's chose to act on Mr. Bebe's opinion; Claimant's realized a large profit on the sale; any losses or damages the Claimants are seeking are speculative; and neither Respondent nor its broker did anything improper with respect to the claimants and are not liable for the Claimants' failure to realize every possible dollar of profit in the stock.

RELIEF REQUESTED

In their Statement of Claim, Claimants requested an award in the approximate amount of \$9,000 which represented the stock price appreciation of Anchor gaming Co. Claimants also requested that the sale be reversed and commissions returned.

Respondent denied the claims asserted against it, requested that it be dismissed, and asked all costs of defense be assessed against Claimants.

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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims made against respondent are, and each of them, denied with prejudice. Each party shall bear its own costs and expenses associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$200 per hearing session. There was one (1) session x \$200 = \$200 in forum fees. Pursuant to Rule 10332(b) of the 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 Rule 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$75 and shall **retain** as forum fees \$100 of the \$200 hearing session deposit previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimants.

Pursuant to Rule 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 \$100 previously paid by Respondent.

Additional forum fees in the amount of \$100 are assessed by the arbitrator against respondent.

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

Dated:

Michael Jos. Hart
Michael Jos. Hart
Public Arbitrator, Presiding Chair

/s/

November 14, 1997