

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Patricia A. Woods,

Claimant,

v.

96-04344

Stifel, Nicolaus & Co., Inc., and
Joseph J. Weinrich,

Respondents.

REPRESENTATION OF PARTIES

Patricia A. Woods ("**Claimant**") was represented by Thomas O. Baker, Esq. of Baker Sterchi Cowden & Rice, L.L.C., Kansas City, Missouri.

Stifel, Nicolaus & Co., Inc. ("**SNC**") was represented by John W. Shaw, Esq. of Bryan Cave, L.L.P., Kansas City, Missouri.

Joseph J. Weinrich ("**Weinrich**") appeared on his own behalf.

CASE INFORMATION

Claimant filed the Statement of Claim on or about September 26, 1996. Claimant signed the Submission Agreement on September 20, 1996.

SNC filed its Statement of Answer on or about February 3, 1997. SNC signed the Submission Agreement on November 18, 1996.

Weinrich filed a Statement of Answer on or about February 7, 1997. Weinrich signed the Submission Agreement on November 19, 1997. Weinrich filed an Amended Statement of Answer on or about March 31, 1997.

HEARING INFORMATION

The Arbitration Panel held a hearings on September 22, 1997 for two (2) sessions, and September 23, 1997 for two (2) sessions in Kansas City, Missouri for a total of four (4) sessions.

CASE SUMMARY

Claimant brought this claim against SNC and Weinrich (collectively referred to as "Respondents") for negligently failing to follow procedures required to preserve the tax exempt status of assets transferred from an IRA account. More specifically, Claimant alleged that Respondents breached their fiduciary duty in one or more of the following respects: Negligently and carelessly failed to handle Claimant's accounts with reasonable care and due diligence when they knew that Claimant was relying on them to complete transfers required by the Internal Revenue Service Ruling; negligently and carelessly failed to make the appropriate transfers of the assets which were in Lyle Woods' IRA Account; negligently and carelessly failed to follow instructions to journal entry assets from Trust Account to Claimant's IRA Account; if Respondents' actions were intentional, rather than negligent, then they failed to provide timely and clear notice to Claimant that they were not going to follow the instructions to complete the transfer to Claimant's IRA Account; and negligently and carelessly failed to adequately supervise employees and others who were responsible for the transfer of the assets and journal entries.

Unless otherwise admitted in its Answer, SNC denied the allegations set forth in the Statement of Claim. SNC also asserted the following affirmative defenses: Claimant is not entitled to an award of attorneys' fees as a matter of law; as a result of Claimant's failure to notify SNC of the alleged acts and omissions of which Claimant now complains promptly after Claimant discovered the alleged acts or omissions, Claimant is barred from recovering from SNC under the doctrines of ratification, accounts stated, estoppel, waiver and laches because SNC relied upon Claimant's silence; the Claimant caused or contributed to cause the alleged damages of which she now complains, and thus is barred by her contributory negligence from recovering any such alleged damages from SNC; Claimant's claims are barred because SNC's conduct was not the proximate cause of any loss or damages to Claimant; Claimant authorized the alleged conduct of which she now complains; and Claimant's Statement of Claim, and all causes of action thereunder, failed to state a claim upon SNC for which relief may be granted.

Unless otherwise admitted therein, Weinrich denied all of the claims for damages. In addition, Weinrich asserted the following affirmative defenses: Claimant is not entitled to an award of attorneys' fees as a matter of law; as a result of Claimant's failure to notify Weinrich of the alleged acts and omissions of which Claimant now complains promptly after Claimant discovered the alleged acts or omissions, Claimant is barred from recovering from Weinrich under the doctrines of ratification, accounts stated, estoppel, waiver and laches because Weinrich relied upon Claimant's silence; the Claimant caused or contributed to cause the alleged damages of which she now complains, and thus is barred by her contributory negligence from recovering any such alleged damages from SNC; Claimant's claims are barred because SNC's conduct was not the proximate cause of any loss or damages to Claimant; Claimant authorized the alleged conduct of which she now complains; and Claimant's Statement of Claim, and all causes of action thereunder, failed to state a claim upon Weinrich for which relief may be granted.

RELIEF REQUESTED

Claimant requested an award in the form of damages, attorneys' fees, accountant's fees and costs in the aggregate amount of \$180,000, and for such other relief as the arbitrators deemed just and proper.

SNC requested that Claimant's claims be denied in their entirety and that an award in favor of Respondents be entered together, along with the costs associated with this proceeding.

Weinrich requested that Claimant's claims be denied in their entirety and that an award in favor of Weinrich be entered together, along with the costs associated with this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

Claimant filed a formal objection to Weinrich's Answer pursuant to Rule 10314 of the Code of Arbitration Procedure (the "Code"). After review of the motion and responses and deliberation, the undersigned arbitrators denied the motion.

Weinrich filed a request that John Shaw, Esq. be removed as counsel to SNC. After reviewing the responses, the request, and deliberation, the panel denied the motion.

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

1. Respondent Stifel, Nicolaus & Co., Inc. is liable for and shall pay to Patricia Woods the sum of \$20,000 as satisfaction of her claim for compensatory damages.
2. Respondent Joseph J. Weinrich is liable for and shall pay to Patricia Woods the sum of \$10,000 as satisfaction of her claim for compensatory damages.
3. All other requests for relief/ claims for damages not specifically set forth are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session. There were four (4) sessions @ \$750 per session = \$3,000 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 \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

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

Additional forum fees in the amount of \$2,250 are assessed by the arbitrators against the Claimant.

Pursuant to Rule 10319 of the Code, Stifel, Nicolaus & Co., Inc. is liable for, and shall pay to NASD Regulation, Inc. Office of Dispute Resolution postponement fees in the amount of \$750 previously assessed for the postponement of the July, 1997 hearing dates.

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

Dated:

Robert G. Scott
Robert G. Scott
Public Arbitrator, Presiding Chair

/s/

December 11, 1997

David I. Lewin
David I. Lewin
Public Arbitrator

/s/

December 11, 1997

Michael E. Nelson
Michael E. Nelson
Industry Arbitrator

/s/

December 10, 1997