

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Dennis M. Jones, Jr. Revocable Trust,

Claimant,

and

No. 96-04961

Stifel, Nicolaus & Co., Inc. and Brett Faulk,

Respondents.

REPRESENTATION OF PARTIES

Claimant, Dennis M. Jones, Jr. Revocable Trust ("Jones"), was represented by Christine A. Ryan of Goldberg, Katz, Sadowski & Croft, P.C., located in Saint Louis, Missouri.

Respondents, Stifel, Nicolaus & Company, Incorporated ("Stifel") and Brett Faulk ("Faulk"), were represented by H. Todd Iveson, Esquire of Dankenbring, Greiman, Osterholt and Hoffmann, P.C., located in Clayton, Missouri.

CASE INFORMATION

Jones' Statement of Claim was filed on or about November 7, 1996.

Jones' Submission Agreement was signed on December 5, 1996 by Dennis Matthew Jones, Jr., Trustee of Dennis Matthew Jones Trust.

Stifel and Faulk's Statement of Answer was filed on or about March 7, 1997.

Faulk's Submission Agreement was signed on April 14, 1997.

Stifel did not submit a properly executed submission agreement.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on: August 19, 1997 for a two (2) sessions.

The hearing was held in St. Louis, Missouri.

CASE SUMMARY

Jones alleged that Faulk, a securities broker of Stifel, failed to follow specific trading instructions and made unauthorized trades that led to substantial monetary damages in his Stifel account. According to Jones, on or about June 27, 1996, he transferred 250 September 50 calls of Jones Medical Industries, Inc., 150 September 40 puts of Jones Medical Industries, Inc. and 100 September 45 puts of Jones Medical Industries, Inc. to his account with Stifel. Jones stated that on July 11, 1996, Jones specifically instructed Faulk to sell 150 post-split September 30 puts contracts for \$375.00 each, sell 225 post-split September 26.625 put contracts for \$200.00 each and buy 375 post-split September 33.625 call contracts for \$321.25 each. Jones asserted that the trades were conducted at market prices, not the prices at which he authorized, and that Faulk had sold 125 more contracts than Jones actually owned. Later in the day on July 11, 1996 Faulk allegedly contacted Jones and informed him that the sell order for the 125 contracts that Jones did not own on the September 33.625 call contracts was canceled and, therefore, Jones would have a gain \$15,000, less commissions. However, according to Jones, on or about July 12, 1996, he was informed that Stifel had purchased 125 put contracts to cover the overage sold on July 11, 1996 and that the trades resulted in a trading loss of \$36,724.06. Jones added that the cost of the 125 contracts purchased by Faulk to cover the overage had been charged to Jones' account in the amount of \$9,600.00. Jones further alleged that Stifel failed to supervise Faulk, of which Jones' damages in the amount of at least \$61,324.06 was a direct result. Jones asserted the following causes of action: (1) negligence of Faulk; and (2) negligence of Stifel.

Stifel and Faulk denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on their part. They contended that Jones entered a market order, not a limit order as Jones alleged, and that Faulk followed Jones' instructions. Stifel and Faulk further contended that the number of contracts purchased and sold were specified by Jones. According to Stifel and Faulk, Jones apparently incorrectly assumed that, because of a stock split, the number of option contracts he held would be adjusted; therefore, Stifel and Faulk concluded, Jones instructed them to close the wrong number of contracts. Stifel and Faulk stated that upon informing Jones that the number of put contracts Stifel would be receiving from his prior account was not equal to the number he had instructed Faulk to sell, Jones instructed Stifel to buy back the put contracts that had been oversold by him. Stifel and Faulk further contended that although Jones claims losses of more than \$60,000, he actually made more than \$9,000 trading Jones Medical Industries, Inc. options.

RELIEF REQUESTED

Jones requested an award for: actual damages in an amount no less than \$61,324.06; interest; punitive damages of \$75,000; and costs and expenses, including attorney's fees.

Stifel and Faulk requested that the claims asserted against them be denied in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Stifel, Nicolaus & Company, Incorporated did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration, but is required to submit to arbitration pursuant to § 10301 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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. Respondent Stifel, Nicolaus & Co., Inc. and Brett Faulk are liable for, and shall pay to the Claimant the sum of \$9,657.00 as satisfaction of the claim for compensatory damages, plus interest thereon at the rate of 9% simple interest from July 15, 1996 through the date of payment. Additionally, Respondents Stifel, Nicolaus & Co., Inc. and Brett Faulk are liable for, and shall pay to the Claimant the sum of \$750 as reimbursement of the cost of filing this arbitration.
2. 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 were no pre-hearing conferences and there were two (2) hearing sessions

x \$750 = \$1,500 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 § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$200 and shall retain as forum fees the hearing session deposit of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Dennis M. Jones, Jr. Revocable Trust.

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

Additional forum fees in the amount of \$750 are assessed jointly and severally against Stifel, Nicolaus & Co., Inc. and Brett Faulk.

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

Concurring Arbitrators' Signatures

Charles A. Seigel, III
Charles A. Seigel, III, Esquire
Chairperson
Public Arbitrator

/s/

August 28, 1997

Dated:

Lawrence M. Raskin
Lawrence M. Raskin, CPA
Panelist
Public Arbitrator

/s/

September 2, 1997

Dated:

Richard L. Johannesman
Richard L. Johannesman
Panelist
Industry Arbitrator

/s/

September 2, 1997

Dated: