

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Kirk A. Nelson

Case Number: 17-00712

vs.

Respondent
Stifel, Nicolaus & Co., Inc.

Hearing Site: Omaha, Nebraska

Nature of the Dispute: Customer vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Kirk A. Nelson (“Claimant”): Bruce D. Oakes, Esq., Oakes & Fosher, LLC, St. Louis, Missouri.

For Respondent Stifel, Nicolaus & Co., Inc. (“Respondent”): Steven M. Phillips, Esq., Anthony Ostlund Baer & Louwagie, P.A., Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed on or about: March 16, 2017.
Claimant signed the Submission Agreement: March 7, 2017.

Statement of Answer filed on or about: May 12, 2017.
Respondent signed the Submission Agreement: May 10, 2017.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty, negligence, negligent misrepresentation, omission, common law fraud, breach of contract, violation of Nebraska’s Securities Act, restitution, and negligent supervision. Claimant alleged that the registered representative invested his funds in highly-speculative and unsuitable securities, which were inconsistent with his directives, investment objectives, and risk-tolerance level. Claimant further alleged that his registered representative excessively traded his account and, as a result, he incurred substantial losses.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

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|-----------------------|--------------|
| Compensatory Damages | \$500,000.00 |
| Punitive Damages | Unspecified |
| Interest | Unspecified |
| Attorneys' Fees | Unspecified |
| Costs | Unspecified |
| Other Monetary Relief | Unspecified |

In the Statement of Answer, Respondent requested that the Panel dismiss the claims in their entirety. Respondent further requested that the Panel expunge all references to this matter from unnamed party Jeffrey Olson's registration records maintained by the Central Registration Depository ("CRD").

At the close of the hearing, Claimant requested compensatory damages of \$261,579.00 (with alternative calculations of \$225,512.00 and \$164,347.00 based on different theories/models); attorneys fees' of \$78,750.00; interest at the rate of 9% on the compensatory damages amount from January 12, 2015 (the date Claimant's brokerage account with Respondent was no longer churned and the damages were liquidated and calculable) through the date the Award is paid in full; punitive damages in the amount or multiple which the Panel deems just and proper; costs of \$23,384.00; and forum fees.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On or about January 30, 2018, Respondent filed a Motion to Dismiss Claims Barred by the Six-Year Eligibility Rule ("Motion to Dismiss"). On or about March 1, 2018, Respondent advised FINRA that the parties resolved the issues relative to the Motion to Dismiss and withdrew the Motion to Dismiss.

While there was no express motion for an amendment of the pleadings, at least in one respect subsequent to the pleadings, there was a noteworthy change in Claimant's case. The Claimant asserted a number of claims based on Nebraska law, and specifically referred to the Nebraska Securities Act as authority for recovering interest, costs, and attorneys' fees. In Claimant's pre-hearing brief, and as the case was presented at the hearing, the case was couched in terms of claims based on Missouri law. Claimant identified a contractual foundation for the application of Missouri law.

The Panel requested arguments or briefs on the issue of conflict of law. In pre-hearing briefs, Claimant argued the case based on Missouri law and Respondent argued the case based on Nebraska law. Claimant wanted this addressed orally during closing arguments and Respondent wanted to present the issue in a post-hearing brief.

At the final hearing, following oral arguments on how the conflict of law issue should be addressed, the Panel ordered the parties to submit (simultaneously) post-hearing briefs

regarding the conflict of law issue no later than May 18, 2018. On or about May 18, 2018, Claimant filed a Supplemental Brief Regarding Choice of Law and Restatement (Second) of Conflicts of Law Section 187 and Respondent filed a Memorandum of Law on Choice of Law.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant the sum of \$144,967.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant the sum of \$47,839.00 in attorneys' fees pursuant to the Missouri Securities Act and/or the Nebraska Securities Act.
3. Respondent is liable for and shall pay to Claimant the sum of \$23,384.00 in costs for expert fees, travel expenses, copying, scanning, binders, exhibit preparation and shipping.
4. Respondent is liable for and shall pay to Claimant the sum of \$300.00 in costs as reimbursement of the non-refundable portion of the filing fee.
5. The request for expungement of unnamed party Jeffrey Olson's CRD records is denied.
6. Any and all claims for relief not specifically addressed herein, including punitive damages, are denied.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

FINRA Office of Dispute Resolution assessed a filing fee* for each claim:

| | |
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| Initial Claim Filing Fee | = \$ 1,425.00 |
|--------------------------|---------------|

**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Stifel, Nicolaus & Co., Inc. is assessed the following:

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| Member Surcharge | = \$ 1,900.00 |
| Member Process Fee | = \$ 3,750.00 |

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

| | |
|---|---------------|
| Six (6) hearing sessions @ \$1,125.00/session | = \$ 1,125.00 |
| Hearing Dates: | |
| May 1, 2018 | 2 sessions |
| May 2, 2018 | 2 sessions |
| May 3, 2018 | 2 sessions |
| <hr/> | |
| Total Hearing Session Fees | = \$ 6,750.00 |

The Panel has assessed \$6,750.00 of the hearing session fees to Respondent.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

| | | |
|-----------------|---|--|
| Murray S. Levin | - | Public Arbitrator, Presiding Chairperson |
| Philip J. Glick | - | Public Arbitrator |
| Mary C. Davis | - | Public Arbitrator |

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

/s/ Murray S. Levin
Murray S. Levin
Public Arbitrator, Presiding Chairperson

June 6, 2018
Signature Date

/s/ Philip J. Glick
Philip J. Glick
Public Arbitrator

June 6, 2018
Signature Date

/s/ Mary C. Davis
Mary C. Davis
Public Arbitrator

June 6, 2018
Signature Date

June 6, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)

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/S/ Murray S. Levin

Murray S. Levin
Public Arbitrator, Presiding Chairperson

June 6, 2018

Signature Date

Philip J. Glick
Public Arbitrator

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Murray S. Levin
Public Arbitrator, Presiding Chairperson

Signature Date



Philip J. Glick
Public Arbitrator

6/6/18

Signature Date

Mary C. Davis
Public Arbitrator

Signature Date

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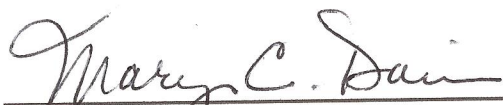
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Signature Date

Philip J. Glick
Public Arbitrator

Signature Date



Mary C. Davis
Public Arbitrator

6/6/18

Signature Date

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