

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Edward Gabryszak

No. 91-00750

Name of Respondents

Stratton Oakmont, Inc.
Neal Kipperman

REPRESENTATION OF PARTIES

For Claimant: Paul J. Sussman, Esq., Chicago, Illinois.

For Respondents: Katherine Nathan, Esq. of Brandeis, Bernstein & Wasserman, New York, New York.

CASE INFORMATION

Statement of Claim filed: March 8, 1991.

Claimant's Submission Agreement signed on: December 28, 1990.

Joint Statement of Answer filed by Respondents, Stratton Oakmont, Inc. and Neal Kipperman on: June 24, 1991.

Respondent Stratton Oakmont, Inc.'s Submission Agreement signed on: June 12, 1991.

Respondent Neal Kipperman's Submission Agreement signed on: June 12, 1991.

Joint Amended Statement of Answer filed by Respondents, Stratton Oakmont, Inc. and Neal Kipperman on: October 15, 1991.

HEARING INFORMATION

Pre-Hearing conference held: April 15, 1992. One (1) session.

Hearing date: April 16, 1992. Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Edward Gabryszak ("Claimant") alleged churning; unsuitability; fraud; breach of fiduciary duty; violation of 18 U.S.C. Sections 1341 and 1343; violation of 18 U.S.C. Section 1962 (c); violation of 1962 (a) and (c) of RICO, 18 U.S.C. Section 1961 (a) and (c) by respondents Stratton Oakmont, Inc. ("SOI") and Neal Kipperman ("Kipperman") or ("Respondents") collectively. The allegations arose from transactions in the following securities: Ventura Motion Picture Group LTD; DVI Financial Corp; Eastman Kodak Co.

Claimant alleged that he had stressed to Respondents that he only desired conservative investments. Claimant further alleged that Respondents entered trades in Claimant's account for the purpose of generating commissions to the Respondents. Next, Claimant alleged that Kipperman effected excessive stock transactions in speculative securities in which Stratton acted as the market maker. Claimant also asserted that the Respondents materially misrepresented, and failed to disclose material information about the above-referenced investments, and the Claimant also asserted that the practices, statements or omissions were made with the specific intent to deceive or defraud Claimant or in reckless disregard for the truth and were reasonably relied upon by Claimant. Claimant further alleged that Respondents failed to inform him of the risks involved in their program or of the speculative nature of the securities traded. Moreover, Claimant alleged that Stratton had failed to adequately supervise the activities of Kipperman. Lastly, Claimant alleged that Stratton had failed to take any action to revise the manner in which the account was handled although they were in a position to monitor the account.

In their Statement of Answer, Respondents denied each and every material allegation contained in the Statement of Claim.

For their Amended Statement of Claim, Respondents reasserted their denials contained in the original Statement of Answer. In addition, Respondents asserted that New York law applies as per paragraphs 21 and 22 of the Account Agreement, and therefore, asserted that Claimant's request for punitive damages should be denied.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in excess of \$46,000.00;
2. Any additional and consequential damages Claimant may

establish at the arbitration hearing, including treble damages (\$138,000.00);

3. Interest at the legal rate, forum fees, attorney's fees and costs; and

4. Other proper and just relief.

Respondents requested that Claimant's cause of action be dismissed and requested reimbursement for all costs and disbursements incurred by Respondents in defending this claim.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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 originals remain on file with the NASD.

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. Respondents, Stratton Oakmont, Inc. and Neal Kipperman are jointly and severally liable for, and shall pay to Claimant, Edward Gabryszak the sum of \$24,000.00 as satisfaction of Claimant's claims herein;

2. Claimant, Edward Gabryszak's requests for attorney's fees and treble damages are hereby denied and dismissed with prejudice; and

3. Each party shall bear their own costs of this arbitration, except as set forth below.

OTHER COSTS

4. Claimant, Edward Gabryszak shall pay for one-half of the forum fees incurred in this arbitration, as set forth more fully below. Respondents, Stratton Oakmont, Inc. and Neal Kipperman are jointly and severally liable for one-half of the forum fees, as set forth more fully below.

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FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

1 pre-hearing conference session X \$300.00 = \$300.00

2 hearing sessions X \$750.00 = \$1,500.00

Pursuant to Section 43 (c) of the Code of Arbitration Procedure, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Pursuant to Section 30 (b) and Section 43 (c) of the Code of Arbitration Procedure, the NASD shall retain the postponement fee previously paid to the NASD by the Respondents.

Additional forum fees in the amount of \$150.00 are assessed against Claimant, Edward Gabryszak.

Additional forum fees in the amount of \$900.00 are assessed jointly and severally against Respondents, Stratton Oakmont, Inc. and Neal Kipperman.

Fees are payable to the National Association of Securities Dealers, Inc.

CONCURRING ARBITRATORS

Dated:

May 7, 1992

/s/William M. Getzoff
William M. Getzoff
Presiding Chair
Public Arbitrator

May 8, 1992

/s/Jordan H. Bodenstein
Jordan H. Bodenstein
Public Arbitrator

May 7, 1992

/s/J.T. Martin
J.T. Martin
Industry Arbitrator

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Jordan H. Bodenstein
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May 7, 1992

/s/J.T. Martin
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