

## NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between :

Edward L. Echnoz :

Claimant :

CASE #91-03025  
AWARD

vs. :

Stratton Oakmont, Inc. :

H. Scott Gelfand :

Respondents :  
-----CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 27, 1991, Claimant, Edward L. Echnoz by and through his counsel, Dom W. Greco, Esq. of Greco & Lander, Clarion, Pennsylvania, alleged that Respondent Stratton Oakmont, Inc. solicited him to become their customer and later advised him to purchase shares of Visual Equities, Inc. ("NOVA"); formerly known as Nova Capital, Inc. Claimant further alleged that on April 25, 1991 he faxed instructions to Respondents, Stratton Oakmont, Inc. and H. Scott Gelfand to place a "stop loss" order to sell the NOVA shares at 7 7/8. Claimant contended that Respondents failed to promptly notify him that the "stop loss" order would not be carried out. Claimant further contended that when he was finally notified that his "stop loss" order would not be honored, he demanded that the NOVA shares be sold at market and faxed these instructions to Respondents on May 8, 1991. Claimant asserted that his instructions were not executed for three weeks and that during that time period, the NOVA shares were selling at the 7 7/8 per share price of Claimant's original "stop loss" instructions. Claimant further asserted that as a result of Respondents, Stratton Oakmont, Inc. and H. Scott Gelfand failure to promptly follow his instructions to sell the shares of NOVA at market price, Claimant suffered a loss.

Claimant requested the arbitrator bar Respondents, Stratton Oakmont, Inc. and H. Scott Gelfand from presenting any matter, arguments, or defenses pursuant to Section 25(b)(2) of the NASD Code of Arbitration Procedure, filed in a Motion to Preclude their Statement of Answer.

Respondents, Stratton Oakmont, Inc. and H. Scott Gelfand by and through their outside counsel, Lester Morse, Esq., Sole Practitioner, Great Neck, New York, maintained that Claimant, Edward J. Echnoz was their customer and purchased shares of NOVA in his account. Respondent, Stratton Oakmont, Inc. further maintained that Claimant was notified by Respondent, H. Scott Gelfand that they could not accept a "stop loss" order on an OTC stock. Respondents contended that Respondent, H. Scott Gelfand was in constant communication with Claimant and that they complied with Claimant's orders as to sales. Respondents further contended that Respondent, H. Scott Gelfand never refused to execute any sell orders which they received on behalf of Claimant and always followed Claimant's instructions. Respondents asserted that the ultimate decision to buy or sell securities at a time was made by Claimant. Respondents further asserted that Claimant is a sophisticated investor and was at all times fully aware of the status of his account. Respondents argued that Claimant is a disgruntled customer that would gladly have taken profits but wanted Respondents to guarantee these profits without risk to loss.

Respondents, Stratton Oakmont, Inc. and H. Scott Gelfand replied to Claimant's Motion to Preclude by stating that their Statement of Answer was in fact timely as an extension of time to file had been granted by the NASD, Inc. until November 11, 1991, at which time they submitted their Answer, therefore, Claimant's Motion has no merit and should be dismissed.

#### RELIEF REQUESTED

Claimant, Edward L. Echnoz requested \$5,212.50 in actual damages.

Respondents, Stratton Oakmont, Inc. and H. Scott Gelfand requested the claim be dismissed and reimbursement for all costs incurred in defending this claim.

#### AWARD

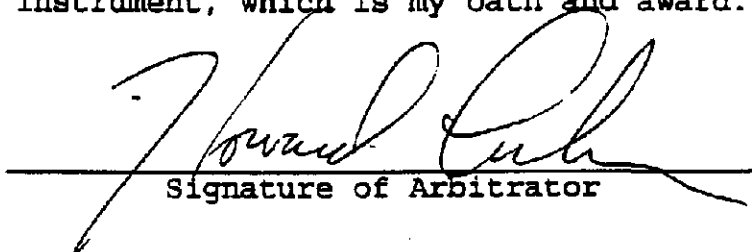
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Howard B. Asher, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 19, 1991 and by the Respondents, Stratton Oakmont, Inc. and H. Scott Gelfand on October 21, 1991.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Stratton Oakmont, Inc. and H. Scott Gelfand are jointly and severally liable and shall pay to the Claimant, Edward L. Echnoz the sum of \$4,205.00 in damages.
2. The Motion to Preclude of Claimant, Edward L. Echnoz is dismissed.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Edward L. Echnoz shall be retained by the NASD, Inc. Respondents, Stratton Oakmont, Inc. and H. Scott Gelfand are jointly and severally liable and shall pay to the Claimant, the sum of \$150.00 as reimbursement.

AFFIRMATION

I, **HOWARD B. ASHER**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
Signature of Arbitrator

DATE OF DECISION: April 20, 1992