

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Phillip R. Nicholson

NASD Arbitration
No. 92-01316

Name of Respondent(s)

Stratton Oakmont, Inc.
Jeffrey Honigman

REPRESENTATION

For Claimant: Irving M. Einhorn, Esq., Einhorn & Edgerton, Los Angeles, California

For Respondent Stratton Oakmont, Inc.: David M. Greenberg, Esq., San Francisco, California

For Respondent Jeffrey Honigman: Stephen B. Wexler, Esq., Wexler & Burkhart, P.C., Garden City, New York

CASE INFORMATION

Statement of Claim filed: April 9, 1992

Claimant's Submission Agreement signed: April 8, 1992

Joint Statement of Answer filed by Respondents: May 26, 1992

Respondents did not file Submission Agreement forms. However they appeared at the hearing and are subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with Section 12 of the Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

June 16, 1993 (one session)

Hearing Date(s)/Session(s):

February 2, 1994 (two sessions)

February 3, 1994 (two sessions)

Hearing Location:

Los Angeles, California

CASE SUMMARY

Claimant alleged the following causes of action with respect to his investments in International Physical Systems, DVI Financial Corp., NOVA Capital (subsequently called Visual Equities), and ROPAK Laboratories: 1) fraud; 2) intentional and negligent misrepresentations and omissions of material fact; 3) manipulation; 4) deceit; 5) breach of fiduciary duty; 6) breach of contract; 7) violations of the NASD's suitability and other rules; 8) theft; 9) conversion; 10) engagement in a pattern of racketeering and an illegal enterprise; and 11) breach of the covenant of good faith and fair dealing. Claimant further alleged that Respondents are liable to Claimant under, among other things: 1) Sections 11 and 12(2) of the Securities Act of 1933, as amended; 2) the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, including, but not limited to, Sections 6 and 10(b), and Rule 10b-5; 3) Sections 25400, 25401, 25500, 25501, 25504, and 25504.1 of the California Corporate Securities Law of 1968, as amended; 4) the California common law; 5) the New York securities and common law; and 6) the Racketeer Influenced and Corrupt Organizations Act.

Respondents denied Claimant's allegations and alleged that Claimant told Stratton Oakmont representatives that his investment objectives were growth. Respondents further alleged that all of the investments recommended by Mr. Honigman were discussed with Claimant and their purchases were specifically authorized or ratified by Claimant. Respondents further alleged that the risks of each and every investment were disclosed to Claimant, including forwarding a prospectus for at least three of the stocks purchased by Claimant. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested damages in the amount of approximately \$123,500.00, punitive damages in the amount of \$75,000.00, treble damages representing approximately \$290,000.00 plus attorney's fees.

Respondents requested that Claimant's Claim be dismissed in its entirety and requested costs and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 Jeffrey Honigman are jointly and severally liable for and shall pay to Claimant Phillip R. Nicholson the sum of \$66,000.00 plus interest at the rate of 10% per annum from June 28, 1991 until date of payment of this Award.

2. Respondent Stratton Oakmont, Inc. is solely liable for and shall pay to Claimant Phillip R. Nicholson the sum of \$25,000.00 in punitive damages pursuant to Todd Shipyard Corp. v. Cunard Line, Ltd. 943 F.2d. 1056 (9th Cir. 1991).

3. Respondent Jeffrey Honigman is solely liable for and shall pay to Claimant Phillip R. Nicholson the sum of \$25,000.00 in punitive damages pursuant to Todd Shipyard Corp. v. Cunard Line, Ltd. 943 F.2d. 1056 (9th Cir. 1991).

4. The parties shall each bear their respective costs, including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$750.00 hearing session deposit previously deposited by the Claimant. Forum fees are assessed against:

Respondents Stratton Oakmont, Inc. and Jeffrey Honigman, jointly and severally, in the amount of \$3,300.00, calculated as follows: One pre-hearing session times \$300.00/session plus four hearing sessions times \$750.00/session.

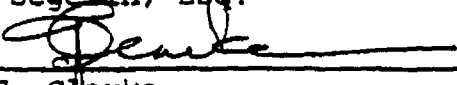
Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Bernard Segelin, Esq.	Public Arbitrator
Robert S. Clarke	Public Arbitrator
Jeffrey E. Skogsbergh	Industry Arbitrator

Concurring Arbitrators' Signatures

Bernard Segelin, Esq.



Robert S. Clarke

Jeffrey E. Skogsbergh

Date of Decision: 7 March 1994

Date Served: 03/15/94