

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ronald Lott

92-02490

Name of Respondents

Stratton Oakmont, Inc.; Jordan Belfort;
Kenneth Greene; Daniel Porush;
Ezra Farbiarz; David Beall

REPRESENTATION

For Claimant: Ronald Lott ("Lott") was represented by Michael Farrell, Esq., with Kullman, Inman, Bee, Downing & Banta, P.C., located in Jackson, Mississippi.

For Respondents: Stratton Oakmont, Inc. ("Stratton") was represented by Ronald Shindler, Esq. of Fowler, White, Burnett, Hurley, Banick & Strickroot, P.A., located in Miami, Florida.

Jordan Belfort ("Belfort"), Kenneth Greene ("Greene") and Daniel Porush ("Porush") were represented by Jacob H. Zamansky, Esq. of Singer Bienenstock Zamansky Ogele & Selengut, located in New York, New York. Belfort was also represented by Franklin D. Ormsten, Esq. of Ormsten & Evangelist, located in Jericho, New York. Greene was also represented by Martin P. Unger, Esq. of Tenzer, Greenblatt, Fallon & Kaplan, located in New York, New York. Porush was also represented by Norman B. Arnoff, Esq. of Lake Success, New York.

Ezra Farbiarz ("Farbiarz") and David Beall ("Beall") were represented by Stephen B. Wexler, Esq. of Wexler & Burkhart, P.C., located in Mitchel Field, New York.

CASE INFORMATION

Statement of Claim filed: July 28, 1992.

Claimant's Submission Agreement signed on: July 23, 1992.

Respondent Stratton's Submission Agreement signed on: December 15, 1992 by Paul F. Byrne of Stratton Oakmont, Inc.

Respondent Belfort's Submission Agreement signed on: December 15, 1992.

Respondent Greene did not file an executed Submission Agreement.
Respondent Porush's Submission Agreement signed on: December 16, 1992.
Respondent Farbiarz's Submission Agreement signed on: December 3, 1992.
Respondent Bell's Submission Agreement signed on: December 15, 1992.
Respondents Statement of Answer filed: December 2, 1992.

Claimant's Amended Statement of Claim filed on: December 30, 1992.

Stratton's Motion for Leave to File a Counterclaim filed: November 9, 1994
Lott's Response to Motion to File Counterclaim filed on: December 12, 1994.

HEARING INFORMATION

Pre-Hearing Conference: May 14, 1993 for One (1) session before One (1) arbitrator;
August 5, 1993 for One (1) session before Three (3) arbitrators;
September 20, 1993 for One (1) session before Three (3) arbitrators;
November 11, 1993 for Two (2) sessions before Three (3) arbitrators; and
April 28, 1994 for One (1) session before Three (3) arbitrators

Hearing Dates/Sessions: February 7, 1995 for Two (2) sessions;
February 8, 1995 for Two (2) sessions;
February 9, 1995 for Two (2) sessions;
May 16, 1995 for Two (2) sessions;
May 17, 1995 for Two (2) sessions;
May 18, 1995 for Two (2) sessions;
September 19, 1995 for Two (2) sessions;
September 20, 1995 for Two (2) sessions; and
September 21, 1995 for Two (2) sessions.

Hearing Location: New Orleans, Louisiana.

CASE SUMMARY

Claimant alleged that Respondents had engaged in securities frauds and racketeering activity by blatantly misrepresenting material facts; high pressure, boiler room sales tactics; market manipulation of Nova Securities; failure to execute orders and unauthorized trading of securities and steering customers into purchasing in-house stocks and holding the stocks with disregard for the customer's interest. Based upon these allegations, Lott further alleged that these practices created a pattern of racketeering activity because they were part of a systematic, scheme of securities fraud.

Based upon the allegations of the Statement of Claim, the Claimant asserted claims for violation

of the Federal Securities laws; violation of the state of Mississippi securities laws; omissions of material facts; unauthorized trading; manipulation of the market in Nova Stock in violation of the federal securities law; and violation of the federal RICO act 18 USC Section 1962(c).

Respondents denied the material allegations of the claims asserted by Lott, asserting that:

1. The claim was merely an attempt to piggy-back upon the negative publicity received by Stratton because of a civil proceeding brought by the Securities and Exchange Commission against Stratton and certain of its principals;
2. Lott did not have any contact or dealings with Respondents Belfort, Greene or Porush, but named them as respondents to increase the costs of defending this action;
3. Stratton only solicits experienced investors possessed of considerable economic resources who are able to risk investment in emerging growth companies. The practice of opening an account with a NYSE listed stock provides an opportunity for the account representative to become familiar with the customer's investment needs and to determine if an investment in OTC stocks traded by Stratton is suitable for the particular customer;
4. Farbiarz stresses to Lott the speculative nature of the stocks and that Stratton would recommend stocks it made a market;
5. The claims for unauthorized trading and failure to execute an order are false and until this Claim, no complaint was ever received;
6. The allegations of stock manipulation are unfounded and not supported by the facts.

In addition, the Respondents asserted several affirmative defenses, including the following:

1. Lott did not seasonably complain of the losses in his account;
2. Lott failed to mitigate damages and was contributorily negligent;
3. Lott assumed the risk of investing;
4. The Statement of Claim fails to state a cause of action;
5. Lott failed to exercise due diligence concerning his investments;
6. Lott ratified the acts and transactions about which he complained; and
7. Lott's losses were not proximately caused by the alleged misconduct of

Respondents.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents for compensatory damages of \$33,315.54 plus interest and attorneys' fees. In addition, Lott sought treble damages of \$99,946.62 for RICO violations pursuant to 18 U.S.C. §1964(c). Lott amended his claim to include a request for punitive damages of 5% of each of the Respondents' net worth.

Respondents requested entry of an award dismissing the Statement of Claim in its entirety and awarding the Respondents their reasonable expenses in defending the action, including costs and attorneys' fees, and assessing the arbitration and forum fees against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Kenneth Greene did not file an executed submission agreement, but as an associated person of a member firm is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure.

After review of the written submissions and having heard argument on the matter in the pre-hearing conference of April 28, 1994, the panel denied the Respondents' Motion to Dismiss Because Claimant Can No Longer Claim Economic Loss by order dated April 29, 1994.

An in-person pre-hearing conference before the full panel was held on November 11, 1993 to resolve several outstanding matters, including several dispositive motions. After hearing argument, the Panel made several decisions, including the following, which were issued by Order executed by all arbitrators in November of 1993:

1. Respondents' Motion to Dismiss Certain Claims was granted in part and denied in part. The Motion with respect to the claims for punitive damages was granted and the claims for punitive damages were dismissed with prejudice. The Motion with respect to the claims for RICO damages and claims for attorneys' fees was denied;
2. Respondent Daniel Porush's Motion to Waive, or be excused from, the provision of Section 6 of the NASD Code of Arbitration procedure was denied; and
3. The Motions for Sanctions were denied at that time and requests for an award of attorneys' fees would be resolved as part of the full hearing.

After review of Stratton's written Motion to File a Counterclaim and all responses, the Panel determined on January 6, 1995 that the Motion would be denied and the relief sought by the counterclaim be addressed as part of a Rule 11 proceeding or counterclaim in Federal Court.

After review of the Claimant's written Motion to Reinstate Punitive Damages filed March 20,

1995 and all responses, the Panel determined that the Motion would be denied.

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 originals remain on file with the NASD.

AWARD

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

1. Respondents Stratton Oakmont, Inc., Jordan Belfort, Kenneth Greene and Daniel Porush are jointly and severally liable for and shall pay to Claimant Ronald Lott the sum of \$23,128.91 plus legal interest dating from October 2, 1992 for a total of \$28,679.84 as actual damages. In addition, interest shall continue at a per diem rate of \$5.06 until the sum is paid in full;
2. Further, Respondents Stratton Oakmont, Inc., Jordan Belfort, Kenneth Greene and Daniel Porush are jointly and severally liable for and shall pay to the Claimant, Ronald Lott, the sum of \$43,750.00 as attorneys' fees. In deciding to award attorneys' fees, the panel considered the arguments of the parties and the authority cited and determined that authority existed for an award of attorneys' fees to the Claimant, Ronald Lott;
3. All claims filed against Respondents Ezra Farbiarz and David Beall are dismissed with prejudice and denied in the entirety;
4. The claims for treble damages pursuant to the RICO statute are dismissed with prejudice and denied in the entirety;
5. Respondent Jordan Belfort is liable for and shall pay to Claimant Ronald Lott the sum of \$5,000.00 as attorneys' fees for sanctions for failure to appear at hearing despite being ordered in writing through the orders of November , 1993 and April 28, 1993, and also being ordered on the record at hearing by the Panel to appear. In deciding to award sanctions, the panel considered the arguments of the parties, as well as Section 35 of the NASD Code of Arbitration Procedure, and determined that authority existed for an award of attorneys' fees as sanctions to the Claimant, Ronald Lott;
6. All costs of arbitration, including any additional attorneys' fees, shall be borne by the party incurring the cost, except for those costs specifically enumerated in the award; and
7. Any relief not specifically awarded is hereby denied.

OTHER COSTS

The postponement fee of \$500.00 paid by Claimant Ronald Lott on May 6, 1993 shall be waived and the sum of \$500.00 refunded to Claimant by the NASD.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing conference before One (1) arbitrator x \$300.00 per session = \$300.00; Five (5) pre-hearing conference sessions before the full panel x \$500.00 per session = \$2,500.00; Eighteen (18) hearing sessions x \$500.00 per session = \$9,000.00; Total Forum Fees = \$11,800.00.

The National Association of Securities Dealers, Inc. shall retain the \$150.00 claim filing fee and refund the \$500.00 hearing sessions deposit previously deposited by the Claimant, Ronald Lott. Respondents Stratton Oakmont, Inc., Jordan Belfort, Kenneth Greene and Daniel Porush are jointly and severally liable for and shall pay to the NASD the sum of \$11,800.00 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Date

/s/ Larry M. Roedel, Esq.
Larry M. Roedel, Esq.
Public Arbitrator
Chairperson

December 28, 1995

/s/ Clayton J. Borne, Jr.
Clayton J. Borne, Jr.
Public Arbitrator

December 29, 1995

/s/ Cynthia M. Sheppard
Cynthia M. Sheppard
Industry Arbitrator

December 28, 1995

For NASD Use Only

Date of Decision: January 2, 1996