

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

MDM Construction Co., Inc.  
Pension Plan, and Ferdinand  
and Marsha Marchese, individually  
and as Trustees of MDM  
Construction Co., Inc. Pension  
Plan

No. 92-02566

Name of Respondents

Stratton Oakmont, Inc.  
Casey Karry  
Richard Bronson

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**REPRESENTATION OF PARTIES**

For Claimants: Ronald P. Kane, Esq., and Diane C. Fischer, Esq. of Siegan Barbakoff & Gombert, & Kane, Chicago, Illinois.

For Respondent Stratton Oakmont, Inc.: Norman B. Arnoff, Esq. of Capuder & Arnoff, P.C., New York, New York.

For Respondents Casey Karry and Richard Bronson: Jerry M. Santangelo, Esq. of Neal Gerber & Eisenberg, Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed: September 3, 1992.

Claimants' Submission Agreements signed on: July 27 and August 6, 1992.

Joint Statement of Answer and Motion to Dismiss Respondent Richard Bronson filed by Respondents, Stratton Oakmont, Inc., Casey Karry, and Richard Bronson on: November 2, 1992.

Respondent Casey Karry's Submission Agreement signed on: October 27, 1992.

Respondent Richard Bronson's Submission Agreement signed on: October 27, 1992.

Respondent Stratton Oakmont, Inc.'s Submission Agreement signed on: September 16, 1992.

### HEARING INFORMATION

Hearing dates:      March 17, 1993. Two (2) sessions.  
                         March 18, 1993. Two (2) sessions.  
                         March 19, 1993. One (1) sessions.  
                         June 7, 1993. Two (2) sessions.  
                         June 8, 1993. Three (3) sessions.  
                         June 9, 1993. Three (3) sessions.  
                         June 10, 1993. Three (3) sessions.

Hearing Location: Chicago, Illinois.

### CASE SUMMARY

Claimants. MDM Construction Co., Inc. Pension Plan, Ferdinand and Marsha Marchese, individually, and as Trustees of the MDM Construction Co., Inc. Pension Plan ("Claimants") alleged: Common law fraud; violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; breach of fiduciary duty; common law negligent misrepresentation; violation of Section 12 of the Illinois Securities Laws of 1953, Ill.Rev.Stat., ch. 121 1/2. Section 137.12; fraudulent misrepresentation in violation of Section 2 of the Illinois Consumer Fraud and Deceptive Practices Act; and violation of Section 20 of the Securities Exchange Act by Respondents Stratton Oakmont, Inc., Casey Karey, and Richard Bronson. The allegations arose out of transactions in the following securities: Ventura Entertainment Group Ltd.; Ventura Motion Picture Group, Ltd.; Nova; DVI Financial Corp.; LICON International, Inc.; IPS Healthcare, Inc.; ROPAC Laboratories, Inc.; and other securities more fully discussed during the hearing of this matter.

In their Answer, Respondents denied each and every allegation contained in the Statement of Claim. In addition, Respondents asserted that: Claimants had been fully aware of and directed each and every trade in their accounts; they fully understood and appreciated the potential rewards and corresponding risks of their trading activity; and they confirmed their financial ability to bear the risks of their trading activity by repeatedly depositing substantial funds into

their accounts for the purpose of making additional trades over a two and a half year time period.

### **RELIEF REQUESTED**

In counts I, III, VI, and VIII, Claimants requested: an award against the Respondents, jointly and severally, in an amount in excess of \$200,000.00, and an additional award for punitive damages in the amount of not less than \$200,000.00, plus interest and costs and such other and further relief as the arbitrators will allow.

In counts II, IV, and VII, Claimants requested: an award against the Respondents, jointly and severally, in an amount in excess of \$200,000.00, plus interest and costs and such other and further relief as the arbitrators will allow.

In Count V, claimants requested: an award against the Respondents, jointly and severally, in an amount in excess of \$200,000.00, plus interest, costs, and attorneys' fees and for such other and further relief as the arbitrators will allow.

Respondents requested that the Statement of Claim be dismissed with prejudice, and an award in Respondents' favor for such further relief as is deemed appropriate under the circumstances.

### **OTHER ISSUES CONSIDERED & DECIDED**

In Respondents' Joint Statement of Answer, Respondent Bronson requested that he be dismissed from this arbitration. The panel after review of the pleadings, and deliberation, denied the Motion without prejudice. However, the panel reserved the right to rule sua sponte on the Motion to Dismiss at the hearing.

On March 19, 1993, Respondent Bronson renewed his Motion to Dismiss. After hearing argument, and deliberation, the panel denied the motion without prejudice.

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 documentary evidence presented at the hearing, as well as the arguments of respective counsel, and the post-hearing submissions, the undersigned arbitrators in full and final resolution of the claims and issues submitted have decided in full and final resolution of the issues submitted have decided and determine as follows:

1. The claims of MDM Construction Co. Inc. Pension Plan and of Ferdinand and Marsha Marchese, individually, and as trustees of MDM Construction Co., Inc. Pension Plan, asserted against Respondents Casey Karey and Richard Bronson are and each of them is hereby denied and dismissed with prejudice.
2. The claims of Ferdinand and Marsha Marchese, individually, and as trustees of MDM Construction Co. Inc. Pension Plan asserted against Respondent Stratton Oakmont, Inc. are and each of them is hereby denied and dismissed with prejudice.
3. Respondent Stratton Oakmont, Inc. is liable for and shall pay to Claimant MDM Construction Co., Inc. Pension Plan the sum of \$50,000.00 as full and complete satisfaction of its claims herein against Respondent Stratton Oakmont, Inc.
4. Claimants' claims for punitive damages and pre-award interest are and each of them is hereby denied and dismissed with prejudice.

**OTHER COSTS**

Each party shall pay its own costs and expenses associated with this arbitration, including attorneys' fees, except as set forth more fully below.

**FORUM FEES**

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

$$16 \text{ hearing sessions} \times \$750.00 = \$12,000.00$$

Pursuant to Section 43(c) of the Code, 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.

Additional forum fees in the amount of \$5,250.00 are assessed jointly and severally against Ferdinand and Marsha Marchese, as individuals.

Additional forum fees in the amount of \$6,000.00 are assessed against Stratton Oakmont, Inc.

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

**CONCURRING ARBITRATORS**

Dated:

July 13, 1993

/s/Robert S. Sugarman  
Robert S. Sugarman  
Presiding Chair  
Public Arbitrator

July 14, 1993

/s/Stephen W. Balek  
Stephen W. Balek  
Public Arbitrator

July 14, 1993

/s/Morgan F. McDonnell  
Morgan F. McDonnell  
Industry Arbitrator

Date of Service by the NASD: 7-14-93