

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Carl W. Poe

92-03671

Name of Respondents

Stratton Oakmont, Inc.;
Bear Stearns Securities, Corp.;
Howard S. Gelfand;
Kenneth S. Greene;
Jordan R. Belfort;
Daniel M. Porush.

REPRESENTATION

For Claimant: Carl W. Poe ("Poe") was represented by William J. Hawkins, Esq. of Houston, Texas, and Daniel R. Kirshbaum, Esq. of Axelrod, Smith, Komiss & Kirshbaum, located in Houston, Texas.

For Respondents: Stratton Oakmont, Inc. ("Stratton Oakmont") was represented by Bradley M. Whalen, Esq. of Doyle, Reed, Restrepo, Harvin & Robbins, located in Houston, Texas.

Bear Stearns Securities Corp. ("Bear Stearns") was represented by Robert B. McKay, Esq. of Carney & McKay, located in Garden City, New York.

Howard S. Gelfand ("Gelfand") was represented by Jacob H. Zamansky, Esq. of Finkelstein Bruckman Wohl Most & Rothman, located in New York, New York.

Kenneth S. Greene ("Greene") was represented by Martin P. Unger, Esq. of Tenzer, Greenblatt, Fallon & Kaplan, located in New York, New York.

Jordan R. Belfort ("Belfort") was represented by Franklin D. Ormsten, Esq. of Ormsten & Evangelist, located in Jericho, New York, and Jack D. Ballard, Esq. of Andrews & Kurth, L.L.P., located in Houston, Texas.

Daniel M. Porush ("Porush") was represented by Norman B. Arnoff, Esq. of Capuder & Arnoff, P.C., located in New York, New York.

CASE INFORMATION

Claimant's Submission Agreement signed on: October 21, 1992.

Statement of Claim filed: October 29, 1992.

Respondent Stratton Oakmont's Submission Agreement signed on: February 25, 1993 by Paul F. Byrne, Compliance Director, Stratton Oakmont, Inc.

Respondent Bear Stearns' Submission Agreement signed on: January 13, 1993 by Mark C. Lehman, Senior Managing Director, Bear Stearns Securities Group.

Respondent Gelfand's Submission Agreement signed on: August 19, 1993.

Respondent Greene's Submission Agreement signed on: October 15, 1993.

Respondent Belfort's Submission Agreement signed on: February 25, 1993.

Respondent Porush's Submission Agreement signed on: March 19, 1993.

Motion to Dismiss of Respondents Bear Stearns, Greene, Belfort and Porush and Respondents' Response to Statement of Claim filed: December 23, 1992.

Claimant's Response to Motion to Dismiss filed: January 4, 1993.

Claimants Poe, Willard E. Inhoff, and Dean and Gayle Kline's First Amended Statement of Claim filed: June 1, 1993.

Respondents' Response to Claimant Poe's First Amended Statement of Claim and Counterclaim filed: June 10, 1993.

Respondent Greene's Answer to Claimant Poe's First Amended Statement of Claim, Motion to Dismiss and Motions to Strike filed: June 15, 1993.

Respondent Stratton Oakmont's Response to Willard E. Inhoff's Statement of Claim filed: June 16, 1993.

Respondent Stratton Oakmont's Response to Dean and Gayle Kline's Statement of Claim filed: June 16, 1993.

Respondent Stratton Oakmont's Motion to Dismiss and Memorandum of Law in Support of Respondent's Motion to Dismiss Claims Brought Pursuant to 18 U.S.C.A. Sec. 1961 filed: June 18, 1993.

Claimants' Response to Respondent Greene's Motion to Dismiss and Motions to Strike filed: June 19, 1993.

Claimants' Response to Respondents' Counterclaim served on June 10, 1993 filed: June 19,

1993.

Respondent Gelfand's Letter Joining in Respondent Stratton Oakmont's Responses to Dean and Gayle Kline's Statement of Claim and the Response to the Statement of Claim of Willard E. Imhoff filed: June 23, 1993.

Respondent Belfort's Letter Joining in Respondent Stratton Oakmont's Answer to the Claims of William E. Imhoff and Dean and Gayle Kline filed: June 24, 1993.

Claimants' Response to Respondent Stratton Oakmont, Inc.'s Motion to Dismiss Claims Brought Pursuant to 18 U.S.C.A. Sec. 1961 filed: June 25, 1993.

Claimants' Response to Respondents' Response (And Motion to Strike) to Willard E. Imhoff's Statement of Claim filed: June 25, 1993.

Claimants' Response to Respondents' Response (And Motion to Strike) To Dean and Gayle Kline's Statement of Claim filed: June 25, 1993.

Respondents' Motion to Dismiss and Memorandum of Law in Support of Respondents' Motion to Dismiss Claims Brought Pursuant to 18 U.S.C.A. Sec. 1961 filed: June 28, 1993.

Respondent Greene's Answer to Statement of Claim of Dean and Gayle Kline, Motion to Dismiss, Motions to Strike and Motion to Sever filed: June 29, 1993.

Respondent Greene's Answer to Statement of Claim of Willard E. Imhoff, Motion to Dismiss, Motions to Strike and Motion to Sever filed: June 29, 1993.

Respondents' Motion to Sever Claims and Memorandum of Law in Support Thereof filed by Respondents Stratton Oakmont, Belfort, Gelfand and Porush on: July 2, 1993.

Respondents' Motion to Strike Certain Exhibits to Claimants' First Amended Statement of Claim and Memorandum of Law in Support Thereof filed by Respondents Stratton Oakmont, Belfort, Gelfand and Porush on: July 2, 1993.

Respondents' Motion to Strike Claimants' First Amended Statement of Claim filed by Respondents Stratton Oakmont, Belfort, Gelfand and Porush on: July 2, 1993.

Claimants' Withdrawal of the First Amended Statement of Claim and Request for an Order Dismissing Claimants Willard E. Imhoff, Dean Kline and Gayle Kline without prejudice filed: July 7, 1993.

Respondent Bear Stearn's Supplemental Motion to Dismiss and Memorandum of Law in Support filed on: July 15, 1993.

Affidavit in Support of Bear Stearn's Motion to Dismiss filed: July 15, 1993.

Respondent Bear Stearn's Motion for Leave to File the Supplemental Answer filed: July 21, 1993.

Claimant's Dismissal with Prejudice of Claims against Respondent Bear Stearns filed: October 29, 1993.

HEARING INFORMATION

Pre-Hearing Conference: July 22, 1993 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: July 27, 1993 for Two (2) sessions;
July 28, 1993 for Two (2) sessions;
July 29, 1993 for Two (2) sessions;
November 1, 1993 for Two (2) sessions;
November 2, 1993 for Three (3) sessions;
November 3, 1993 for Two (2) sessions;
November 4, 1993 for Two (2) sessions;
November 5, 1993 for Three (3) sessions;
November 6, 1993 for One (1) session;
December 13, 1993 for One (1) session;
December 14, 1993 for One (1) session.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant Poe alleged that Respondent Gelfand, while employed by or acting as an agent for Respondent Stratton Oakmont, misrepresented the quoted prices of certain "penny stocks" and Poe's account performance, thereby inducing Poe to invest in unsuitable securities given Poe's investment experience. In addition, Poe alleged that Gelfand engaged in unauthorized trading and induced Poe to purchase securities which were not "blue skied" in the State of Texas.

Poe alleged that Respondents Belfort, Greene and Porush were officers and directors of Stratton Oakmont and acted recklessly in failing to discover Gelfand's fraudulent practices.

It was further alleged that the above Respondents engaged in market manipulation of the stock values. No independent competitive market existed for many of the stocks traded in Poe's account. Stratton Oakmont dominated the market and controlled the wholesale prices of the stocks and the only reliable basis for determining the market price of these stocks was the prices paid for the stocks by Stratton Oakmont.

Respondent Bear Stearns, as the clearing firm for the trades, was alleged to have acted recklessly

in failing to discover the fraudulent and assisted Stratton Oakmont in carrying out these practices by listing the market manipulated prices on the monthly statements published by Bear Stearns.

Based upon the above allegations, Poe asserted claims for violations of the Federal and State Securities statutes; violation of the NASD Rules of Fair Practice; and breach of fiduciary duty. In addition, Poe asserted claims against Stratton Oakmont under the doctrine of respondeat superior.

Respondents Stratton Oakmont, Bear Stearns, Gelfand, Greene, Belfort and Porush denied the material allegations of the Statement of Claim, alleging that:

1. Claimant failed to state claims for which relief could be granted and the securities laws cited by Claimant provided no basis for his claims;
2. The damages allegedly suffered have no causal relationship with any act committed by or legally attributable to any Respondent, but were proximately caused by normal market fluctuations over which Respondents had no control;
3. All Respondents acted in compliance with all applicable rules and regulations and in good faith. Respondents Stratton Oakmont, Greene, Belfort and Porush implemented and carried out appropriate supervisory procedures, and Bear Stearns did not have a duty to supervise;
4. Poe has waived his right to maintain this action by his representations, is estopped from asserting his claims, is barred from asserting his claims under the doctrine of ratification, and assumed the risk of loss associated with his investments;
5. Any of Poe's damages were caused or contributed to by Poe's failure to mitigate damages;
6. Poe was specifically advised of all risks of his investments;
7. Poe has no standing to assert any claim for violation of the NASD Rules of Fair Practice or the rules of the New York Stock Exchange because no private right of action exists for violation of these rules;
8. The Respondents reasonably relied upon the publicly available information, their own research and the research provided to them regarding the investments in Poe's account, believed their statements to Poe were true and did not omit any material facts;

9. Poe represented that he was a sophisticated investor with the intelligence to understand his investments, did not blindly rely upon Gelfand's suggestions, and consistently told Gelfand that he was willing to take risks in exchange for the possibility of profits;

10. Gelfand discussed each transaction with Poe in detail before the transaction took place, with the exception of when Poe gave Gelfand discretionary authority;

11. Gelfand informed Poe of every investment in which Stratton Oakmont was a market maker and the monthly account statements informed Poe of this fact; and

12. Respondents deny any violation of the "Blue Sky" laws, but if any were violated, Poe would be barred and estopped from asserting this claim because the laws were violated with his knowledge, complicity and at his direction.

In addition, Respondent Bear Stearns filed a motion to dismiss the action against itself, alleging that as a clearing broker, it had no duty to supervise or investigate the transactions in Poe's account, is not liable for the acts of the introducing broker, and that Poe had signed a customer agreement agreeing not to hold Bear Stearns responsible for any complaints he had against Stratton Oakmont or its brokers.

Respondents Greene, Belfort and Porush motioned to dismiss the action against themselves, asserting that the Claimant had failed to state a single fact or allegation that supported the claims against these Respondents. Greene, Belfort and Porush further asserted that they had no personal knowledge regarding Poe's account and had no involvement in the transactions made in the account.

RELIEF REQUESTED

Claimant Poe requested that the Panel enter an award against Respondents in the sum of \$990,474.33 for actual losses in the account, together with the loss of benefits the account should have been entitled to in the amount of \$220,548.87 and interest from May 18, 1992 until the date of the award; a monetary award in an amount equal to the total commissions, markups, markdowns and fees charged to Poe; \$3,000,000.00 in punitive damages; pre-judgment interest; reasonable attorneys' fees; costs of arbitration; and such other relief as the arbitrators deemed fit to award.

Respondents requested that Poe's claims against them be dismissed in their entirety and that he take nothing by way of his claim. In addition, Respondents Greene, Belfort and Porush requested that they be granted reasonable attorneys' fees incurred for responding to Poe's claim.

OTHER ISSUES CONSIDERED & DECIDED

On June 1, 1993, Claimant filed a First Amended Statement of Claim, adding as Claimants William E. Imhoff, Dean Kline and Gayle Kline and including a claim for damages pursuant to the Racketeering Influenced and Corporate Organizations Act (RICO), 18 U.S.C. Sec. 1961(3). Respondents filed several Motions to Dismiss or Strike the Amended Statement of Claim, as shown in the Case Information section of this decision. After review of the Motions and Claimants Responses to the Motions, the Panel determined on July 2, 1993 that the First Amended Statement of Claim was inadequate concerning the factual allegations to justify permissive joinder of the additional parties and the alleged RICO violations. However, instead of dismissing the First Amended Statement of Claim, the Claimant was provided the opportunity to replead the allegation with sufficient particularity, which the Panel would decide on at the first hearing date whether the Amended Claim would be allowed. If allowed, the Panel would grant Respondents' Motion to Postpone. If the First Amended Statement of Claim was withdrawn, the hearing would proceed as scheduled. On July 7, 1993, in response to the Panel's ruling, Poe withdrew without prejudice the First Amended Statement of Claim.

At hearing on July 27, 1993, the Motions to Dismiss of Respondents Bear Stearns, Greene, Belfort, and Porush were argued by the parties. After consideration of all documentation filed and all arguments presented by the parties, the Panel determined that the Motions to Dismiss would be denied.

On October 29, 1993, Claimant dismissed with prejudice all claims against Respondent Bear Stearns.

On November 5, 1993, at the close of Claimant Poe's case, remaining Respondents presented Motions to Dismiss. After hearing all arguments of counsel, the Panel recessed for an executive session. The Panel, after considering the arguments of counsel, determined that the Motions to Dismiss of Respondents Greene, Belfort and Porush were granted. The Motion to Dismiss of Respondents Stratton Oakmont and Gelfand were 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 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. and Howard S. Gelfand are jointly and severally liable for and shall pay to Claimant Carl W. Poe the sum of \$270,000.00;
2. In addition, Respondent Howard S. Gelfand is liable for and shall pay to Claimant Carl W. Poe the sum of \$60,000.00;
3. The above amounts shall incur post-judgment interest at the rate of 10% per annum from the date of service of the award until the amounts are paid in full;
4. The claims against Respondents Bear Stearns Securities Corp., Kenneth S. Greene, Jordan R. Belfort and Daniel M. Porush are hereby dismissed with prejudice and denied in their entirety;
5. The claims for punitive damages and attorneys' fees are dismissed with prejudice;
6. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
7. All relief not specifically granted is hereby denied.

OTHER COSTS

The NASD shall retain the \$1,000.00 adjournment fee paid by Respondent Stratton Oakmont, Inc. and apply the same to the sums due from Stratton Oakmont, Inc. as forum fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing conference session before One (1) arbitrator x \$300.00 per sessions = \$300.00; Twenty One (21) hearing sessions x \$1,000.00 per session = \$21,000.00; Total Forum Fees = \$21,300.00.

The National Association of Securities Dealers, Inc. shall retain the \$250.00 non-refundable claim filing fee and the \$1,550.00 hearing session deposit previously deposited by the Claimant Carl W. Poe. In addition, Claimant Carl W. Poe is liable for and shall pay to the NASD additional forum fees in the sum of \$9,100.00. The NASD shall retain the \$1,000.00 adjournment fee paid by Respondent Stratton Oakmont, Inc. In addition, Respondent Stratton Oakmont, Inc. is liable for and shall pay to the NASD additional forum fees in the sum of

\$9,650.00.

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

Concurring Arbitrators' Signatures

Name

Date:

/s/ Russell F. Rains, Esq.
Russell F. Rains, Esq.
Public Arbitrator
Chairperson

January 20, 1994

/s/ J. Randle Henderson, Esq.
J. Randle Henderson, Esq.
Public Arbitrator

January 17, 1994

/s/ Robert M. Birenbaum
Robert M. Birenbaum
Industry Arbitrator

January 18, 1994

For NASD Use Only

Date of Service on Parties:

January 21, 1994