

1/95

9501075

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimants

Meyer and Charlotte Kauffman

92-03784

Name of Respondents

Stratton Oakmont
Howard Weinstein
Jordan S. Belfort
Kenneth S. Greene
Daniel M. Porush

REPRESENTATION

For Claimants Meyer and Charlotte Kauffman ("Claimants") appeared Susan N. Perkins, Esq., of the law firm of Susan N. Perkins, P.C., located in New York, New York.

For Respondent Stratton Oakmont ("Stratton") appeared Norman B. Arnoff, Esq., of the law firm of Capuder & Arnoff, P.C., located in New York, New York.

For Respondent Howard Weinstein ("Weinstein") appeared Stephen B. Wexler, Esq., of the law firm of Wexler & Burkhardt, P.C., located in Mitchel Field, New York.

CASE INFORMATION

Statement of Claim filed: November 3, 1992.

Claimant's Submission Agreement signed on: November 3, 1992.

Amended Statement of Claim filed: December 7, 1993.

Respondent Stratton's Statement of Answer filed: January 14, 1993.

Respondent Stratton's Answer to the Amended Statement of Claim filed: January 20, 1994.

9501075

Respondent Stratton's Submission Agreement signed on: January 13, 1993.

Respondent Weinstein's Statement of Answer filed: January 25, 1993.

Respondent Weinstein's Answer to the Amended Statement of Claim filed: January 19, 1994.

Respondent Weinstein's Submission Agreement signed on: January 25, 1993.

Jordan S. Belfort, Kenneth S. Greene and Daniel M. Porush did not file a Statement of Answer nor execute Submission Agreements.

HEARING INFORMATION

Pre-hearing Conference:	August 4, 1993	-	One Session/ One Arbitrator
Hearing dates/sessions:	April 21, 1994	-	Two Sessions
	April 29, 1994	-	Two Sessions
	June 24, 1994	-	Two Sessions
	August 5, 1994	-	Two Sessions
	August 12, 1994	-	Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc., located in New York City, New York.

CASE SUMMARY

Claimants alleged that Respondent Weinstein was their account executive when they maintained an account at Shearson Lehman Brothers ("Shearson"). Claimants further alleged that, when Respondent Weinstein became associated with Respondent Stratton, he contacted Claimants and recommended that they transfer their account to Respondent Stratton. Claimants alleged that, because of their past association with Respondent Weinstein, they transferred 300 shares of McGraw Hill, Inc. from their account at Shearson to an account at Respondent Stratton.

Claimants alleged that Respondent Weinstein applied high pressure tactics to sell them stocks and warrants of a small number of companies in which Stratton made a market ("house stocks"). Claimants further alleged that Respondent Stratton was the underwriter for all or most of these house stocks. Claimants alleged that these house stocks were for speculative, unseasoned companies, with low revenues and low or negative earnings. Claimants further alleged that they had explained to Respondent Weinstein when he was employed by Shearson that their account represented their retirement savings and that their investment objective was safety of principal. Claimants further alleged that Respondent Weinstein

intentionally ignored their objectives and instructions, made unsuitable investments on their behalf and violated the fiduciary duty owed to them.

Claimants alleged that Respondents made numerous material misrepresentations and omissions to induce Claimants to purchase house stocks and to convince them not to sell these stocks. Claimants also alleged that Respondents refused to execute sell orders for several of the house stocks. In addition, Claimants alleged that Respondents omitted to tell them that the purchasers or intended purchasers of warrants for the house stocks were several top-level executives of Respondent Stratton, namely, Jordan S. Belfort ("Belfort"), Kenneth S. Greene ("Greene") and Daniel M. Porush ("Porush"). Further, Claimants alleged that Respondents manipulated the prices of one or more house stocks, by acquiring and maintaining control of the publicly traded float, by dominating the market and by creating demand for the house stock by means of boiler room sales practices. Claimants alleged that after the price of the stocks were artificially driven up, Belfort, Greene and Porush sold off their own shares and warrants and the shares and warrants in Respondent Stratton's house account, which resulted in enormous losses to its public customers, including Claimants.

Respondent Stratton maintained that Claimants were experienced, sophisticated and financially successful investors. Respondent Stratton also maintained that Claimants eagerly sought risk, engaged in transactions with the hope of realizing large gains, and voluntarily took large positions involving great risk.

Respondent Stratton denied manipulating the price of the house stock, maintaining control of the public float, dominating the market and creating artificial demand for the house stocks by means of boiler room sales practices. Respondent Stratton also denied that it intentionally defrauded and breached their regulatory and fiduciary duties owed to Claimants.

As affirmative defenses, Respondent Stratton asserted that Claimants failed to state a cause of action, that Claimants failed to mitigate their damages, that the claims are barred by the applicable statutes of limitations, that the panel of arbitrators does not have the authority to award punitive damages or attorney's fees, that Claimants ratified all of the transactions in their account, that Claimants failed to exercise due diligence, that Claimants authorized and directed the execution of all transactions in their account, and that the claims are barred by the doctrines of estoppel and waiver.

Respondent Weinstein maintained that Claimants were well educated, successful individuals and that Claimants knowingly entered into and authorized every transaction in their account. Respondent Weinstein further maintained that Claimants understood and realized the market risks and were aware that the stocks they purchased were speculative. In addition, Respondent Weinstein maintained that Claimants directed every trade in the account and that Claimants confirmed their financial ability to bear the risks of their trading activity by

9501075

repeatedly depositing funds into their account.

Respondent Weinstein maintained that he never pushed Claimants to make a decision. Respondent Weinstein further maintained that on many occasions he told Claimants to sell the stocks, but that Claimants wanted to wait for the stocks to rebound.

As affirmative defenses, Respondent Weinstein asserted that the claims are barred by the applicable statutes of limitations, that the panel of arbitrators does not have the authority to award punitive damages or attorney's fees, that Claimants ratified the transactions in their account, that Claimants failed to exercise due diligence, that Claimants authorized and directed all transactions in their account, and that the claims are barred by the doctrines of estoppel and waiver.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$100,000.00 and punitive damages in an amount to be determined by the arbitrators, in accordance with the Federal Arbitration Act, 9 U.S.C. Section 1 et seq. In addition, Claimants requested interest at 9% per annum from May 15, 1990 to the date of payment, costs, disbursements, expert witness fees, and attorney's fees, pursuant to Section 9(e) of the Securities Exchange Act of 1934, 15 U.S.C. Sections 78i(e). Claimants further requested such other and further relief that is deemed fair and equitable.

Respondent Stratton requested that the Statement of Claim be dismissed in its entirety and that all costs and forum fees be assessed against Claimants. Respondent Stratton further requested attorney's fees and such other and further relief that is deemed fair and equitable.

Respondent Weinstein requested that the Statement of Claim be dismissed in its entirety and that all costs and forum fees be assessed against Claimants. Respondent Weinstein further requested such other and further relief that is deemed fair and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

On December 7, 1993, Claimants filed an amended Statement of Claim, naming Jordon S. Belfort, Kenneth S. Greene and Daniel M. Porush as Respondents to this arbitration. At the hearing, the panel determined that these individuals did not receive service of the amended claim, in accordance with Sections 39(a) and 25(c) of the NASD Code of Arbitration Procedure. Therefore, Belfort, Greene and Porush were dismissed from the case without prejudice.

At the hearing, Respondent Stratton made a motion to strike certain statements from the Amended Statement of Claim. The panel considered this motion and

9501075

ruled that it be denied.

Subsequent to the hearings in this matter, Respondent Stratton made a motion to dismiss the claims against it, by letter dated December 2, 1994. The panel considered this motion and ruled that it be denied.

The NASD was advised, by letter dated August 10, 1994, that the parties reached a settlement with respect to the "Nova claim".

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Stratton and Weinstein be and hereby are jointly and severally liable and shall pay to the Claimant the sum of \$39,803.96, inclusive of interest.
2. Claimants request for punitive damages be and hereby is denied.
3. Each party shall bear their respective costs, including attorney's fees.
4. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$150.00 non-refundable filing fee and have assessed the following forum fees:

Pre-hearing conference (single arbitrator)	= \$ 300.00
10 hearing sessions x \$500.00	= <u>\$5,000.00</u>
	\$5,300.00

The forum fees are assessed against:

1. Claimants be and hereby are liable for the sum of \$2,650.00 representing one-half of the forum fees assessed. Claimants previously deposited the sum of \$500.00 with the NASD, which

9501075

shall be applied towards the forum fees assessed. Therefore, Claimants are liable and shall pay to the NASD the sum of \$2,150.00.

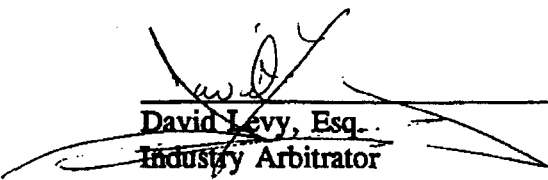
2. Respondents Stratton and Weinstein be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$2,650.00, representing one-half of the forum fees assessed.

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

ARBITRATORS' SIGNATURES

James M. Bauman, Esq.
Public Chairperson

Harry Weiss
Public Arbitrator



David Levy, Esq.
Industry Arbitrator

Date of decision: January 11, 1995

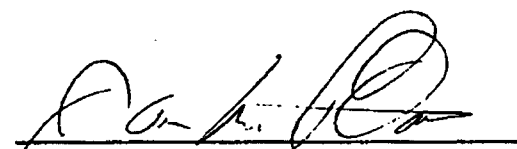
9501075

shall be applied towards the forum fees assessed. Therefore, Claimants are liable and shall pay to the NASD the sum of \$2,150.00.

2. Respondents Stratton and Weinstein be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$2,650.00, representing one-half of the forum fees assessed.

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

ARBITRATORS' SIGNATURES


James M. Bauman, Esq.
Public Chairperson

Harry Weiss
Public Arbitrator

David Levy, Esq.
Industry Arbitrator

Date of decision: January 11, 1995

9501075


shall be applied towards the forum fees assessed. Therefore, Claimants are liable and shall pay to the NASD the sum of \$2,150.00.

2. Respondents Stratton and Weinstein be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$2,650.00, representing one-half of the forum fees assessed.

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

ARBITRATORS' SIGNATURES

James M. Bauman, Esq.
Public Chairperson



Harry Weiss
Public Arbitrator

David Levy, Esq.
Industry Arbitrator

Date of decision: January 11, 1995