

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Byron S. Kopman

92-04182

Name of Respondent(s)

Stratton Oakmont Inc.
John P. Clancy

REPRESENTATION

For Claimant Byron S. Kopman: Gary S. Freed, Esq. and Benjamin Fink, Esq., of the law firm of Freed, Lester and Freed, Atlanta, GA.

For Respondent Stratton Oakmont, Inc.: Harry L. Garman, Esq. of the law firm of Garman and Amdur, Rutherford, NJ.

For Respondent John P. Clancy: Franklin D. Ormsten, Esq. of the law firm of Ormsten and Evangelist, Jericho, NY.

CASE INFORMATION

Statement of Claim filed: December 11, 1992.

Claimant's Submission Agreement signed on: December 8, 1992.

Joint Statement of Answer filed by Respondents Stratton Oakmont, Inc. and John P. Clancy on: February 3, 1993.

Respondent Stratton Oakmont, Inc.'s ("Stratton") Submission Agreement signed on: February 3, 1993.

Respondent John P. Clancy's Submission Agreement signed on: February 3, 1993.

HEARING INFORMATION

Pre-hearing conference on: July 22, 1993
October 12, 1993
March 8, 1994

Hearing Dates/Sessions: January 26, 1994 / Two Sessions
January 27, 1994 / Two Sessions
March 16, 1994 / Two Sessions
March 17, 1994 / Two Sessions
June 8, 1994 / Two Sessions
June 9, 1994 / Two Sessions
June 10, 1994 / Two Sessions
July 21, 1994 / Two Sessions
July 22, 1994 / Two Sessions
July 23, 1994 / One Session

Hearing Location: Atlanta, GA.

CASE SUMMARY

Claimant alleged he suffered significant damages as a result of fraudulent and deceitful practices perpetrated by the Respondents. Claimant further alleged during the period that he maintained his account at Stratton Oakmont, Inc. the fraudulent and manipulative practices committed by the Respondents included:

- (a) Recommending and effecting unsuitable trades in Mr. Kopman's account;
- (b) Misrepresenting, and omitting to state, material facts to Mr. Kopman regarding recommended investments;
- (c) Failing to obtain appropriate written authorization and disclosures from Mr. Kopman prior to effecting trades in Mr. Kopman's account;
- (d) Manipulation of the market with respect to certain securities in which the Respondents were making a market;
- (e) Excessive and improper markups and commissions charged to Mr. Kopman's account; and
- (f) Failing to adequately supervise the activities of Mr. Clancy, its registered representative.

Claimant further alleged these acts constitute breach of contract, breach of duty, violations of federal securities laws, breach of fiduciary duty, and violations of the rules and regulations of the National Association of Securities Dealers, Inc. ("NASD"). Claimant further alleged the Respondents are liable to him for all losses sustained by him as a result of the misconduct practiced by Stratton and its registered representative, Mr. Clancy. Claimant further alleged Stratton is liable for its failure to reasonably supervise or prevent the fraudulent activities which occurred in the Claimant's account.

Respondents maintained Claimant has the financial capacity to make investments and the knowledge and experience to evaluate those investments and he assumed the risks of the market and upon sustaining the loss he sought to make an unjustified recovery against the broker that dealt with him in good faith and that broker's employer that at all times also dealt with him in good faith. Respondents further maintained that with the Claimant's financial capacity, experience and sophistication, he was suitable for the moderately speculative investments involved in the action and he was in the market prior to his contacts with the Respondents and was an owner of securities prior to that contact. Respondents further maintained there were no unauthorized transactions as there was constant and conscientious consultation between Respondent Clancy and the Claimant and all transactions were cleared with the Claimant prior to the time they occurred.

Respondents further maintained it is apparent from the course of trading that Claimant had to know the prices of the securities he was purchasing and had to know where he was sustaining losses and the degree of the losses and Claimant was a recipient of monthly account statements that summarized his overall transactions and he received confirmations that reflected the nature and kind of transactions in which he engaged. Respondents further maintained the claim of lack of liquidity is belied by the fact that each security which Claimant purchased was sold after a relatively brief period of time. Respondents further maintained all of the investments were reasonable and represented real companies that had grown and were in growth areas of the economy and where appropriate, that it made a market in the securities in question and so maintains a compliance department and supervises its employees and that Mr. Clancy acted in accordance with Stratton Oakmont, Inc. policies and acted in a fully lawful and proper fashion and there was no failure to supervise because there were no violations of law by Mr. Clancy and any losses sustained by Claimant were those inherent to taking risks in the marketplace and were those he knew of and freely accepted and Claimant failed to mitigate his damages and Claimant's actual damages are, at most, a small fraction of the sum claimed and the claim for punitive damages should be rejected in its entirety as it has no basis in fact or law.

RELIEF REQUESTED

Claimant requested damages jointly and severally against the Respondents in the sum of \$161,896.91, plus punitive damages of \$250,000.00, plus all of Claimant's costs, expenses and disbursements including reasonable attorneys' fees in pursuing the arbitration proceeding in the sum of \$76,928.63 plus 20% of the totality of actual damages in the sum of \$32,379.00 and for such other relief as the arbitration panel deems just and proper under the circumstances.

Respondents requested a dismissal of the claim in its entirety and that Respondents be awarded the costs and disbursements of this case including reasonable attorneys' fees.

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. The Respondents Stratton Oakmont, Inc. and John P. Clancy be and hereby are liable jointly and severally and shall pay to the Claimant the sum of \$158,653.00 in compensatory damages, inclusive of interest.
2. The Respondent John P. Clancy be and hereby is liable and shall pay to the Claimant the sum of \$50,000.00 representing punitive damages pursuant to recent case law authority cited by the Claimant.
3. The Respondents Stratton Oakmont, Inc. and John P. Clancy be and hereby are liable jointly and severally and shall pay to the Claimant the sum of \$4,966.67 to reimburse him for the additional hearing session deposit paid to the NASD and the sum of \$950.00 representing the claim filing fee and hearing session deposit originally submitted to the NASD.
4. Each party shall bear their respective other costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

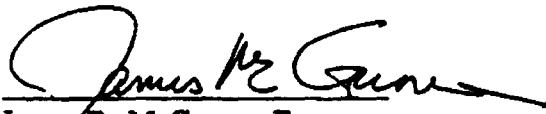
5 sessions (July 21, July 22 and July 23, 1994) x \$1,000.00 = \$5,000.00
less Claimant's original hearing session deposit (\$750.00) = net \$4,250.00
due.

Forum Fees Assessed Against:

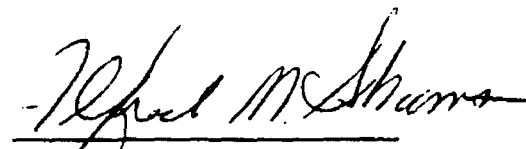
The Respondents Stratton Oakmont, Inc. and John P. Clancy be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$4,250.00 representing forum fees for the above referenced hearing sessions.

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

ARBITRATORS' SIGNATURE


James R. McGuone, Esq.
Public Arbitrator


Kendall P. Hill
Public Arbitrator


Alfred M. Shams
Industry Arbitrator