

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert Hesse;
Joyce Hesse; and
International Logistics, Ltd.

92-04327

Name of Respondents

Stratton Oakmont, Inc.; and
William J. Mooney

REPRESENTATION

For Claimants: Robert Hesse, Joyce Hesse and International Logistics, Ltd. ("Claimants") were represented by Daniel R. Kirshbaum, Esq. of Axelrod, Smith, Komiss & Kirshbaum, and William J. Hawkins, Esq., both of Houston, Texas.

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

William J. Mooney ("Mooney") was represented by Jack D. Ballard, Esq. of Andrews & Kurth, L.L.P., located in Houston, Texas.

CASE INFORMATION

Statement of Claim filed: December 28, 1992.

Claimants' Submission Agreement signed on: December 22, 1992 by Robert and Joyce Hesse, individually, and by Robert Hesse, as Director, International Logistics, Ltd.

Joint Statement of Answer filed by Respondents Stratton Oakmont, Inc. and William J. Mooney on: February 9, 1993.

Respondent Stratton Oakmont, Inc.'s Submission Agreement signed on: February 12, 1993 by Paul F. Byrne, Compliance Director, Stratton Oakmont, Inc.

Respondent William J. Mooney's Submission Agreement signed on: February 9, 1993.

Respondents' Amended Statement of Answer filed on: March 9, 1993.

Claimants' Motion for Leave to File an Amended Statement of Claim filed: October 2, 1993.

Respondent Stratton's Response to the Motion for Leave to Amend filed: October 7, 1993.

Respondents Mooney's Adoption of Stratton's Objections to the Motion for Leave to Amend filed: October 14, 1993.

HEARING INFORMATION

Pre-Hearing Conference: October 15, 1993 for One (1) session before Two (2) Arbitrators;
October 22, 1993 for One (1) session before Two (2) Arbitrators.

Hearing Dates/Sessions: October 26, 1993 for Two (2) sessions;
October 27, 1993 for Two (2) sessions;
October 28, 1993 for Two (2) sessions;
November 29, 1993 for Two (2) sessions;
November 30, 1993 for Two (2) sessions;
December 1, 1993 for Two (2) sessions;
December 2, 1993 for Two (2) sessions;
December 3, 1993 for Two (2) sessions; and
December 4, 1993 for One (1) session.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimants alleged that Respondent Mooney, while employed by or acting as an agent for Respondent Stratton, engaged in the following activities:

1. In April of 1991, Mooney induced Claimants to open three investment accounts with Stratton. Claimants informed Mooney that they were totally unsophisticated regarding

the stock markets and directed that their investments be in safe, conservative securities. Mooney agreed to these terms and expressly represented that he would handle the accounts pursuant to their directions and objectives;

2. Despite his representations, Mooney violated the authority granted by Claimants by investing Claimants' money in speculative securities, manipulated the market in certain securities to the Claimants' detriment, traded without their authorization and mishandled their accounts. In addition, Mooney failed to adequately investigate or diversify the securities in Claimants' accounts, and recommended high risk, speculative securities when low risk, conservative securities would have obtained the same rate of return;

3. In May of 1991, Claimants noticed the decline in the value of their accounts and contacted Mooney. Mooney represented that the losses were temporary, that their accounts were being handled as directed, and urged them, through false statements, to continue the speculative trading; and

4. Under the principle of respondeat superior, Stratton is responsible for the acts of Mooney, failed to adequately supervise Mooney and participated in, approved and accepted the benefits of Mooney's conduct.

Based upon the above allegations, Claimants asserted claims for violation of Sections 10(b), 15 (c) (1) and 20 of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; violation of Section 12(2) of the Securities Act, as amended [15 U.S.C. 771(2)]; violation of Section 33A(2) and 33F of the Texas Securities Act [Article 581.33a(2) and 581. 33F, V.T.C.S.]; violation of Article 27.01 of the Texas Business & Commerce Code, as amended; violation of Section 17.46 of the Deceptive Trade Practices Act, as amended, Texas Business & Commerce Code; common law fraud; breach of contract; breach of fiduciary duty; breach of the duty of good faith and fair dealing; negligence and gross negligence; failure to diligently supervise; and violations of the New York Stock Exchange Rules as to suitability.

Respondents denied the material allegations of the Statement of Claim, alleging that:

1. When Mooney initially contacted Robert Hesse in March of 1991, Hesse represented that he had experience investing in securities. Mooney explained that he principally recommended investments in small companies with growth potential and that the very nature of the investment were increased risks and rewards. Hesse stated that he could accept the risks in exchange for reaping handsome profits;

2. Claimants were advised of the risks of all investments made, either through prospectuses or by Mooney. No guarantees were made and the Respondents are not required to insure the Claimants from loss in the market. In addition, the Claimants

Respondents requested that Claimants take nothing by way of their claim, that their claim be dismissed in its entirety, and all other relief which the Panel deemed just.

OTHER ISSUES CONSIDERED & DECIDED

After hearing argument at the pre-hearing of October 15, 1993 regarding the Claimants' Motion to Amend, the Panel determined that the Motion would be denied and the Amended Statement of Claim was stricken.

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 the 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 William J. Mooney are jointly and severally liable for and shall pay to the Claimants, Robert Hesse, Joyce Hesse and International Logistics, Ltd. the sum of \$250,000.00;
2. The claims for punitive damages and treble damages pursuant to the Texas Deceptive Trade Practices Act are hereby dismissed and denied in their entirety;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. All relief not specifically granted is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:
Two (2) Pre-Hearing Conference Sessions with Two (2) arbitrators x \$750.00 per sessions = \$1,500.00;

Seventeen (17) Hearing Sessions x \$750.00 per session = \$12,750.00; Total Forum Fees = \$14,250.00.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 non-refundable claim filing fee and refund the \$750.00 hearing session deposit previously deposited by the Claimants, Robert Hesse, Joyce Hesse and International Logistics, Ltd. Respondents Stratton Oakmont, Inc. and William J. Mooney are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$14,250.00.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Harold E. Vanberg, Jr., Esq.

February 8, 1994

Harold E. Vanberg, Jr., Esq.

Public Arbitrator

Chairperson

/s/ Edward T. Bowen

February 11, 1994

Edward T. Bowen

Public Arbitrator

/s/ Thomas A. Thornhill, Jr.

February 9, 1994

Thomas A. Thornhill, Jr.

Industry Arbitrator

For NASD Use Only

Date of Service of Award: 2-14-94