

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

David W. Hammel,
Claimant/Counterrespondent

v.

No. 93-00474

Stratton Oakmont, Inc.
Joel Grant
Respondents/Counterclaimants

REPRESENTATION OF PARTIES

For Claimant/Counterrespondent ("Claimant"): James A. Walker, Esq., of Triplett, Woolf & Garretson, Wichita, Kansas.

For Respondents/Counterclaimants ("Respondents"): Jacob Zamansky, Esq. of Finkelstein, Bruckman, Wohl, Most & Roth, New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about February 5, 1993.

Claimants' Submission Agreement was signed on February 4, 1993.

Respondents' Joint Statement of Answer and Counterclaim filed on or about April 8, 1993.

Respondents', Joel Grant's and Stratton Oakmont, Inc.'s, joint Submission Agreement was signed on March 18, 1993 and March 16, 1993, respectively.

Claimant's Reply to Respondents' Counterclaim was filed on or about December 21, 1993.

HEARING INFORMATION

Hearing date: April 19, 1994. Two (2) sessions.

Hearing Location: Kansas City, Missouri.

CASE SUMMARY

Claimant, David W. Hammel ("Claimant") alleged that Respondents, Stratton Oakmont, Inc. and Joel Grant ("Respondents"): Violated Sections 12(2), 10(b), and Rule 10b-5, and 5; violated Kansas Securities Act, K.S.A. Sections 17-1253 and 17-1268; Violation of Kansas Securities Act

Section 17-1255; breached their fiduciary duty; made misrepresentations and omissions of material facts on which the Claimant relied upon in his investment decision. The allegations arose out of an investment in a private placement offering of Yankee Stores.

Respondents generally denied the allegations contained in the Statement of Claim. Respondents further asserted the following affirmative defenses:

1. The Statement of Claim fails to state a claim upon which relief can be granted.
2. Claimant's claims are barred by the applicable Statute of Limitations.
3. Claimant's claims are barred by the doctrine of in pari delicto.
4. Claimant's claims are barred by the doctrine of laches.
5. Claimant's claims are barred by the doctrines of waiver and ratification.
6. Claimant's claims are barred by the doctrine of estoppel.
7. Claimant is barred from recovery on his claim because he knowingly assumed the risk of his investment.
8. Claimant has obtained, as a result of his purchase of Units, substantial cash and income tax savings, and will continue to receive such benefits in the future. To the extent that the Claimant has obtained or will obtain such cash and/or income tax savings, he is barred from recovering on his claims.
9. If the Offering Documents included any untrue statement of material fact or omitted to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (which Respondents deny), Respondents cannot be held liable to Claimant because they did not know, and in the exercise of reasonable care could not have known, of such untruth or omission

Respondents asserted a counterclaim alleging that the Claimant had breached the representations, warranties and assurances which Claimant had made in the Subscription Agreement and the Questionnaire relating to the Yankee Stores private placement. Respondents further alleged that the representations were knowingly false when made and were made with the intent that Yankee Stores would rely upon those representations in their acceptance of Claimant's subscription.

In his Reply, Claimant, unless specifically admitted therein, denied each and every allegation contained in the Counterclaim.

RELIEF REQUESTED

Claimant requested an award ordering the rescission of his investment in Yankee Stores and the return of his investment therein, for damages in the amount of \$50,000.00, plus interest at the rate of 15% per annum from the time he invested in Yankee Stores, plus reasonable attorneys fees, plus his costs in this action, plus punitive damages in an amount determined appropriate by the Court, plus any other and further relief deemed just and equitable.

Respondents requested judgement as follows:

- (i) dismissing the Statement of Claim against Respondents;
- (ii) awarding the Respondents on their counterclaim all losses, damages and liability incurred by them as the result of Claimant's breach of the representations, warranties and assurances contained in the Subscription Agreement and the Questionnaire including, without limitation, the costs and disbursements of this action, including attorney's fees and the monetary value of the time of Respondents' executive and administrative personnel who were diverted from their normal business duties to the defense of this action, in an amount not presently ascertainable, but which is not less than \$50,000.00; and
- (iii) awarding to Respondents their costs and disbursements of this action, including attorneys' fees together with such and other further relief as the panel may deem just and proper.

OTHER ISSUES CONSIDERED & DECIDED

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 original(s) remain on file with the NASD.

The record was closed in this case on June 23, 1994.

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 Oakmont, Inc. and Joel Grant are, and each of them, jointly and severally liable for, and shall pay to the Claimant, David Hammell, the sum of \$50,000.00 as satisfaction of his compensatory damages claims.
2. Respondents Stratton Oakmont, Inc. and Joel Grant are, and each of them, jointly and severally liable for, and shall pay to the Claimant, David Hammell, an award of interest in the total amount of \$17,198.63 from July 21, 1990 through and including June 30, 1994.
3. All other claims and Counterclaims made herein are, and each of them, denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs and expenses associated with this arbitration, including attorney's 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:

2 hearing sessions x \$600.00 = \$1,200.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$120.00, and shall RETAIN the hearing session deposit in the amount of \$400.00 previously paid to the NASD by the Claimant.

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable Counterclaim filing fee in the amount of \$500.00, and shall RETAIN the Counterclaim hearing session deposit in the amount of \$600.00 previously paid to the NASD by the Respondents.

Additional forum fees in the amount of \$200.00 are assessed Jointly and severally against the Respondents.

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

CONCURRING ARBITRATORS

Dated:

Name:

June 28, 1994

Robert A. Babcock s/s
Robert A. Babcock
Presiding Chair
Public Arbitrator

June 27, 1994

Alan D. Beauchaine s/s
Alan D. Beauchaine
Industry Arbitrator

June 28, 1994

William T. Smith, III s/s
William T. Smith, III
Public Arbitrator

Date of Service by the NASD: 6-29-94