

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

R.C. Layne Construction, Inc.

NASD Arbitration  
No. 93-02567

vs.

Name of Respondents

Jordan Shamah, Robert A. Freedman,  
Jordan R. Belfort, Kenneth S. Greene,  
Daniel M. Porush and Stratton Oakmont, Inc.

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REPRESENTATION

For Claimant R.C. Layne Construction, Inc.:

Brian Lowe and Adam Schneir, Esq. of Investors Arbitration Services, Inc.,  
Woodland Hills, California

For Respondents Jordan Shamah, (Shamah) Jordan R. Belfort, (Belfort) Kenneth S. Greene,  
(Greene) and Daniel M. Porush (Porush):

Martin Unger, Esq., of Tanzer, Greenblatt, Fallon & Kaplan,  
New York, New York

For Respondent Stratton Oakmont, Inc. (SOI):

Norman Arnoff, Esq. of Capuder & Arnoff,  
New York, New York

For Respondent Robert A. Freedman (Freedman):

Roger M. Dietz, Esq.,  
New York, New York

### **CASE INFORMATION**

Statement of Claim filed: June 15, 1993

Amendment to Statement of Claim filed: February 21, 1995

Statement of Answer filed by Respondents Shamah, Porush, Belfort, Greene and SOI: August 26, 1993

Amended Statement of Answer filed by Respondents Shamah, Porush, Belfort, Greene and SOI: September 7, 1993

Statement of Answer filed by Freedman: October 5, 1993

Claimant's Submission Agreement signed: June 15, 1993

Respondents Shamah's, Porush's, Belfort's, Green's and SOI's Submission Agreements signed: August 26, 1993

Respondent Freedman's Submission Agreement signed: September 14, 1993

### **HEARING INFORMATION**

Prehearing telephone conference: March 15, 1995 - (one session)

Hearing Dates/Sessions: April 10, 1995 - (two sessions)  
April 11, 1995 - (two sessions)  
April 12, 1995 - (one session)

Hearing Location: Las Vegas, Nevada

### **CASE SUMMARY**

Claimant R.C. Layne Construction, Inc. alleged that Respondents selected high risk, low quality stocks, PDK Labs (PDK) and Nutrition Management Services, Co. (NMS) for Claimant which were unsuitable. Claimant further alleged that Respondents' conduct constituted negligence, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing,

deceit, misrepresentation and omission of material fact. Claimant also alleged that Respondents Stratton Oakmont, Belfort, Greene, and Porush failed to supervise and monitor the activities of their registered representatives. Claimant further alleged that Respondents violated the Racketeer Influenced and Corrupt Organizations Act.

Respondents Stratton Oakmont, Inc., Belfort, Greene, Porush and Shamah denied all allegations of wrongdoing and alleged that Claimant failed to state a claim. The Respondents argued that Claimant's claims were barred by the doctrine of estoppel and waiver. The Respondents further argued that the Claimant ratified all transactions and authorized and directed their execution. The Respondents contended that any damage or loss sustained by Claimant was caused or contributed to by Claimant's own actions, fault or lack of due diligence. Respondents also alleged that Claimant acted in reckless disregard of facts of which it had or should have been aware.

### **RELIEF REQUESTED**

Claimant sought compensatory damages in excess of \$279,000, costs, including attorney's fees, pre- and post-award interest at the maximum legal rate, punitive damages, and treble damages pursuant to RICO.

All Respondents demanded dismissal of all claims with prejudice, plus expenses, costs and attorney's fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

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.

Prior to the commencement of the hearing, Claimant dismissed all claims against Respondent Freedman.

At the conclusion of Claimant's case in chief, Respondents Belfort, Porush, Shamah, Greene and SOI made a motion to dismiss. The panel granted Respondents Belfort's and Greene's motions and denied Shamah's, Porush's and SOI's motions.

### **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. Respondent Stratton Oakmont, Inc., is liable for and shall pay Claimant \$144,552.51 in compensatory damages;
2. Respondents Stratton Oakmont, Inc. and Jordan Shamah are jointly and severally liable for and shall pay Claimant compensatory damages of \$140,635;
3. Respondent Stratton Oakmont, Inc. is liable for and shall pay Claimant punitive damages of \$119,552.50. The authority for the award of punitive damages is NRS Section 42.005.
4. Respondents Stratton Oakmont, Inc. and Jordan Shamah are jointly and severally liable for and shall pay Claimant punitive damages of \$140,635. The authority for the award of punitive damages is NRS Section 42.005;
5. The claims against Respondent Daniel M. Porush are dismissed;
6. The claim for treble damages according to RICO is dismissed;
7. All other claims are dismissed;
8. The parties shall each bear their respective attorney's fees;
9. The parties shall each bear their respective costs.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc. shall refund the \$750 hearing session deposit previously deposited by the Claimant. Stratton Oakmont, Inc. and Jordan Shamah are jointly and severally assessed \$4,050 and calculated as follows:

One prehearing conference @ \$300/session	=	\$ 300.00
Five hearing sessions @ \$750/session	=	<u>3,750.00</u>
Total fees assessed	=	\$ 4,050.00

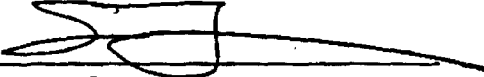
Fees are payable to the National Association of Securities Dealers.

**ARBITRATORS**

<u>Name</u>	<u>Public / Industry</u>
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Steven K. Lum	Public Arbitrator
Alan R. Markizon	Public Arbitrator
Harvey M. Hudgins	Industry Arbitrator

**Concurring Arbitrators' Signatures**

  
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Steven K. Lum

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Alan R. Markizon

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Harvey M. Hudgins

Date of Decision: 5/16/95

**Date Served: 5-19-95**

ARBITRATORS

Name \_\_\_\_\_ Public / Industry \_\_\_\_\_

Steven K. Lum

Public Arbitrator

Alan R. Markizon

Public Arbitrator

Harvey M. Hudgins

Industry Arbitrator

Concurring Arbitrators' Signatures

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Steven K. Lum



Alan R. Markizon

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Harvey M. Hudgins

Date of Decision: 4/12/95

Date Served: 5-19-95