

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Charles B. Rupani & Mildred Rupani  
C & M Coal Co., Inc.

vs.

Award No.  
93-02631

Name of Respondents

Stratton Oakmont, Inc.  
Victor DiFrisco

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**REPRESENTATION**

For Claimants, Charles B. Rupani, Mildred Rupani and C & M Coal Co., Inc. ("Claimants"), Edwin J. Straussburger, Esq. and Charles Avalli, Esq. from the law firm of Straussburger McKenna Gutnick & Potter located in Pittsburgh, Pennsylvania.

For Respondent, Stratton Oakmont, Inc. ("Stratton"), Martin P. Unger, Esq. from the law firm of Tenzer Greenblatt, LLP and Norman B. Arnoff, Esq. from the law firm of Capuder & Arnoff both located in New York, New York. Foster S. Goldman, Esq. from Pittsburgh, Pennsylvania also participated as co-counsel.

For Respondent, Victor DiFrisco ("DiFrisco"), Stephen B. Wexler, Esq. from the law firm of Wexler & Burkhart, P.C. located in Mitchel Field, New York and Jerome W. Kiger, Esq. of Pittsburgh, Pennsylvania also participated as co-counsel.

**CASE INFORMATION**

Statement of Claim was filed on July 1, 1993.

Claimants' Submission Agreement was signed on June 29, 1993 and July 20, 1993.

Statement of Answer was filed by Respondent Stratton on October 6, 1993.

Respondent Stratton's Submission Agreement was signed on December 10, 1993.

Statement of Answer was filed by Respondent DiFrisco on January 12, 1994.

Respondent DiFrisco's Submission Agreement was signed on January 5, 1994.

**HEARING INFORMATION**

Pre-Hearing Conferences with Chairperson:	May 8, 1995	-	1 Session
	May 12, 1995	-	1 Session
	January 22, 1996	-	1 Session

Hearing Dates/Sessions:	February 2, 1995	-	2 Sessions
	February 3, 1995	-	2 Sessions
	January 30, 1996	-	2 Sessions
	January 31, 1996	-	2 Sessions

Hearing Location: The Westin William Penn, located in Pittsburgh, Pennsylvania.

### **CASE SUMMARY**

Claimants allege, in general, that Stratton and DiFrisco (collectively "Respondents") engaged in a pattern of fraudulent and misleading conduct whereby Claimants were induced to purchase highly speculative over-the-counter securities which were unsuitable for them. (Claimant Mildred Rupani passed away prior to the last two days of the hearing.)

Claimants allege that the Respondents' actions violated Section 10(b) of the Securities Exchange Act of 1935, 15 U.S.C. Section 78(b) and Rule 10(b)-5, the NASD suitability rule, the N.Y.S.E. "Know Your Customer" Rule and the Pennsylvania Unfair Trade Practices and Consumer Law.

Respondents deny each and every allegations of wrongdoing, deny liability and each assert eight affirmative defenses. Respondent DiFrisco states that the nature of the investment at Stratton was consistent with Claimants' investment objectives and consistent with past investment objectives at another brokerage firm. Respondent DiFrisco states that Mr. Rupani told him of prior investment experience. Respondent DiFrisco also contends that he did not have discretionary authority, written or oral, over Claimants' account and that Claimants were informed of every transaction and approved them prior to execution.

### **RELIEF REQUESTED**

Claimants claimed damages in the approximate amount of \$1,294,000.00, comprising approximately \$750 in direct lost portfolio value, plus approximately \$579,000.00 in lost investment opportunity. Claimants also sought \$1 million in punitive damages, legal fees and the costs of litigation.

Respondents request that the Statement of Claim be dismissed with prejudice and that costs of this arbitration be assessed against Claimants. Respondent DiFrisco also requests that the Arbitrators grant such further relief as may seem just and equitable.

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

The parties have agreed that the Award in this matter may be executed in counterpart copies and have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

Prior to and during the hearing process, the parties made several motion including a motion to take deposition. The motion to take deposition was granted.

### **AWARD**

After considering the pleadings, four days of testimony and reviewing 96 exhibits presented at the

hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Enter an award in favor of Claimants, Charles and Mildred Rupani and C&M Co., Inc. and against Respondents, Stratton Oakmont, Inc. and Victor DiFrisco, jointly and severally, in the amount **NINE HUNDRED AND SIXTY FIVE THOUSAND DOLLARS AND ZERO CENTS (\$965,000.00)**. Claimants' request for punitive damages and legal fees is denied. Respondents shall further pay the record costs of litigation before the NASD.

#### **FORUM FEES**

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed jointly and severally against Respondents Stratton and DiFrisco.

Non-refundable Filing Fee:	\$250.00
Hearing Sessions Fee:	4000.00 (4 hearing sessions are \$1000.00 per session)
Pre-hearing Conferences:	900.00 (3 conferences at \$300.00 per conference)
Total Forum Fees:	\$ 5150.00

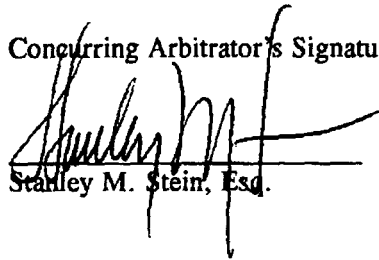
1. Claimants previously deposited \$1,250.00 and are entitled to a refund.
2. Respondent Stratton and DiFrisco shall satisfy the fees assessed by reimbursing Claimants \$1,250.00 and remitting the balance, \$3,900.00, to the NASD.
3. Respondent DiFrisco was assessed a \$1,000.00 for the postponement of the hearings scheduled for January 22- 24, 1996, which has been paid.

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

#### **ARBITRATION PANEL**

Stanley M. Stein, Esq. -	Public Chairperson
Robert N. Sughrue -	Public Panelist
Dennis R. Shannon -	Industry Panelist

Concurring Arbitrator's Signature



Stanley M. Stein, Esq.

NASD's Date of Decision: February 27, 1996

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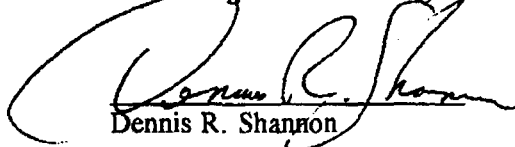
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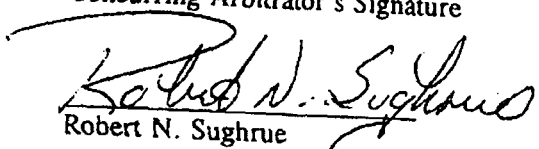
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Concurring Arbitrator's Signature

  
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