

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Frederic Rossy

93-02899

Name of Respondent

Stratton Oakmont

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 26, 1993, Claimant Frederic Rossy, by and through his counsel David G. Ironside, Esq. of Maliniak & Ironside, Montreal, Canada, alleged that on or about May 23, 1991 Claimant through Respondent Stratton Oakmont authorized the purchase of up to \$12,000.00 worth of shares, and shares only in Ropak Laboratories the whole subject to his verbal approval through one Mr. Scanlon, and one Mr. Stitsky and finally and/or one Mr. Steve Annello, all employees, lawfully employed by Respondent. Claimant further alleged due to the unauthorized transactions of Respondent, he sustained financial loss and Respondent should be liable for those losses.

Respondent Stratton Oakmont, by and through their counsel Norman B. Arnoff of Capuder & Arnoff, P.C., New York, New York, maintained that the complaint does not adequately set forth any specific rule violations of the NASD causative of the actual loss to the Claimant Frederic Rossy, nor does the complaint state the wrongs or the circumstances of the wrongs complained of so that the responsive pleader has adequate and meaningful notice of the claim and can interpose an answer against the allegations made against the Respondent. Respondent further maintained that the recommendations were reasonably based and suitable in light of the investor's stated investment objectives, which is amply demonstrated in the new account document, statement of account, confirmations, due diligence materials of the firm and the parties involved. Respondent contended the confirmations were timely sent and were not timely objected to, orally or in writing, by the Claimant whereby statements of the account were also duly sent to the customer and were not timely objected to orally or in writing. Respondent further contended that while it is categorically denied that there were any unauthorized, unsuitable, illegal or improper transactions, receipt by the Claimant of confirmations and account

statements without written or other appropriate objection constitutes in law and in equity ratification and acceptance of the transactions. Respondent asserted that the aforescribed documentation of the transactions in issue and the failure of the Claimant to timely object justifiably defeat that tendency of human nature to reverse economic loss and thereby, this claim.

RELIEF REQUESTED

Claimant Frederic Rossy requested the sum of \$6,940.00 in actual damages plus \$3,000.00 in Punitive damages.

Respondent Stratton Oakmont requested the claim be denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Maureen J.M. Ely, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 18, 1993 and by the Respondent on September 24, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Stratton Oakmont is liable and shall pay to the Claimant Frederic Rossy the sum of \$8,467.50 in damages.
2. The Claimant's request for punitive damages is denied.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Frederic Rossy shall be retained by the NASD, Inc. Respondent Stratton Oakmont is liable and shall pay to the Claimant the sum of \$75.00, as partial reimbursement.

REPORT OF ARBITRATOR

**Matter of Rossy v. Stratton Oakmont
NASD No. 93-02899**

On or about May 23, 1991, Mr. Rossy gave Stratton Oakmont a general authorization to purchase up to \$12,000 of Ropak shares. The claim was silent regarding Mr. Rossy's general or specific instructions to Stratton Oakmont before that date.

On May 20, 1991, Stratton Oakmont bought 1000 warrants at 6 1/4 for Mr. Rossy's account and sent him a confirmation statement. In a June 5, 1991 letter to Stratton Oakmont, Mr. Rossy referenced a May 28, 1991 phone call to Stratton Oakmont informing them that he did not order the warrants. The letter stated that Mr. Rossy then received a "cancel previous buy" statement on May 28, 1991. Mr. Rossy had informed Stratton Oakmont that warrants were only to be purchased if the Ropak stock got to 11. At the time the warrants were purchased, the stock had not reached 11. The purchase of the 1000 warrants on May 20, 1991 was without authorization and was specifically disavowed by Mr. Rossy both orally and in writing. Stratton Oakmont's cancellation of the purchase is further evidence of the unauthorized trade. Mr. Rossy should be reimbursed for the price of the warrants, \$6250 minus the amount he was reimbursed when the warrants were sold.

On June 3, 1991, Stratton Oakmont sold 100 shares of Mr. Rossy's Ropak stock at 9 3/4 and sent him a confirmation statement listing this transaction. Mr. Rossy took no steps to nullify the transaction. Even though this transaction may have been unauthorized given Mr. Rossy's general direction to purchase up to \$12,000 of Ropak shares after May 23, 1991, his failure to object to the transaction orally or in writing was ratification of the trade.

On June 20, 1991, Stratton Oakmont bought 1000 Ropak warrants at 3 1/4 for Mr. Rossy's account and sent a confirmation statement. In his June 5, 1991 letter, Mr. Rossy stated that after Stratton Oakmont sent him a "cancel previous buy" statement following his objection to the purchase of warrants he did not authorize, the warrants were repurchased on May 31. Mr. Rossy stated that he received notice of the repurchase of warrants he specifically objected to on June 3, 1991. It is not clear from the documents attached to the claim whether the warrants repurchased on May 31 were cancelled (the "cancel previous buy" statement refers to the 1000 warrants purchased at 6 1/4 on May 20). However, Mr. Rossy sent a letter to Stratton Oakmont on June 21, 1991 replying to a letter Stratton Oakmont had sent to him on June 17. In the letter, Mr. Rossy restated that he had authorized the purchase of warrants of Ropak only if the stock reached 11 and that after informing Stratton Oakmont that he had not authorized the purchase of the warrants received a cancellation only to be followed by a

repurchase of the warrants. In the June 21 letter, Mr. Rossy objected to the purchase of the warrants as unauthorized and asked to be reimbursed. From the confirmation orders attached to the Statement of Claim, it appears that an additional 1000 warrants were purchased by Stratton Oakmont after Mr. Rossy informed them that warrants were only to be purchased if the Ropak stock reached 11. Since the Ropak stock did not hit 11, the purchase of the additional 1000 shares was unauthorized and specifically disavowed by Mr. Rossy. Mr. Rossy should be reimbursed by Stratton Oakmont for the purchase of 1000 warrants at 3 1/4 minus the amount he received when the warrants were sold.

On July 19, 1991, Stratton Oakmont sold 900 shares of Ropak stock in Mr. Rossy's account at 7 1/8 and sent him a confirmation statement. Although this transaction was not within the general instruction given by Mr. Rossy on or about May 23, 1991, Mr. Rossy did not object to the sale of the shares and therefore, ratified this transaction.

Although the Statement of Claim lists October 4, 1991 as the date when Stratton Oakmont purchased 1500 shares of Ventura Entertainment stock at 4 1/8 for Mr. Rossy's account, the confirmation statement gives the date as April 10, 1991. The confirmation statement date and the date on the letter sent by Mr. Rossy to Stratton Oakmont disavowing the transaction (April 16, 1991) make it more likely than not that an error was made on the Statement of Claim when the transaction was listed and the date of the purchase should be April 10, 1991. Mr. Rossy sent a letter to Stratton Oakmont on April 16, 1991 stating that the purchase of the 1500 shares of Ventura Entertainment was an unauthorized transaction and requesting that the transaction be cancelled. The Ventura stock remained in Mr. Rossy's account until June of 1993 when it was sold at 1. This falls outside the May 23, 1991 time period when Mr. Rossy directed Stratton Oakmont to buy only shares of Ropak up to \$12000. The claim is silent regarding what direction, if any, Mr. Rossy gave to Stratton Oakmont before May 23, 1991. However, the answer of Stratton Oakmont categorically denies that any unauthorized trades were executed but in the alternative pleads that lack of objection by the customer to the confirmation statement constitutes ratification. The Statement of Claim contains a general statement that the Ventura trade was not authorized and this in conjunction with the April 16, 1991 letter specifically disavowing the transaction constitutes a prima facie case of unauthorized trading which is not disproved by a general denial. Mr. Rossy should recover for the purchase of the Ventura shares at 4 1/8 minus the amount he received when the stock was sold.

On May 16, 1991, Stratton Oakmont purchased 1000 shares of Ropak for Mr. Rossy's account at 9 3/4 and sent him a confirmation statement. Although Mr. Rossy states in his claim that this was an authorized trade, he did not call or write Stratton Oakmont disavowing the trade and the trade appears to be within the instructions given Stratton Oakmont on or about May 23, 1991, i.e.

to buy shares of Ropak up to \$12000. While outside the May 23 date. Mr. Rossy's failure to object to the purchase of these shares combined with his stated intention to buy Ropak up to \$12000 appears to constitute ratification of the trade.

On May 16, 1991, Stratton Oakmont bought 400 warrants of Ropak for Mr. Rossy's account at 4 1/2 and sent him confirmation. These warrants were sold on May 17, 1991 at 14 1/4. The Statement of Claim contains a general statement that the purchase of these warrants was not authorized, however, Mr. Rossy did nothing to disavow their purchase or sale and in effect, ratified the transaction.

The claimant should recover for the following transactions:

Purchase of 1000 warrants at 6 1/4 on 5/21 (includes service charge)	6260
Purchase of 1000 warrants at 3 1/4 on 6/20 (includes service charge)	3260
	<u>9520</u>
— Sale price of 2000 warrants at 2 7/8 on 6/24	5750
	<u>3770</u>
Purchase of 1500 shares of Ventura at 4 1/8 (includes service charge)	6197.50
— Sale price of 1500 shares of Ventura at 1	1500.00
	<u>4697.50</u>
Total Amount Recovered	8467.50

AFFIRMATION

I, MAUREEN J.M. ELY, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

Maureen J.M. Ely
Signature of Arbitrator

DATE OF DECISION: January 11, 1994

STATE OF: New York

SS:

COUNTY OF: Schenectady

On this 11th day of January 1993, before me personally appeared Maureen J.M. Ely, Esq. to me known and known before me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

Abraham D. Westman

Notary Public
for the State of New York
Qualified in Schenectady County
My Commission Expires Aug. 31, 1994