

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimants**

**Larry and Virginia Mueller**

**94-00109**

**Name of Respondents**

**Stratton Oakmont, Inc.  
Tim Hills**

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**REPRESENTATION**

Claimant Larry Mueller ("Mueller") appeared at the hearing pro se. Claimant Virginia Mueller did not appear at the hearing. (See "Other Issues").

Respondents Stratton Oakmont, Inc. ("Stratton Oakmont") and Tim Hills ("Hills") were represented at the hearing by Jay Marc Israel, Esq. of Wexler & Burkhart, P.C., of Mitchell Field, New York. Respondent Hills did not appear at the hearing, but gave testimony via telephone. (See "Other Issues").

**CASE INFORMATION**

The Statement of Claim was filed with the NASD by Claimants Larry and Virginia Mueller on January 10, 1994. A Uniform Submission Agreement was signed by Larry and Virginia Mueller on January 6, 1994.

A joint Statement of Answer was filed by Respondents Stratton Oakmont and Tim Hills on April 8, 1994. A Uniform Submission Agreement was signed by Paul F. Byrne, Compliance Director, on behalf of Stratton Oakmont on April 19, 1994. A Uniform Submission Agreement was signed by Respondent Tim Hills on April 4, 1994.

**HEARING INFORMATION**

The hearing was held on January 30, 1995, at the Omni Richmond Hotel in Richmond, Virginia for a total of two (2) hearing sessions.

### **CASE SUMMARY**

Claimants Larry and Virginia Mueller alleged in their Statement of Claim that on October 20, 1993, Respondent Tim Hills, while employed for Respondent Stratton Oakmont, contacted Larry Mueller and recommended the sale of 5,000 shares of Computer Marketplace, Inc. ("MKPL") and the purchase 10,000 shares of Aqua Natural Co. ("AQQA"). Claimants further alleged that Larry Mueller was reluctant to make either trade, and gave Hills a conditional instruction to effect them only if MKPL could be sold at a price of \$8.875 per share or above. Claimants alleged that contrary to Larry Mueller's instructions and without his knowledge or authorization, Respondent Hills sold MKPL at a price of \$7.875 per share, and purchased AQQA at \$3.375 per share. Claimants' assert that they were unaware of the transactions until several days later. Claimants stated that as a result of Respondent Hills' actions they have suffered a loss of \$23,750.

Respondents Stratton Oakmont and Tim Hills in their Answer categorically denied effecting any unauthorized transactions in Claimants' account. Respondents also stated that they reserved the right to submit a more detailed response.

### **RELIEF REQUESTED**

Claimants Larry and Virginia Mueller requested damages for out-of-pocket losses in the amount of \$23,750, plus the arbitration filing fee of \$100.

Respondents Stratton Oakmont and Tim Hills did not specifically state a relief, but in their joint Answer invited Claimants to contact Respondents' counsel in order to resolve the claims in an informal manner.

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

Respondents filed a Motion to Strike certain materials produced by the Claimants to the Respondents and to the NASD, and requested that a separate independent arbitrator be appointed to rule on the Motion. The Respondents were advised by the NASD staff attorney by letter dated January 27, 1995 that the panel had not received the materials in question, that the NASD does not appoint a separate arbitrator to rule on evidentiary matters, that these matters would be addressed by the full panel at hearing, that Respondents may raise the Motion or any other objections to the materials at hearing, and that Claimants would be given an opportunity to respond.

On January 27, 1995, Claimant Larry Mueller telephoned the NASD and inquired of the staff attorney whether it was necessary for Virginia Mueller to appear at the hearing. Mr. Mueller stated that Virginia Mueller was willing to attend, but would not be called to testify for Claimants. Respondents' counsel, Jay Marc Israel, Esq., was contacted by the NASD staff attorney via telephone, and when advised of the inquiry, stated that Respondents had no intention of calling Virginia Mueller as a witness, and therefore had no objection to her not appearing.

Respondents' counsel advised the Claimants and the NASD by letter dated Friday January 27, 1995 that Respondent Tim Hills would be unable to attend the hearing scheduled for Monday January 30,

1995 due to financial constraints, and stated that Hills would be available to testify via telephone. At hearing, the Panel heard argument on the issue of whether to allow Hills to testify via telephone. The Panel, after due deliberation, advised Claimant Larry Mueller that as an alternative to allowing Respondent Hills to testify via telephone, he could (1) request a postponement of the hearing, (2) request a postponement and request that the Panel issue an Order of Appearance directed to Hills, or (3) proceed with the hearing and request an additional hearing day for Hills to appear and testify. Claimant Larry Mueller requested that the Panel proceed with the hearing and consented to allowing Respondent Hills to testify via telephone.

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

### **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 Tim Hills, shall be and hereby are jointly and severally liable for, and shall pay to Claimants, Larry and Virginia Mueller, damages for out-of-pocket losses in the sum of Twenty Three Thousand Seven Hundred and Fifty Dollars and No Cents. (\$23,750.00).
2. Respondents, Stratton Oakmont, Inc. and Tim Hills, shall be and hereby are jointly and severally liable for, and shall pay to Claimants, Larry and Virginia Mueller, Three Hundred Dollars and No Cents (\$300.00) as reimbursement for the hearing session deposit previously paid to the NASD by Claimants.
3. Each of the parties shall bear their own costs and expenses incurred, other than those specifically provided for herein.
4. Any relief not specifically provided for herein is denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following Forum Fees are assessed:

2 hearing sessions x \$400 = \$800.

Pursuant to Section 43(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$100, and the hearing session deposit in the amount of \$300 previously paid to the NASD by Claimant.

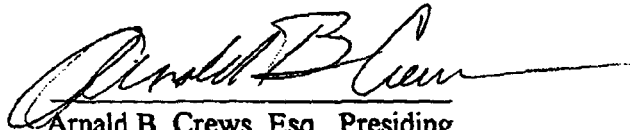
The panel has ordered that the Respondents, jointly and severally, pay forum fees in the amount of \$500 to the NASD.

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

By The Arbitration Panel:

Dated:

3/1/95



Arnald B. Crews, Esq., Presiding  
Public Arbitrator

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Stuart H. Dunn, Esq.  
Public Arbitrator

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Gordon F. Linke  
Industry Arbitrator

Date Award Served By the NASD: March 8, 1995

The panel has ordered that the Respondents, jointly and severally, pay forum fees in the amount of \$500 to the NASD.

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

By The Arbitration Panel:

Dated:

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