

## NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

R. Allen Fox Ltd. and Robert A. Fox

and

94-00210

Name of Respondent

Stratton Oakmont, Inc.  
Robert Koch

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### **REPRESENTATION OF PARTIES**

R. Allen Fox Ltd. and Robert A. Fox ("**Claimants**") were represented by Arthur M. Holtzman, Esq., Tammye T. Raster, Esq. and Steven Austermiller, Esq., Pedersen & Houpt, Chicago, Illinois.

Stratton Oakmont, Inc. ("**Respondent Stratton**") was represented by Norman Arnoff, Esq., Capuder and Arnoff, New York, New York.

Robert Koch ("**Respondent Koch**") (collectively as "**Respondents**") was represented by Martin Unger, Esq., Tenzer Greenblatt Fallon & Kaplan, New York, New York.

### **CASE INFORMATION**

The Statement of Claim was filed on or about January 19, 1994. Submission Agreement of Claimants R. Allen Fox Ltd. and Robert A. Fox was signed on December 23, 1993 by Robert A. Fox.

Statement of Answer was filed by Respondents Stratton Oakmont, Inc. and Robert Koch on or about March 21, 1994. Submission Agreement of Respondent Stratton Oakmont, Inc. was signed on February 22, 1994 by Paul F. Byrne. Submission Agreement of Respondent Robert Koch was signed on February 22, 1994.

### **HEARING INFORMATION**

Pre-hearing conferences were held on October 19, 1994 for one (1) session and November 29, 1994 for one (1) session with Barry E. Simon, Esq., presiding for a total of two (2) pre-hearing sessions.

The hearing was held on November 30, 1994 for two (2) sessions, December 1, 1994 for two (2) sessions, April 24, 1995 for two (2) sessions, and April 25, 1995 for two (2) sessions in Chicago, Illinois for a total of eight (8) hearing and two (2) pre-hearing sessions.

### **CASE SUMMARY**

Claimant alleged that Respondents engaged in common law fraud, breach of fiduciary duty, violations of the Illinois Consumer Fraud and Deceptive Trade Practices Act, breach of contract, negligent misrepresentation, and negligence. Specifically, Claimants alleged that Respondent Koch made material misrepresentations and omitted material facts to induce the purchase of Ventura Motion Picture Group, Ventura Entertainment Group, and Ropak Laboratories. Claimants also alleged that contrary to the specific order to sell all securities in the accounts and send the cash, Respondent Koch purchased shares of Visual Equities for the accounts of Claimants.

Respondents denied the allegations set forth in the Statement of Claim. Respondents asserted affirmative defenses including but not limited to the following: Claimants have failed to state a claim for relief since the NASD determined that no action was warranted regarding the activities complained of; and the claims are barred by the doctrines of estoppel, waiver and ratification.

### **RELIEF REQUESTED**

Claimant requested an award in an amount in excess of \$190,000 in compensatory damages and \$1,000,000 in punitive damages jointly and severally against Respondents, prejudgment interest, attorneys' fees, costs and such other relief as the panel deems just.

Respondents requested that the claims asserted against them be dismissed with prejudice and that they be awarded their costs and attorneys' fees.

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

The parties have agreed that a handwritten, signed Award may be entered. The parties have 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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Stratton Oakmont, Inc. and Robert Koch shall be and hereby are jointly and severally liable for and shall pay to the Claimants R. Allen Fox Ltd. and Robert A. Fox the

sum of **Two hundred eighty one thousand three hundred four dollars and ninety seven cents (\$281,304.97)**.

2. Interest at the rate of 9% per annum is awarded on the above stated sum from and inclusive of January 1, 1991 to and inclusive of the date this award is paid in full.
3. Respondent Stratton Oakmont, Inc. shall be and hereby is liable for and shall pay to the Claimants R. Allen Fox Ltd. and Robert A. Fox the sum of **One hundred thousand dollars (\$100,000)** as punitive damages. The undersigned arbitrators have considered the evidence and the arguments presented by the parties and the written submissions of the parties and determine that they have the authority to award punitive damages in this matter.
4. Respondent Robert Koch shall be and hereby is liable for and shall pay to the Claimants R. Allen Fox Ltd. and Robert A. Fox the sum of **Twenty five thousand dollars (\$25,000)** as punitive damages. The undersigned arbitrators have considered the evidence and the arguments presented by the parties and the written submissions of the parties and determine that they have the authority to award punitive damages in this matter.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each prehearing conference, if any. There were eight (8) hearing x \$1,000 and two (2) pre-hearing sessions x \$300 = **\$8,600** in forum fees.

Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$250 and shall **refund** the hearing session deposit in the amount of **\$1,000** and the balance of **\$750** that was overpaid previously deposited with the NASD by the Claimants R. Allen Fox Ltd. and Robert A. Fox.

Respondents shall be and hereby are liable for and shall pay to the NASD the sum of **\$8,600** as forum fees.

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

Dated:

/s/ Barry E. Simon, Esq.

Barry E. Simon, Esq.  
Public Arbitrator, Presiding Chair

September 12, 1995

/s/ Ralph D. Silver

Ralph D. Silver  
Public Arbitrator

September 12, 1995

/s/ Daniel J. Foley

Daniel J. Foley  
Industry Arbitrator

September 12, 1995