

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Chris McClelland,

Claimant,

v.

No. 95-00091

Stratton Oakmont, Inc.,
Jordan R. Belfort, Daniel M. Porush,
Kenneth S. Greene, Edward Michael Azrilyan,
John Squieri, Tim Hills, and David Beall,
Respondents.

REPRESENTATION OF PARTIES

Claimant was represented by John J. Miller, Esq., Overland Park, Kansas. On August 8, 1996, Claimant filed notice of co-counsel for the hearings scheduled to begin in August, 1996. The notice named Barry Estell, Esq. of Mission, Kansas as co-counsel.

Respondents Stratton Oakmont, Inc., Jordan R. Belfort, Daniel M. Porush, Kenneth S. Greene, John Squieri, and David Beall are represented by Sandra Grannum, Esq., and Fredda Plessner, Esq., of Tenzer Greenblatt LLP, New York, New York. On December 5, 1996, Sandra Grannum, Esq., and Fredda Plessner, Esq., of Tenzer Greenblatt LLP, New York, New York filed their notice of withdrawal of representation.

Respondent Stratton was represented by Matthew V. Bartle, Esq., of Bryan Cave, Kansas City, Missouri from April 6, 1995 through August 2, 1996.

Respondents Jordan R. Belfort, Daniel M. Porush, Kenneth S. Greene were initially represented by Norman B. Arnoff, Esq., of Capuder & Arnoff, New York, New York.

Respondents John Squieri, and David Beall were initially represented by Andrew F. Greitz, Jr. Esq., of Wexler & Burkhart, PC, Michel Field, New York.

Respondent Edward Michael Azrilyan ("Azrilyan") was initially represented by Andrew F. Greitz, Jr. Esq., of Wexler & Burkhart, PC, Michel Field, New York, and later by Sandra Grannum, Esq., and Fredda Plessner, Esq., of Tenzer Greenblatt LLP, New York, New York. On August 12, 1996, NASD Regulation, Inc. Office of Dispute Resolution received notice of resignation of counsel. NASD Regulation, Inc. Office of Dispute Resolution has not received notice of new counsel.

Respondent Tim Hill ("Hill") was represented by initially by Franklin D. Ormsten, Esq. of Ormsten & Evangelist, Jericho, New York and Andrew F. Greitz, Jr. Esq., of Wexler & Burkhart, PC, Michel Field, New York. Hill was later represented by Sandra Grannum, Esq., and Fredda

Plessner, Esq., of Tenzer Greenblatt LLP, New York, New York. On August 7, 1996 NASD Regulation, Inc. Office of Dispute Resolution received notice of resignation of counsel. NASD Regulation, Inc. Office of Dispute Resolution has not received notice of new counsel.

Respondent Greene was represented from early 1997 until the present by Marvin G. Pickholz, Esq., of Hoffman Pollok & Pickholz, LLP, New York, New York.

Respondents Belfort and Beall were represented from February 17, 1997 until the present by Franklin D. Ormsten, Esq., of Ormsten & Evangelist, Jericho, New York.

Respondent Porush was represented from early 1997 until the present by Mark Gelfand, Esq., Great Neck, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about January 6, 1995. Claimant's Submission Agreement was signed on December 6, 1994. Claimant's Amendment to the Statement of Claim was filed on or about February 21, 1995.

Respondents Stratton Oakmont, Inc.'s, Jordan R. Belfort's, Daniel M. Porush's, and Kenneth S. Greene's Answer was filed on or about April 6, 1995. Respondents Stratton Oakmont, Inc.'s, Jordan R. Belfort's, Daniel M. Porush's, and Kenneth S. Greene's Submission Agreements were signed on February 21, 1995, February 23, 1995, February 23, 1995, and March 8, 1995 respectively.

Respondents John Squieri's, Edward Michael Azrilyan's, and David Belle's Statement of Answer was filed on or about April 5, 1995. Respondents John Squieri's, Edward Michael Azrilyan's, and David Belle's Submission Agreements were signed on February 21, 1995, March 14, 1995, and June 28, 1995 respectively.

Respondent Tim Hill's Answer to the Statement of Claim was filed on or about March 30, 1995. NASD Regulation, Inc. Office of Dispute Resolution does not have a record of Respondent Tim Hill having filed a Submission Agreement.

HEARING INFORMATION

Telephonic pre-hearing conferences were held on January 4 and 15, 1996, and August 9, 1996 for one (1) session each day.

The hearing was held on July 16, 1997 in Kansas City, Missouri for one (1) session.

CASE SUMMARY

Claimant alleged that Respondents Stratton Oakmont, Inc., Jordan R. Belfort, Daniel M. Porush, Kenneth S. Greene, Edward Michael Azrilyan, John Squieri, Tim Hill, and David Belle

(hereinafter collectively referred to as "Respondents"): Violated the Kansas and Federal Securities Acts; committed fraud and misrepresentations; committed negligence; breached their contract with Claimant; violated NASD Rules; breached their fiduciary duty; and violated 18 U.S.C. 1961 et seq. ("RICO"). The allegations arose out of transactions in securities more fully set forth in the Statement of Claim. Claimant later amended his claim to withdraw the allegation of RICO violation.

Respondents Stratton Oakmont, Inc., Jordan R. Belfort, Daniel M. Porush, and Kenneth S. Greene hereinafter referred to as "Stratton", "Belfort", "Porush", and "Greene") denied the allegations set forth in the Statement of Claim. Stratton, Belfort, Porush, and Greene also asserted the following affirmative defenses: Claimant is not entitled to an award of punitive damages or an award of attorneys fees by law; Claimant is barred from recovering because of Stratton's, Belfort's, Porush's, and Greene's good faith and due diligence in the conduct of their affairs with Claimant, and under the doctrines of ratification, account stated, estoppel, waiver, and laches; even if Stratton, Belfort, Porush, and Greene actually made the misrepresentations that Claimant alleged, Claimant was sufficiently sophisticated that he was not entitled to reasonable rely on the alleged misrepresentations; Claimant failed to mitigate his damages; Claimant's claim failed to state with particularity the circumstances of any fraud allegedly committed by Stratton, Belfort, Porush, and Greene; Claimant contributed to or caused the alleged damages of which he complains; Claimant's claims are barred because Stratton's, Belfort's, Porush's, and Greene's conduct was not the proximate cause of any loss or damages to Claimant; Claimant knowingly and voluntarily assumed the risks associated with his investments; and Claimant's Statement of Claim failed to state a claim for which relief may be granted.

Unless otherwise admitted in their Answer, Respondents John Squieri, Edward Michael Azrilyan, and David Beall (herein after referred to as "Squieri", "Azrilyan", and "Beall") denied the allegations contained in the Statement of Claim. Squieri, Azrilyan, and Beall specifically stated that: Their recommendations were reasonably based and suitable in light of Claimant's stated investment objectives; confirmations and account statements were sent timely and were not timely objected to by the Claimant; Claimant received Stratton's disclosure of risk letter; Claimant had a history in trading in commodities and penny stocks; and there were not any unauthorized, unsuitable, illegal or improper transactions effected in Claimant's account.

Respondent Hill denied the allegations in the Statement of Claim. Hill specifically stated that: The Statement of Claim does not furnish a basis for reliance on anything Respondents did or could have done and does not demonstrate even minimal responsibility or due diligence on the part of Claimant; Claimant is a highly experienced investor maintaining many accounts and engaging in many speculative investments; Claimant received adequate disclosure to know precisely the nature and kind of investments in which he was engaged; each and every transaction was accompanied by proper account documentation; to the extent Hill communicated with Claimant, he did so in an open and above board manner and Claimant fully understood the nature and kind of transactions into which he entered; any claims under federal securities laws are barred by the statute of limitations; there is no basis for a fraud claim in this action; and claims for punitive damages and attorneys fees should be denied as the agreement signed and entered into by the parties applies New York law to these proceedings.

RELIEF REQUESTED

In his Statement of Claim, Claimant requested an award against the Respondents of the following: Realized capital losses of at least \$195,583; interest, attorneys' fees and costs of this proceeding pursuant to K.S.A. §17-1268; punitive damages; and treble damages.

In their Answer, Respondents Stratton, Belfort, Porush, and Greene requested that the claims asserted against them be denied in their entirety and that they be awarded their costs associated with this proceeding.

In their Answer, Respondents Squieri, Azrilyan, and Beall requested an award dismissing the Statement of Claim, directing that Claimant pay all NASD forum fees and costs associated with this arbitration, and that the arbitrators grant such other and further relief as to them may seem just and equitable.

In his Answer, Respondent Hills requested that the Statement of Claim be dismissed and an award against Claimant of any fees and costs involved.

OTHER ISSUES CONSIDERED & DECIDED

On or about August 12, 1996, the parties gave notice to NASD Regulation, Inc. Office of Dispute Resolution that an agreement to settle had been reached, and that the hearing scheduled to begin on August 13, 1996 would no longer be necessary. On or about September 16, 1996, Claimant filed notice that Respondents had defaulted on the settlement and requested that hearing dates starting September 25, 1996 be set by the panel. On or about September 20, 1996, Claimant filed notice that the September 25, 1996 hearing date could be postponed, and that a notice of dismissal would be sent once the settlement between the parties was final.

On or about October 30, 1996, Claimant filed a Notice of Default dated October 15, 1996, a Confession of Judgment by Stratton dated August 13, 1996 and an Affidavit of Claimant's counsel dated October 30, 1996. Claimant's October 30, 1996 correspondence requested that, pursuant to the Confession of Judgment executed by Stratton, an Award be entered against Stratton for the amount of the settlement agreement less any payments Respondents made pursuant to the settlement agreement between the parties. Respondents have not filed any response or denial to the Notice of Default and accompanying Affidavit of Claimant's counsel. Pursuant to the agreement of the parties the arbitrators previously entered an Award by Confession of Judgment. Also, pursuant to the agreement, this arbitration was reset for hearing.

Prior to the hearing in this matter, Respondent Greene filed a Motion to Dismiss and Motion to Strike Claimant's late notice of additional exhibits for the hearing. Respondent Belfort also filed a Motion to Dismiss. Respondents Squieri filed a request to be allowed to appear by telephone, and Respondent Beall filed a request to be allowed to testify on July 16, 1997, rather than July 17, 1997. After consideration of the motions, responses, and deliberation, the undersigned arbitrators denied the motions to dismiss, and allowed Squieri to appear by telephone and Beall to testify on July 16, 1997. The arbitrators also issued a ruling denying the Motions for Dismissal and to Strike previously filed by the Respondents.

Prior to the start of the hearing on July 16, 1997, Claimant reached an agreement to settle with Respondents Belfort, Beall, Porush, and Greene. The hearing proceeded against Respondents Hills, Squieri, and Azrilyan.

Upon review of the file and the representations made by the Claimant, the undersigned arbitrators have determined that Respondents Edward Michael Azrilyan, John Squieri, Tim Hills have been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents Squieri, Hills and Azrilyan have received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondent Tim Hills did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, is bound by the determination of the arbitration panel on all issues submitted.

The party(ies) present at the hearing 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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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:

Respondents Edward Michael Azrilyan, John Squieri, Tim Hills are jointly and severally liable for, and shall pay to Claimant, Chris McClelland, the sum of \$120,000, inclusive of fees and costs, as satisfaction of his claim for compensatory damages.

All other claims for damages/requests for relief not specifically set forth herein are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were three (3) pre-hearing sessions x \$300 (\$900) + one (1) hearing session x \$750 = \$1,650 (\$900 + \$750) in forum fees. Pursuant to §10332(b) of the Code, 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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$350 previously paid by Stratton Oakmont.

Additional forum fees in the amount of \$900 are assessed jointly and severally by the arbitrators against Respondents Edward Michael Azrilyan, John Squieri, Tim Hills.

Dated:

Robert E. Eisler

/s/

July 22, 1997

Robert E. Eisler

Public Arbitrator, Presiding Chair

Kurt A. Harper

/s/

July 21, 1997

Kurt A. Harper

Public Arbitrator

Bill J. Alexander

/s/

July 22, 1997

Bill J. Alexander

Public Arbitrator