

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

Robert Allman

and

95-00969

Name of Respondent

Howard Scott Gelfand  
Stratton Oakmont, Inc.

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### **REPRESENTATION OF PARTIES**

Robert Allman ("Claimant") was represented by G. Martin Cole, Esq., Rothberg, Gallmeyer, Fruechtenicht & Logan, Fort Wayne, Indiana.

Howard Scott Gelfand ("Respondent Gelfand") and Stratton Oakmont, Inc. ("Respondent Stratton"), were represented by Franklin D. Ormsten, Esq., Ormsten & Evangelist, Jericho, New York.

### **CASE INFORMATION**

The Statement of Claim was filed on or about February 23, 1995. Submission Agreement of Claimant Robert Allman was signed on December 1, 1994.

Statement of Answer was filed by Respondents Howard Scott Gelfand, Stratton Oakmont, Inc., and RMS Network, Inc. on or about May 10, 1995. Submission Agreement of Respondent Stratton Oakmont, Inc. was signed on March 15, 1995 by Paul F. Byrne. Submission Agreement of Respondent RMS Network, Inc. was signed on March 29, 1995 by Daniel Porush.

### **HEARING INFORMATION**

Pre-hearing sessions with all arbitrators and parties participating were held on April 15, 1996 for one (1) session, May 10, 1996 for one (1) session, June 21, 1996 for one (1) session.

The hearing on the merits was held on Tuesday, October 1, 1996 for two (2) sessions, Wednesday, October 2, 1996 for two (2) sessions, Thursday, October 3, 1996 for two (2) sessions and Friday, October 4, 1996 for two (2) sessions in Indianapolis, Indiana for a total of eleven (11) sessions.

### **CASE SUMMARY**

Claimant alleged that Respondents violated the Indiana Securities Act; §10b of the 1934 Exchange Act; engaged in common law fraud; and violated rules of the NASD. Specifically, Claimant alleged that Respondents Stratton and Gelfand engaged in unlawful and fraudulent practices including but not limited to the following:

- fraudulently inducing Claimant to open an account at Respondent Stratton;
- fraudulently inducing Claimant to make an initial purchase of Eastman Kodak to open the account at Respondent Stratton by making false statements about Eastman Kodak, Respondent Stratton and Respondent Gelfand;
- fraudulently inducing Claimant to switch his investment in Eastman Kodak to an investment in Ventura Motion Pictures by making false statements about Ventura Motion Pictures;
- fraudulently concealing from Claimant the policies and practices of Respondent Stratton; and
- fraudulently inducing Claimant to invest beyond his means and/or to invest in securities which were known to be unsuitable for him.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant authorized each transaction; was aware of and directed each and every trade in his account; fully understood and appreciated the possible rewards and risks of his trading activity; and confirmed his financial ability to bear the risks of his trading activity by repeatedly depositing substantial funds into his account for the express purpose of effectuating additional trades. Respondents asserted numerous affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested an award of damages in the approximate amount of \$150,000.

Respondents requested that all claims be dismissed with prejudice and that they be awarded such further relief as is deemed appropriate under the circumstances.

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

Respondent Howard Scott Gelfand did not file with the 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, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

RMS Network, Inc. was originally named as a Respondent in this matter. RMS Network, Inc. refused to submit to arbitration and therefore not a party to this proceeding.

The parties 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 the 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:

1. Respondents Stratton Oakmont, Inc. and Howard Scott Gelfand shall be and hereby are jointly and severally liable for and shall pay to the Claimant Robert Allman the sum of **one hundred ten thousand dollars (\$110,000)**.
2. Respondents Stratton Oakmont, Inc. and Howard Scott Gelfand shall be and hereby are jointly and severally liable for and shall pay to the Claimant Robert Allman the sum of **forty six thousand dollars (\$46,000)** as interest.
3. Respondents Stratton Oakmont, Inc. and Howard Scott Gelfand shall be and hereby are jointly and severally liable for and shall pay to the Claimant Robert Allman the sum of **fifty thousand dollars (\$50,000)** as attorneys' fees.
4. No punitive damages are awarded herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were eleven (11) sessions x \$750 = \$8,250 in forum fees. Pursuant to §10332(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 §10332(c) of the NASD Code of Arbitration Procedure, the 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 the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Robert Allman. Respondents Stratton Oakmont, Inc. and Howard Scott Gelfand shall be and hereby are jointly and severally liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$7,500 as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ Steve C. Bach, Esq.  
Steve C. Bach, Esq.  
Public Arbitrator, Presiding Chair

October 30, 1996

/s/ Donald G. Fletcher  
Donald G. Fletcher  
Public Arbitrator

November 5, 1996

/s/ George W. Humm  
George W. Humm  
Industry Arbitrator

November 1, 1996