

AWARD

9902005

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Louis E. Dequine, Jr., Individually,
Louis E. Dequine, Jr., as Trustee of the
Louis E. Dequine, Jr. Revokable Trust
and Dorothy M. Dequine as Trustee of
the Dorothy M. Dequine Revokable Trust

95-01335

Names of Respondents

Daniel Porush
Eric Blumen
Stratton Oakmont, Inc.

REPRESENTATION

For Claimants Louis E. Dequine, Jr., Individually, Louis E. Dequine, Jr., as Trustee of the Louis E. Dequine, Jr. Revokable Trust and Dorothy M. Dequine as Trustee of the Dorothy M. Dequine Revokable Trust ("Claimants"): Timothy J. Dennin, Esq., New York, New York.

Respondent Daniel Porush ("Porush") was represented by Mark E. Gelfand, Esq., Hicksville, New York. On January 13, 1999, the NASD Regulation, Inc. was advised that Mark E. Gelfand no longer represented Porush, and that Porush had not retained, and will not be retaining new counsel in this matter. Prior to December 1996, Porush was represented by Amal Aly, Esq. of Tenzer Greenblatt, LLP, New York, New York.

Respondent Eric Blumen ("Blumen") was represented by Amal Aly, Esq. of Tenzer Greenblatt, LLP, New York, New York. On March 1, 1996, NASD Regulation, Inc. was advised that Tenzer Greenblatt, LLP no longer represented Blumen. Thereafter, Blumen did not appear.

Respondent Stratton Oakmont, Inc. ("Stratton") was represented by Amal Aly, Esq. of Tenzer Greenblatt, LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed: March 17, 1995.

Claimants' Submission Agreements signed: June 20, 1995.

Respondents' joint Statement of Answer filed: August 28, 1995.

Respondent Porush's Submission Agreement was signed: July 7, 1995.

Respondent Blumen's Submission Agreement was signed: July 6, 1995.

Respondent Stratton's Submission Agreement was signed: July 6, 1995.

HEARING INFORMATION

On September 2, 1997, the arbitration panel conducted a telephonic pre-hearing conference which lasted one (1) session.

On December 16, 1998, in Tampa, Florida, the evidentiary hearing lasting one (1) session was conducted with the panel.

CASE SUMMARY

Claimants alleged the following: Respondents acted in complete disregard of their fiduciary and contractual obligations to Claimants. Moreover, Respondents fraudulently, negligently and with wanton indifference to Claimants' interests, engaged in a fraudulent scheme, the purpose of which was to coerce Claimants into purchasing ever increasing amounts of Stratton stocks to the extreme detriment of Claimants. As a result of Respondents' actions, Claimants sought compensatory damages of approximately \$283,000.00, costs, interest, attorneys' fees plus treble punitive damages.

Respondents maintained the following: Claimants were fully aware that Respondents typically recommended speculative securities which involved substantial risk. This fact was fully disclosed to the Claimants in three separate letters which were forwarded from Stratton to Claimants. Respondents denied that they committed any illegal or improper acts, made any material misstatement or omission, or engaged in any "hard sell techniques" or fraudulent schemes relating to Claimants' accounts. Claimants authorized all trades in their accounts and received numerous verbal updates on the status of the securities held in those accounts. Respondents denied that their actions caused Claimants to suffer any damages and alleged that Claimants were fully aware of the risks involved in the securities in which they traded.

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RELIEF REQUESTED

Claimants requested 'the following: compensatory damages in the amount of \$283,000.00, attorneys' fees, expenses, costs, treble punitive damages and such other relief deemed appropriate.

Respondents requested that all claims be dismissed in their entirety and that all costs associated with this matter be assessed against the Claimants.

OTHER ISSUES CONSIDERED & DECIDED

The Claimants 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 Claimants have agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc.

On February 26, 1998 and October 2, 1998, Claimants filed motions to postpone the hearings scheduled to commence on June 1, 1998 and November 16, 1998, respectively. The panel granted Claimants' motions to postpone and waived the adjournment fees.

On December 10, 1998, Claimants submitted a Motion to Appear Telephonically at the hearing which was granted by the panel.

At the hearing in this matter, Claimants advised the panel that Respondent Blumen filed for protection under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court, Eastern District of New York on May 19, 1998. In addition, the panel was informed that Respondent Stratton tiled for protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Southern District of New York on January 24, 1997. The panel determined to deny Claimants' request to keep this proceeding open and determined that all proceedings against Respondents Blumen and Stratton were stayed pursuant to their respective bankruptcy filings. Therefore, the arbitration panel made no determinations regarding Respondents Blumen and Stratton, and the record was closed at the conclusion of the evidentiary hearing.

Respondent Porush did not attend the evidentiary hearing in this matter. Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators have determined that Respondent Porush was properly served with the Statement of Claim pursuant to Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators also determined that Respondent Porush received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

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After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Respondent Porush is found liable and shall pay compensatory damages to Louis E. Dequine, Jr., Individually, in the amount of **\$2,557.92** plus interest at the rate of 9% from December 20, 1994 until the date of payment of the award.

Respondent Porush is found liable and shall pay compensatory damages to Louis E. Dequine, Jr., as Trustee of the Louis E. Dequine, Jr. Revokable Trust in the amount of **\$196,503.02** plus interest at the rate of 9% from December 20, 1994 until the date of payment of the award.

Respondent Porush is found liable and shall pay compensatory damages to Dorothy M. Dequine as Trustee of the Dorothy M. Dequine Revokable Trust in the amount of **\$43,075.97** plus interest at the rate of 9% from December 20, 1994 until the date of payment of the award.

Respondent Porush is found liable and shall pay punitive damages to Louis E. Dequine, Jr., Individually, in the amount of **\$5,000.00**, Louis E. Dequine, Jr., Trustee of the Louis E. Dequine, Jr., Revokable Trust in the amount of **\$406,000.00** and Dorothy M. Dequine Trustee of the Dorothy M. Dequine Revokable Trust in the amount of **\$89,000.00**, pursuant to Bonar vs. Dean Witter, 835 F.2d 1378 and Mastrobouno vs. Shearson Lehman, 115 S.Ct. 1212 (1995).

Respondent Porush is found liable and shall pay attorneys' fees to the Claimants pursuant to Mastrobouno vs. Shearson Lehman, 115 S.Ct. 1212 (1995) and Smith Barney vs. Sacharow, N.Y. S.Ct., April 18, 1995. As such, the amount of attorneys' fees must be determined by a court of competent jurisdiction.

Respondent Porush shall pay to the Claimants the sum of **\$1,000.00** representing reimbursement of the hearing session deposit previously paid by the Claimants.

FORUM FEES

Pursuant to Rule 10332(c) of the Code, forum fees in the amount of **\$2,000.00** (1 session x **\$1,000.00** plus one (1) pre-hearing conference with the panel x **\$1,000.00**) are assessed against Respondent Porush, for which NASD Regulation, Inc. shall retain the **\$1,000.00** hearing session deposit previously paid by Claimants in partial satisfaction thereof, leaving a balance due in the amount of **\$1,000.00**.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

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OTHER FEES

Pursuant to Rule 10332(a) of the Code, Claimants have paid to NASD Regulation, Inc. the \$250.00 claim filing fee.

Concurring Arbitrators' Signatures

/S/
John P. Cullem, Esq.

Public/Chairman

/S/
Russell E. Puckett, PhD

Public/Panelist

/S/
Harold C. Anders

Industry/Panelist

Date of Decision: February 10, 1999