

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Sav-A-Trip, Inc.,

Claimant,

v.

No. 95-01516

Stratton Oakmont, Inc.,
Jordan R. Belfort,
Daniel M. Porush,
Kenneth S. Greene,
Christopher F. Castaldo,
Matthew L. Bloom, and
Andrew Greene,

Respondents.

REPRESENTATION OF PARTIES

Claimant Sav-A-Trip, Inc. ("Claimant") was represented by Mr. Barry D. Estell, Esquire, of Mission, Kansas, and Mr. Dennis E. Egan, Esquire, of the Popham Law Firm, P.C., located in Kansas City, Missouri.

Respondents Stratton Oakmont, Inc. ("Stratton"), Mr. Christopher F. Castaldo ("Castaldo"), and Mr. Matthew L. Bloom ("bloom") were represented by Mr. Martin P. Unger, Esquire, of Tenzer Greenblatt, LLP, located in New York, New York.

Respondents Mr. Jordan R. Belfort ("Belfort"), Mr. Daniel M. Porush ("Porush"), and Mr. Kenneth S. Greene ("Greene") were represented by Mr. William B. Federman, Esquire, of Day Edwards Federman Propester & Christie, located in Oklahoma City, Oklahoma.

Respondent Andrew Greene was represented by Steven G. Mintz, Esquire, of Mintz & Gold located in New York, New York, but no appearance was made at the hearing due to a settlement with the Claimant.

CASE INFORMATION

Claimant Sav-A-Trip, Inc.'s Statement of Claim was filed on or about March 26, 1995. Claimant Sav-A-Trip, Inc.'s Submission Agreement was signed on March 15, 1995, by Royce Flaming, President of Sav-A-Trip, Inc.

Respondents Stratton Oakmont, Inc., Christopher F. Castaldo, and Matthew L. Bloom's joint Statement of Answer was filed on or about June 6, 1995. Respondent Stratton Oakmont, Inc.'s Submission Agreement was signed on April 27, 1995, by Paul F. Byrne, Compliance Director of Stratton Oakmont, Inc. Respondent Christopher F. Castaldo's Submission Agreement was signed on June 19, 1995. Respondent Matthew L. Bloom's Submission Agreement was signed on April 27, 1995.

Respondents Jordan R. Belfort's, Daniel M. Porush's, and Kenneth S. Greene's joint Statement of Answer was filed on or about June 6, 1995. Respondent Jordan R. Belfort's Submission Agreement was signed on May 3, 1995. Respondent Daniel M. Porush's Submission Agreement was signed on May 1, 1995. Respondent Kenneth S. Greene's Submission Agreement was signed on April 24, 1995.

Respondent Andrew Greene's Statement of Answer was filed on or about June 6, 1995. Respondent Andrew Greene's Submission Agreement was signed on May 17, 1995.

HEARING INFORMATION

Pre-hearing conferences were held on: February 26, 1996, for one (1) session; and July 12, 1996 for one (1) session.

The hearing was held on: August 26, 1996, for two (2) sessions;
August 27, 1996, for two (2) sessions;
August 28, 1996, for three (3) sessions;
August 29, 1996, for three (3) sessions; and
August 30, 1996, for two (2) sessions.

The hearing was held in Kansas City, Missouri.

CASE SUMMARY

Claimant Sav-A-Trip, Inc. ("Claimant") alleged that respondents Stratton Oakmont, Inc. ("Stratton"), Mr. Jordan R. Belfort ("Mr. Belfort"), President and Director of Stratton, Mr. Kenneth S. Greene, Secretary and a Director of Stratton, Mr. Daniel M. Porush ("Mr. Porush"), Vice President and a Director of Stratton, Mr. Matthew L. Bloom ("Mr. Bloom"), Vice President of Stratton, Mr. Andrew Greene, Vice President of Investments and Corporate Finance at Stratton, and Mr. Christopher F. Castaldo ("Mr. Castaldo"), an Account Executive with Stratton who directed and controlled Claimant's brokerage account, (hereinafter collectively referred to as "Respondents") made misrepresentations and omissions of material facts, made unauthorized trades in its account, and churned its account. Claimant also alleged that Mr. Castaldo engaged in high pressure sales techniques in which he induced Claimant to agree to purchases and then pressured Claimant into purchasing a higher number of shares than it was willing to consider, and that risk was never discussed. Claimant asserted that when it was induced to purchase initial public offerings from Stratton, Respondents required Claimant to purchase a multiple of the shares acquired through the initial public offering on the secondary market, and would not allow Claimant to make these purchases

with proceeds acquired from the sale of other Stratton stocks. Claimant further asserted that following one particular sale it requested the proceeds, but Mr. Castaldo made an unauthorized purchase with these proceeds instead and threatened Claimant with freezing its account for sixty days, if it did not pay for this purchase. Finally, Claimant also asserted that when Respondents were instructed to close its account, they delayed taking any action. Claimant made the following legal claims: (1) violations of the Kansas, Oklahoma, and Federal Securities Acts; (2) fraud and misrepresentation; (3) negligence; (4) breach of contract and violation of NASD Rules; and (5) breach of fiduciary duty.

Respondents Stratton, Mr. Bloom, and Mr. Castaldo denied the allegations set forth in the Statement of Claim. Respondents Stratton, Mr. Bloom, and Mr. Castaldo stated that monthly statements and a prospectus for each company Claimant made purchases in were sent to Claimant, and that therefore Claimant was fully aware of the nature of the securities in which Stratton dealt; in addition, all transactions were carried out in conformity to Claimant's instructions and all applicable laws, rules, and regulations. According to respondents Stratton, Mr. Bloom, and Mr. Castaldo, Claimant was advised of the risks associated with its trading, and that regardless of losses, Claimant continued to trade in the same securities.

Respondents Mr. Belfort, Mr. Porush, and Mr. Kenneth S. Greene denied the allegations set forth in the Statement of Claim. According to respondents Mr. Belfort, Mr. Porush, and Mr. Kenneth S. Greene, Claimant would have been advised of the risks associated with investing in securities by its broker and by introductory letters from Stratton. Respondents Mr. Belfort, Mr. Porush, and Mr. Kenneth S. Greene stated that they were neither involved in the transactions in Claimant's account, nor were they aware, nor had any way of reasonably knowing, of any illegal activity related to Claimant or its account.

Respondent Mr. Andrew Greene denied the allegations set forth in the Statement of Claim. Respondent Mr. Andrew Greene also stated that Claimant would have been advised of the risks associated with investing in securities by its broker and by introductory letters from Stratton. Respondent Mr. Andrew Greene further stated that he was neither involved in the transactions in Claimant's account, nor was he aware, nor had any way of reasonably knowing, of any illegal activity related to Claimant or its account.

Respondents made the following affirmative defenses: (1) Claimant's claims are barred by the doctrine of estoppel; (2) Claimant authorized and directed all transactions in its account; (3) Claimant's claims are barred by the doctrines of waiver and ratification; (4) Claimant has waived its claims and alleged damages by failing to take timely and appropriate action prior to incurring such damage; (5) Respondents, in discharging their duties, acted in good faith at all relevant times; (6) no fiduciary duty existed pursuant to New York law; (7) New York law governs the rights and liabilities of the parties to this arbitration, and punitive damages as a matter of law cannot be awarded; (8) attorneys' fees may not, as a matter of law, be awarded; (9) Claimant's claims are barred in whole or in part by the applicable statutes of limitations; (10) Respondents did not know, and in the exercise of reasonable care, could not have known of any untruths or omissions alleged by Claimant; (11) Claimant's agent is a wealthy and sophisticated investor who understood, and therefore assumed, all of the material risks involved in the purchases of the various securities at issue; and (12) Claimant is barred from making allegations of unauthorized transactions because it failed to object in writing.

RELIEF REQUESTED

Claimant Sav-A-Trip requested: an award in the amount of \$1,151,504 for compensatory damages resulting from capital losses; an award for losses, interest, attorneys' fees, and costs of this proceeding as provided by § 17-1268 of the Kansas Securities Act; and an award for punitive damages.

Respondents Stratton Oakmont, Inc., Mr. Matthew L. Bloom, and Mr. Christopher F. Castaldo requested that the claims asserted against them in the Statement of Claim be dismissed in their entirety with prejudice and that costs of this arbitration be assessed against claimant Sav-A-Trip, Inc.

Respondents Mr. Jordan R. Belfort, Mr. Daniel M. Porush, and Mr. Kenneth S. Greene requested that the claims asserted against them in the Statement of Claim be dismissed in their entirety with prejudice and that costs of this arbitration be assessed against claimant Sav-A-Trip, Inc.

Respondent Mr. Andrew Greene requested that the claims asserted against him in the Statement of Claim be dismissed in their entirety with prejudice and that costs of this arbitration be assessed against claimant Sav-A-Trip, Inc.

OTHER ISSUES CONSIDERED & DECIDED

The arbitrators, after consideration of respondents Stratton Oakmont, Inc., Mr. Christopher F. Castaldo, Mr. Matthew L. Bloom, Mr. Jordan R. Belfort, Mr. Daniel M. Porush, Mr. Kenneth S. Greene, and Mr. Andrew Greene's (hereinafter collectively referred to as "Respondents") Motion to Dismiss the Statement of Claim and Motion to Strike a portion of the Statement of Claim, which were filed with their respective Statement of Answers, and Respondents request for a decision on this motion during the February 26, 1996, Pre-hearing conference, the arbitrators decided not to rule on this motion until the hearing. The arbitrators denied Respondents' motions.

The arbitrators, after consideration of respondents Stratton Oakmont, Inc., Mr. Christopher F. Castaldo, and Mr. Matthew L. Blooms' March 27, 1996 Request for an adjournment of the April 1 and 2, 1996 hearing sessions and Claimant's response thereto, and review of the parties correspondence concerning availability for a hearing, the arbitrators granted the request. The parties were ordered to provide the NASD Regulation, Inc. Office of Dispute Resolution mutually agreeable dates during the month of August within 10 days of the date of that order, which was March 28, 1996. It was also ordered that if the parties failed to provide the NASD Regulation, Inc. Office of Dispute Resolution with mutually agreeable dates, the arbitrators would set the date for the hearing.

On or about June 7, 1996, claimant Sav-A-Trip, Inc. filed a Motion to Accept an Amendment to the Statement of Claim, which was subsequently withdrawn during the July 12, 1996 Pre-hearing conference.

The arbitrators, after consideration of Claimant Sav-A-Trip, Inc.'s August 13, 1996, Request for Sanctions against Respondents for failure to produce requested documents, and Respondents' response thereto,

decided that they were unable to evaluate the statements of counsel without documents to review, and, therefore, withheld ruling on the this Request for Sanctions. The parties were ordered, however, to bring certain documents with them to the hearing. Furthermore, an evidentiary hearing on the Request for Sanctions was ordered to be held at the commencement of the first hearing session.

Respondent Andrew Greene settled with the Claimant prior to the first day of hearing. Notice of the settlement with Andrew Greene was delivered orally to the panel on August 26, 1996 prior to the commencement of the hearing. Therefore, Respondent Andrew Greene did not participate in the hearing.

On August 30, 1996, at the close of the hearing, a briefing schedule was set. The parties would submit briefs on October 18, 1996. Reply briefs would be filed by the parties on October 31, 1996. On October 15, 1996, Claimant filed a request to stay any decision by the arbitrators until April 24, 1997, pending settlement between the parties. The panel granted the request.

On October 28, 1996, Claimant filed a notice of default on the settlement agreement. On October 29, 1996, Stratton's counsel filed notice that, under the settlement agreement, Respondents would have 12 days after notice of default to file briefs and another 12 days to file reply briefs. On November 2, 1996, Claimant filed it's post-hearing brief. A copy of the brief and all correspondence pertaining to settlement, and default, were sent to the panel. The Department of Dispute Resolution did not receive a brief from the Respondents. The hearing was closed by the arbitrators on November 27, 1996.

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 NASD Regulation, Inc. Office of Dispute Resolution.

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., Jordan R. Belfort, Daniel M. Porush, Kenneth S. Greene, Christopher F. Castaldo, and Matthew L. Bloom are jointly and severally liable for, and shall pay to the Claimant, Sav-A-Trip, Inc. the sum of \$712,000 in actual damages, \$1,250 for filing costs, and \$15,000 in punitive damages as satisfaction of Claimant's claims made in this arbitration.
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) pre-hearing conferences \times \$300 = \$600, and there were twelve (12) hearing sessions \times \$1,000 = \$12,000 in forum fees. Total forum fees are \$600 + \$12,000 = \$12,600. 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, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$250 and shall **retain** as forum fees the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the claimant Sav-A-Trip, Inc.

Respondent Stratton Oakmont, Inc. is liable for and shall pay the member surcharge of \$500 pursuant to §10333 of the NASD Code of Arbitration Procedure.

Respondent Stratton Oakmont, Inc. is liable for and shall pay postponement fees in the amount of \$1,000.

Additional forum fees in the amount of \$11,600 are assessed by the arbitrators jointly and severally against the Respondents.

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

Dated:

Mark D. Wasserstrom
Mark D. Wasserstrom
Public Arbitrator, Presiding Chair

/s/

December 2, 1996

Charles E. Jones
Hon. Charles E. Jones
Public Arbitrator

/s/

December 3, 1996

Jerry L. Kaempfe
Jerry L. Kaempfe
Industry Arbitrator

/s/

December 3, 1996