

## **AWARD**

### **NASD Regulation, Inc. Office of Dispute Resolution**

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In the Matter of Arbitration Between

Robert Fitts, Carla M. Cozad Trust, John  
Eldred Cozad Trust, Monica R. Cozad Trust,  
and Mary Lynne Cozad Trust,

Claimants,

and

No. 95-02020

Stratton Oakmont, Inc., and  
Riccardo White,

Respondents.

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#### **REPRESENTATION OF PARTIES**

Claimants, Robert Fitts, Carla M. Cozad Trust, John Eldred Cozad Trust, Monica R. Cozad Trust, and Mary Lynne Cozad Trust, were represented by M. Mark Lanier, Esquire of Lanier & Wilson located in Houston, Texas.

Respondent, Riccardo White, was represented by Brad Whalen, Esquire of Doyle, Rider, Restrepo, Harvin & Robbins, Houston, Texas, prior to the date of the hearing yet was not represented at the hearing.

#### **CASE INFORMATION**

Claimants, Robert Fitts, Carla M. Cozad Trust, John Eldred Cozad Trust, Monica R. Cozad Trust, and Mary Lynne Cozad Trust's Statement of Claim was filed on or about: July 12, 1995

Claimant, Robert Fitts' Submission Agreement was signed on: April 21, 1995

Claimants, Carla M. Cozad Trust, John Eldred Cozad Trust, Monica R. Cozad Trust, and Mary Lynne Cozad Trust's Submission Agreements were signed on: June 5, 1995.

Respondent, Riccardo White's Statement of Answer was filed on or about: October 4, 1995.

### HEARING INFORMATION

A pre-hearing conference was held on: February 7, 1996 for one (1) pre-hearing session.

The hearing was held on: October 15, 1997 for one (1) hearing session.

The hearing was held in: Houston, Texas.

### CASE SUMMARY

Robert Fitts ("Fitts"), and Carla M. Cozad Trust, John Eldred Cozad Trust, Monica R. Cozad Trust, and Mary Lynne Cozad Trust (together "Claimants") alleged that Riccardo White ("White"), while employed by Stratton Oakmont, Inc., convinced Fitts to purchase shares of stocks both for himself and the Claimants' Trusts which were highly speculative, despite Fitts' desire for a conservative, low-risk investment plan both for himself as a nearly retired man and for the Trusts in his care. Furthermore, Claimants alleged that Riccardo White assured Fitts that he was operating in a fiduciary capacity to both he and the Trusts. Claimants alleged that while Fitts was the named Trustee of the above Cozad family Trusts, he was contacted by Riccardo White who encouraged Fitts to purchase for himself 1,000 warrants of Aquanatural Company ("AQQA") on June 29, 1993 at 4 1/2 for a total price (including fees) of \$4,510.00. At the urging of White, Fitts said he also twice purchased for himself Aquanatural Company shares ("AQQA") on April 30, 1993 for 1,000 shares at 8 1/2 for \$8,510.00 (including fees) and on May 13, 1993 for 1,000 shares of AQQA at 8 3/4 for a total, \$8,635.00. According to Claimants, the total personal investment of Fitts in Aquanatural Company stock shares and warrants equaled \$17,145.00, and his losses amounted to \$17,561.25, due to the misrepresentations of Respondent, Riccardo White.

Claimants also alleged that White's misrepresentations induced Fitts to purchase 1,000 shares of AQQA on June 21, 1993, at 9 1/4 for a total price of \$9,260.00 for each of the four Cozad family trusts. Claimants pointed to the April 12, 1995 price of the stock at 1 13/16, which indicated a loss of \$7,447.50 for each of the stocks with respect to the AQQA purchases. Claimants asserted that White also misrepresented to Fitts the conservative nature of PDK Labs preferred stock ("PDK"). Claimants stated that for each of the Cozad family trusts, Fitts purchased 500 shares on May 7, 1993 for the stock at 5 for a total of \$2,510 (including fees). Furthermore, Claimants stated that Fitts, as Trustee, and upon reliance of White's misrepresentations, purchased on July 29, 1993, 2500 shares of PDK at 4 for a total of \$10,010.00 per trust. Claimants said that each of the trusts had a total investment of \$12,520.00 in the PDK stocks. Claimants then related that on February 22, 1994, Fitts authorized Respondents to sell 2,500 shares of PDK for each of the Trusts at no less than 3 per share. Instead, Claimants stated that Respondents sold 3,000 shares at 2 3/4, and while Fitts ratified the sale of the 2,500 stocks at that price, he did not ratify the sale of the additional 500 shares. Claimants stated that each Cozad Trust lost a total of \$3,944.89 on the PDK shares alone, and combined with the loss on the AQQA shares, for a combined total of \$11,422.39. Claimants asserted

that Riccardo White's actions in misrepresenting the AQQA and PDK shares to Fitts, both personally and as Trustee constituted common law fraud, breach of contract, breach of fiduciary duty, breach of the duty of the duty of good faith and fair dealing, negligent misrepresentation, negligence, and gross negligence.

Riccardo White, Respondent denied any claim of wrongdoing on his part. He further denied any breach of fiduciary obligation, any unauthorized activity with respect to Claimants' account, any direction to purchase conservative, low risk investments only and denied that there was any fiduciary obligation to the Claimants. Respondent denied any guarantees of profitability to the Claimants and stated that he merely offered his reasonable, good faith projections and opinions regarding the stocks recommended, based upon publicly available information and research. Respondents asserted the following affirmative defenses: Respondent advised Claimants of the risks necessarily attendant to investing in securities; Respondent offered advise based upon public information; Respondent specifically advised Claimants that their investments were subject to market risks; Claimants have failed to state a claim for which relief may be granted; losses were proximately caused by market forces; Claimants were estopped from asserting any claims based on their oral and written representations, and more specifically, they were barred under the Doctrine of Ratification; and, finally, Claimants were barred by the Doctrine of Laches and by the applicable statutes of limitations.

#### **RELIEF REQUESTED**

Claimants, Robert Fitts, and Carla M. Cozad Trust, John Eldred Cozad Trust, Monica R. Cozad Trust, and Mary Lynne Cozad Trust, requested an award for Robert Fitts, individually for \$17,561.25 in actual damages, and statutory damages of \$35,122.50 for a total amount of \$52,683.75. With respect to each of the trusts, Claimants requested an award of \$11,442.39 in actual damages and for each of the Trusts, \$22,884.78 in statutory damages, for a total of \$34,327.17 for each of the four Cozad family trusts. Claimants also sought \$32,000.00 in attorneys' fees and costs related to this matter.

Respondent, Riccardo White, requested that the claims asserted against him be dismissed in their entirety and that he be awarded his costs and attorneys' fees.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about January 27, 1997, Respondent, Stratton Oakmont, Inc. filed bankruptcy under the Securities Investor Protection Corporation, Inc. ("SIPC.") Pursuant to the order of the United States District Court for the Southern District of New York, upon the application of SIPC and under the Securities Investor Protection Act, all matters concerning Stratton Oakmont, Inc. are indefinitely stayed. Therefore, Stratton Oakmont, Inc. was released as a party in this action.

Respondent, Riccardo White did not appear at the arbitration hearing in this matter. However, upon review of the file and the representations made by/on behalf of Claimants, Robert Fitts, Carla M. Cozad Trust, Monica R. Cozad Trust, Mary Lynne Cozad Trust, the undersigned arbitrators have determined that Respondent, Riccardo White, had been properly served with the Statement of Claim pursuant to § 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators also determined that Respondent, Riccardo White, had received due notice of the hearing as required under §§ 10310 and 10315 of the Code and the hearing would proceed under § 10318 of the Code.

Respondent, Riccardo White, 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 and having answered the claim is bound by the determination of the arbitration panel on all issues submitted.

The parties present at the hearing agreed that the Award in this matter may be executed in counterpart copies and 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. Respondent, Riccardo White is liable for and shall pay to Claimants, Robert M. Fitts, Carla M. Cozad Trust, John Eldred Cozad Trust, Monica R. Cozad Trust and Mary Lynne Cozad Trust the amount of \$31,664.00 in actual damages and \$3,000.00 in attorneys fees and costs pursuant to the contract between the parties and the Texas Deceptive Trade Practices Act.
2. 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 \$750.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300.00 and there was one (1) hearing session x \$750.00 = \$1,050.00 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (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, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$200.00 and shall retain as forum fees the hearing session deposit of \$750.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimants, Robert Fitts, and Carla M. Cozad Trust, John Eldred Cozad Trust, Monica R. Cozad Trust, and Mary Lynne Cozad Trust.

Pursuant to § 10332(c) of the Code, Respondent, Riccardo White is liable for and shall reimburse the Claimants, Robert Fitts, and Carla M. Cozad Trust, John Eldred Cozad Trust, Monica R. Cozad Trust, and Mary Lynne Cozad Trust for the \$750.00 hearing session deposit previously deposited with the NASD Regulation Inc. Office of Dispute Resolution. Respondent, Riccardo White is liable for and shall pay to NASD Regulation, Inc., Office of Dispute Resolution the remaining \$300.00 in forum fees. Pursuant to § 10332 of the Code, Respondent, Riccardo White is liable for and shall pay to the NASD regulation, Inc. Office of Dispute Resolution the sum of \$375.00 for a postponement fee.

Pursuant to §§ 10332 and 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge of \$350.00 and shall retain the \$375.00 postponement fee previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Stratton Oakmont, Inc.

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

Concurring Arbitrators' Signatures

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Russell E. Rains, Esq.  
Chairperson  
Public Arbitrator

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Dated:

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Richard A. Hollenberg  
Panelist  
Public Arbitrator

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Dated:

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Timothy W. Kelley  
Panelist  
Industry Arbitrator

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Dated:

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For NASD use only:

Date Award was served on the parties: \_\_\_\_\_