

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Rick Robert Hoffman

and

Case Number 95-02227

Names of Respondents

Stratton Oakmont, Inc. and Andrew Friedman

REPRESENTATION OF PARTIES

Claimant Rick Robert Hoffman was represented by Ben A. Wallis, Jr., Esq. located in San Antonio, Texas.

Respondent Stratton Oakmont, Inc. was represented by Ron Schindler, Esq. of Fowler White Law Firm located in Miami, Florida.

Respondent Andrew S. Friedman was represented by Bradley Whalen, Esquire of Doyle, Reed, Restrepo, Harvin & Robbins located in Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed by Claimant Rick Robert Hoffman on or about May 4, 1995.

An amendment to the Statement of Claim was filed by Claimant Rick Robert Hoffman on or about May 18, 1995.

The Submission Agreement of Claimant Rick Robert Hoffman was signed on May 4, 1995.

The Statement of Answer was filed by Respondents Stratton Oakmont, Inc. and Andrew Friedman on or about July 31, 1995.

The Submission Agreement of Respondent Stratton Oakmont, Inc. was signed on July 17, 1995 by Paul F. Byrne, Compliance Director.

The Submission Agreement of Respondent Andrew Friedman was signed on July 12, 1995.

HEARING INFORMATION

Pre-hearing conferences were on: -June 18, 1996 for one (1) session;
 -July 9, 1996 for one (1) session; and
 -July 10, 1996 for one (1) session.

The hearing was held on: -December 18, 1996 for one (1) session.

Hearing location: -Houston, Texas.

CASE SUMMARY

In the Statement of Claim, Rick Robert Hoffman ("Claimant") alleged that Stratton Oakmont, Inc. ("Stratton Oakmont") by and through its employee, Andrew Friedman ("Friedman") (collectively, "Respondents") made misrepresentations which were willful and malicious with the sole intent of inducing Claimant to invest money in a stock in which Stratton Oakmont was an underwriter. Claimant alleged that he purchased 5,000 shares of Aquanatural ("AQQA") stock at 8 1/2 per share on or about July 8, 1993 after great pressure from Friedman and based upon representations made by Friedman such as describing AQQA to be a great stock. The price of the stock dropped to 7 1/2 within a month yet Friedman allegedly strongly urged Claimant to hold the stock. On or about September 13, 1993, Friedman allegedly insisted that Claimant needed to purchase additional shares of AQQA since the stock would definitely move up that day following a news announcement. As alleged, Claimant purchased an additional 2,500 shares based on Friedman's advice and assurances. When the price of the stock continued to drop and reached 6 1/2, Claimant allegedly desired to sell the stock and asked Friedman for investment alternatives. According to the Claim, Friedman stated that he attempted, but was unable, to transfer Claimant's investment into other initial public offerings of Stratton Oakmont unless Claimant could establish an out-of-state address. Claimant complained to the branch manager who appeared sympathetic and said he would investigate yet Claimant did not hear further. When Claimant contacted the vice president of Aquanatural Company in January of 1994, he was allegedly informed that the company was practicably insolvent and was ceasing manufacturing. As alleged, Respondents continued to maintain and advise Claimant that AQQA was a sound stock. Claimant then transferred his account and later sold the stock for 1 3/8 per share for a loss of \$44,687.50.

Respondents Stratton Oakmont, Inc. and Andrew Friedman denied the allegations set forth in the Statement of Claim. Respondents asserted many affirmative defenses including, but not limited to, failure to state a claim upon which relief may be granted; the losses were caused by market forces over which Respondents had no control; the claims were under the doctrine of ratification; waiver; laches; and failure to mitigate.

RELIEF REQUESTED

Claimant Rick Robert Hoffman requested an award in the amount of \$44,687.50 in actual damages; an award in the amount of \$250,000.00 in punitive damages; and an award for interest and attorneys' fees in undisclosed amounts.

Respondents Stratton Oakmont, Inc. and Andrew Friedman requested that the Claimant take nothing by way of the claim and that the Claimant's claims be dismissed in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

On or about December 17, 1996, Respondent Stratton Oakmont, Inc. submitted a motion for adjournment of the hearing scheduled for December 18, 1996. Respondent Andrew Friedman joined in the motion yet Claimant Rick Robert Hoffman objected. After considering all the submissions by the parties relating to the motion for adjournment, the arbitrators decided to deny the motion.

Neither counsel nor a representative for Respondent Stratton Oakmont, Inc. appeared at the hearing. Respondent Andrew Friedman also did not appear at the hearing although his counsel did appear and orally requested an adjournment. Following oral arguments by the parties, the arbitrators determined that the request for adjournment was denied. Counsel for Respondent Andrew Friedman elected to leave the hearing shortly thereafter.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondents Stratton Oakmont, Inc. and Andrew Friedman had been properly served with the Statement of Claim pursuant to Section 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators also determined that Respondents Stratton Oakmont, Inc. and Andrew Friedman had received due notice of the hearing as required under Section 10315 of the Code and that arbitration of the matter would proceed pursuant to Section 10318 of the Code.

On or about January 29, 1997, an Order was entered by the United States District Court upon the application of the Securities Investor Protection Corporation, Inc. under the Securities Investor Protection Act. Pursuant to the Order, all matters against Respondent Stratton Oakmont, Inc. including the Claimant's claims in this matter were stayed. The Claimant's claims against Respondent Andrew S. Friedman proceeded as requested by the Claimant.

The party present at the hearing agreed that a handwritten, signed Award may be entered. The party present at the hearing agreed to receive conformed copies of the award while the original remains 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 Andrew Friedman is hereby liable for and shall pay to Claimant Rick Robert Hoffman the sum of \$23,199.20 in actual damages;
2. Respondent Andrew Friedman is hereby liable for and shall pay to Claimant Rick Robert Hoffman the sum of \$7,026.00 in attorneys' fees. In determining to award attorneys' fees, the arbitrators considered the pleadings, the evidence and the testimony provided by the parties;
3. Any requests for relief not specifically granted are hereby denied in their entirety; and
4. The parties shall bear their own costs except for forum fees specifically addressed below.

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 were three (3) pre-hearing sessions x \$300.00 plus there was one (1) hearing session x \$750.00 = \$1,650.00 in forum fees. Pursuant to Section 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 Section 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Claimant Rick Robert Hoffman.

Respondent Andrew Friedman is hereby liable for and shall pay to Claimant Rick Robert Hoffman the sum of \$950.00 as reimbursement of the claim filing fee and hearing session deposit. Respondent Andrew Friedman is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$900.00 in additional forum fees.

Fees are payable to the National Association of Securities Dealers Regulation, Inc. Office of Dispute Resolution.

Signed:

Dated:

Leah Balk, Esq.

March 3, 1997

Leah Balk, Esq.

Public Arbitrator, Presiding Chair

Randall W. Heinrich, Esq.

February 21, 1997

Randall W. Heinrich, Esq.

Public Arbitrator

Robert C. Upton, Jr.

March 3, 1997

Robert C. Upton, Jr.

Industry Arbitrator

Date served by the NASD Regulation, Inc.: March 4, 1997