

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Joseph A. Sommer

and

NASD Case Number: 95-03478

Name of Respondents

Stratton Oakmont, Inc.; and
Christopher Francis Castaldo

REPRESENTATION OF PARTIES

Claimant Joseph A. Sommer, Esq. appeared pro se.

Respondents Stratton Oakmont, Inc. and Christopher Francis Castaldo were represented by Michael P. Gilmore, Esq. of Wexler & Burkhart, P.C. located in Mitchel Field, New York.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") by Claimant Joseph A. Sommer on or about July 19, 1995.

The Amendment of Statement of Claim and Addition of Exhibits was filed with the NASD on or about August 16, 1995.

Claimant's Submission Agreement was signed on July 14, 1995.

The Statement of Answer was filed with the NASD by Respondents Stratton Oakmont, Inc. and Christopher Francis Castaldo on or about October 13, 1995.

Respondent Stratton Oakmont, Inc.'s Submission Agreement was signed on August 31, 1995 by Daniel Porush.

The NASD has no record that Respondent Christopher Francis Castaldo signed a Submission Agreement.

HEARING INFORMATION

The Hearing was held on May 2, 1996 for two (2) sessions and May 3, 1996 for two (2) sessions. The Hearing location was Albuquerque, New Mexico.

CASE SUMMARY

Claimant Joseph A. Sommer ("Claimant") alleged that Brian Priest ("Priest"), an employee of Respondent Stratton Oakmont, Inc. ("Stratton") made an unsolicited cold call to Claimant during June of 1994. Claimant maintained that Priest praised the financial acumen and successful record of Stratton and its managing director, Russell Ehrens ("Ehrens"). Claimant contended that Claimant received a call from Ehrens and that Ehrens sold Claimant 1,000 shares of Dr. Pepper stock at \$22.00 per share for \$22,050. Claimant asserted that, on July 7, 1994, Ehrens sold Claimant 3,000 shares of Octagon stock at \$8.00 per share for \$24,000. Claimant alleged that Respondent Christopher Francis Castaldo ("Castaldo") informed Claimant that he had taken over Claimant's account. Claimant contended that, yielding to the high-powered tactics of Respondent Castaldo, Claimant sold 1,000 shares of Dr. Pepper and purchased 3,000 shares of Octagon for \$24,760. Claimant maintained that, during a telephone call of July 22, 1994, Respondent Castaldo convinced Claimant to sell Octagon and buy 10,000 shares of Meyerson stock for \$62,510. Claimant alleged that he sold the 10,000 shares of Meyerson stock through Principal Financial Securities for \$12,742.26, after Respondent Stratton was first offered the shares, but refused to buy them back. Claimant asserted that this loss of \$49,767.74 constituted Claimant's claim.

Claimant alleged that, in effecting the sale of 6,000 shares of Octagon, and an investment of the proceeds in 10,000 shares of the Meyerson stock owned by Stratton based upon misrepresentation of, and omission to reveal, material facts, Respondents violated an implied covenant with Claimant of good faith and fair dealing. Claimant contended that the actions of Respondents were in violation of the Federal Securities Act of 1933, the Securities Exchange Act of 1934, and regulations adopted pursuant to such acts, and to the New Mexico Securities Act of 1986.

Respondents Stratton Oakmont, Inc. ("Stratton") and Christopher Francis Castaldo ("Castaldo") denied all liability to Claimant in the Statement of Answer. Respondents alleged that the Claim did not adequately set forth any specific rule violations of the NASD causative of the actual loss to Claimant, nor does the Claim state the wrongs or the circumstances of the wrongs complained of so that Respondents had adequate and meaningful notice of the Claim. Respondents asserted that the recommendations were reasonably based and suitable in light of the Claimant's stated investment objectives. Respondents alleged that the Claimant represented that his investment objectives were growth and speculation. Respondents maintained that at all times the accounts and activities of Respondent Stratton's registered representative were properly supervised and in accordance with applicable statutes. Respondents contended that confirmations were timely sent and were not timely objected to, orally or in writing, by the Claimant. Respondents alleged that the Claimant failed to mitigate Claimant's damages.

RELIEF REQUESTED

Claimant requested compensatory damages of \$49,767.74, interest thereon from July 22, 1994 until paid, and punitive damages of \$99,535.48, together with the costs and expenses of this arbitration.

Respondents requested that the panel (i) dismiss the Statement of Claim in its entirety, (ii) award Respondents their costs and expenses of this arbitration, including reasonable attorneys' fees; and (iii) grant Respondents such other and further relief as is just and proper.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Christopher Francis Castaldo did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 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.

The parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD.

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. The Statement of Claim is hereby dismissed in its entirety with prejudice;
2. Forum fees shall be divided between the parties, as specified below;
3. Other than forum fees which are specified below, the parties shall each bear their own costs, expenses and attorney's fees incurred in this matter; and
4. Any relief not specifically enumerated is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 per pre-hearing session, if any. There were four (4) hearing sessions x \$750 = \$3,000 in forum fees. Total forum fees = \$3,000. Pursuant to §43(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 §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200 previously deposited with the NASD by the Claimant. The NASD shall retain the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant.

Claimant Joseph A. Sommer is assessed and shall pay forum fees in the amount of \$750. Respondents Stratton Oakmont, Inc. and Christopher Francis Castaldo are jointly and severally assessed and shall pay forum fees in the amount of \$1,500. Respondent Stratton Oakmont, Inc. is assessed and shall pay the Section 45 Member Surcharge in the amount of \$350.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

\s\ Barry H. Barnett, Esq.
Barry H. Barnett, Esq.
Chairperson
Public Arbitrator

May 21, 1996
Dated:

\s\ John L. Porter
John L. Porter
Panelist
Public Arbitrator

May 20, 1996
Dated:

\s\ Richard W. Arms, Jr.
Richard W. Arms, Jr.
Panelist
Industry Arbitrator

May 20, 1996
Dated:

For NASD use only:
Date award served on the parties: May 29, 1996