

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Raymond C. Lemire & Management Realty Co

NASD Case No.
95-03747

Name of Respondents

Stratton Oakmont, Inc.
Daniel Porush
Paul F. Byrne
Patrick McDonnell

REPRESENTATION

For Claimants Raymond Lemire ("Lemire") and Management Realty Corporation ("Management") appeared Bret D. Gifford, Esq. of Devine, Millime and Branch, Manchester, New Hampshire.

For Respondents Stratton Oakmont, Inc. ("Stratton"), Daniel Porush ("Porush"), Paul F. Byrne ("Byrne") and Patrick McDonnell ("McDonnell") appeared David Richan, Esq., of Tenzer & Greenblatt, New York, New York.

(David Richan and the firm of Tenzer & Greenblatt withdrew as counsel for respondent Stratton by letter dated December 13, 1996; David Richan and the firm of Tenzer & Greenblatt withdrew as counsel for respondents Porush, Byrne and McDonnell by letter dated December 19, 1996.)

CASE INFORMATION

Statement of Claim filed on August 3, 1995.

Claimant Lemire's Submission Agreement signed on July 28, 1995.

Claimant Management's Submission Agreement signed on July 28, 1995.

Respondent's Statement of Answer filed on October 3, 1995.

Respondent Porush's Submission Agreement signed on August 10, 1995.

Respondent Byrne's Submission Agreement signed on August 11, 1995.

Respondent McDonnell did not execute a Uniform Submission Agreement as required pursuant to Rule 10314 of the Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conference:	August 6, 1996	-	One Session
	August 16, 1996	-	One Session
	August 29, 1996	-	One Session
Hearing Date/Sessions:	January 13, 1997	-	Two Sessions
Hearing Location:	American Arbitration Association 133 Federal Street - 11th Floor Boston, MA		

CASE SUMMARY

Claimants alleged that respondents engaged in unauthorized trading in claimant's accounts, failed to disclose Stratton's extensive disciplinary history and made reckless or intentional misrepresentations concerning stock in which Stratton was a market maker. Claimants also alleged that respondents illegally froze the claimants' accounts.

Claimants alleged that Lemire was President and sole shareholder of Management. Claimants also alleged that Lemire was an unsophisticated investor. Claimants contended that Stratton was a marketmaker in highly speculative securities and further alleged that Stratton employed aggressive marketing techniques designed to influence the trading price and trading volume of securities in which it was a marketmaker.

Claimants alleged that, in late July 1994, Lemire received telephone solicitation from respondent McDonnell, a registered representative with Stratton. Claimants alleged that McDonnell urged Lemire to open an account with Stratton. Claimants asserted that Lemire opened a trading account with Stratton on July 26, 1994 and, based on McDonnell's advice, purchased 1,000 shares in United States Surgical Corporation ("Surgical") at a total price of \$22,625.

Claimants alleged that, on August 5, 1994, McDonnell encouraged Lemire to sell all Lemire's shares in Surgical and invest in Octagon, Inc. ("Octagon"). Claimants asserted that Octagon was a highly volatile stock and that Stratton was a marketmaker in Octagon. Claimants alleged that Lemire paid for the Octagon purchase with \$22,514 received from the sale of his Surgical shares in addition to an additional \$36,245 he submitted by personal check. Claimants further alleged that Stratton's registered representatives failed to obtain adequate information concerning Lemire's investment objectives and ignored information provided by Lemire concerning his objectives.

Claimants claimed that on August 9, 1994, Lemire agreed to purchase, at McDonnell's insistence, 15,000 additional shares of Octagon for a total price of \$206,250. Claimants asserted that Stratton's brokers insisted that Lemire open a separate corporate account which claimants alleged Stratton's brokers represented would provide him with additional time to pay for his Octagon purchases. Claimants alleged that, although Management is located in New Hampshire, Stratton insisted that Lemire supply an out of state address. Claimants asserted that, although Lemire never understood the reason for this request, Lemire provided a Florida address for Management. Claimants also alleged that, upon information and belief, Stratton's motivation for requesting that Lemire open a corporate account was to violate trading and concentration limits.

Claimants alleged that on August 16, 1994, at McDonnell's recommendation, the first purchase made for Management's account was 100 shares of Surgical for a total price of \$2,450. Claimants asserted that Stratton's brokers telephoned Lemire almost every day throughout August 1994 to urge him to purchase additional shares of Octagon. Claimants also alleged that, on August 18, 1994, Stratton telephoned Lemire to recommend that Lemire purchase shares in Select Media Communications ("Media"). Claimants alleged Stratton was a market maker for Media. Claimants stated that Lemire agreed to purchase 30,000 shares of Media for a total of \$208,125 and 3000 Media warrants for a total of \$21,000. Claimants alleged that these transactions were posted to the Management account. Claimants also asserted that McDonnell provided false information to Lemire regarding Octagon's business stability, specifically with regard to a contract Octagon had entered with Mackenzie, a British telecommunications firm. Claimants further alleged that in reliance upon information supplied by McDonnell, Lemire decided not to sell his shares of Octagon.

Claimants asserted that McDonnell contacted Lemire on August 26, 1994 to urge him to sell his Media shares and purchase additional shares of Octagon. Claimants contended that, based upon McDonnell's representations that Octagon's business dealings with Mackenzie were legitimate, Lemire agreed to purchase 30,000 additional shares of Octagon. Claimants also claimed that, after speaking with Eric Blumin, another Stratton representative recommended by McDonnell, Lemire agreed to purchase 50,000 Octagon warrants because Blumin advised him that warrants were a better investment. Claimants alleged that Lemire agreed to purchase the 50,000 Octagon warrants instead of the 30,000 Octagon shares. Claimants further asserted that on August 26, 1994, contrary to Lemire's express instructions, Stratton transmitted a buy order for 30,000 Octagon shares and 50,000 Octagon warrants.

Claimants alleged that Stratton knew or should have known by August 18, 1994 that the large Octagon contract with Mackenzie was illegal. Claimants contended that, upon receipt of the trade confirmations for the Octagon stock and warrants, Lemire advised Stratton that he did not have the funds to pay for the large purchase. Claimants alleged that, when Lemire insisted that the stock trade be reversed, Stratton advised him a reversal was impossible until both transactions were fully paid. Claimants also alleged that on September 8, 1994, Lemire instructed Stratton to transfer both his individual and corporate account to another broker dealer.

Claimants asserted that Stratton refused to follow his instructions and advised him that his personal account was frozen until the debit in the Management account resulting from the purchase of both the Octagon warrants and stock was cleared. Claimants contended that, on September 14, 1994, without Lemire's authorization, Stratton liquidated Lemire's personal account and the Management account.

Claimants asserted that, if Lemire had known Stratton's disciplinary and enforcement history, he never would have opened an account. Claimants alleged that respondents withheld material information about Octagon's business relationships and knew of Octagon's problems at least as early as August 1994. Claimants also asserted that Lemire acted in reliance upon Stratton's misrepresentations concerning the legality of Octagon's business dealings in not selling his shares of Octagon before the price plummeted in September 1994. Claimants alleged that Lemire also relied upon Stratton's misrepresentations in deciding not to sell the Octagon warrants and shares in the Management account in August 1994 thereby suffering damages when the securities were sold in September 1994 at a lower price than the purchase price.

Respondents generally denied the allegations in the Statement of Claim. Respondents maintained that all the transactions identified in the Statement of Claim were carried out in accordance with claimants' instructions. Respondents contended that Stratton's employees were properly supervised at all times.

Respondents denied that they made any material misrepresentations to claimants and further claimed that the allegations in the Statement of Claim reflected claimants' disappointment that their investments had not been as profitable as claimants had hoped.

Respondents maintained that, when he opened claimants' accounts, Lemire represented that he had a net worth of \$5-10 million and that Management had an approximate net worth of \$10 million. Respondents contended that Lemire also represented that he had a market portfolio of over \$500,000.

Respondents claimed that claimants received letters from Stratton which clearly disclosed the nature of the securities with which Stratton dealt. Respondents asserted that claimants reported growth and speculation as investment objectives. Respondents also denied they were unaware that any problems existed with Octagon and its contract with Mackenzie. Respondents maintained that claimants were fully aware of the risks involved in the securities in which they traded.

Respondents also alleged that claimants had or should have had full knowledge of all material facts concerning the securities in their accounts and further alleged that claimants authorized and directed the execution of all transactions in their accounts. Respondents maintained that claimants authorized and ratified all transactions in their accounts and waived their claims by failing to take timely and appropriate actions. Respondents maintained that they acted in good faith with diligence and due care. Respondents also alleged that punitive damages could not be awarded because New York law did not allow arbitrators to render an award for punitive damages. Respondents also alleged that New York law did not permit an award of attorney's fees by an arbitration panel. Respondents maintained that statements by respondents regarding the potential values of securities or the future prospects for companies were not statements of material facts upon which claimants could reasonably have relied. Respondents also alleged that the Statement of Claim failed to state causes of action upon which relief could be granted.

RELIEF REQUESTED

Claimants requested damages in the amount of \$602,500.00 reflecting the Octagon losses from Lemire's personal account and Management's account. Claimants also requested punitive damages, treble damages, costs, interest and attorneys' fees for a total damage claim of \$2 million.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice and that the costs of the arbitration be assessed against claimants.

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

Respondents made a Motion to Dismiss the Statement of Claim against respondent Porush for failure to allege any wrongdoing on Porush's part. Respondents also moved to dismiss the allegations that Stratton failed to disclose mere unproven allegations of unrelated misconduct against it for failure to state a claim for relief. Respondents also moved to dismiss the claims for unauthorized trading, for punitive and treble damages, for attorneys' fees and for lost opportunity costs.

The arbitrators denied the motions to dismiss.

Subsequent to the hearing in this matter, upon complaint and application of the Securities Investor Protection Corporation "(SIPC)", a trustee was appointed and the business of respondent Stratton was ordered to be liquidated by Order of the United States District Court for the Southern District dated January 29, 1997.

The panel was informed of Stratton's SIPC liquidation and received a copy of the U.S. District Court Order on February 10, 1997.

Respondents Stratton, Porush, Byrne and McDonnell did not appear at the hearing. Respondent Byrne submitted post hearing correspondence to the panel advising the panel that he had not been aware of the January 13, 1997 hearing.

None of the respondents advised NASD Regulation, Inc. of new counsel prior to the January 13, 1997 hearing.

The claimants advised the panel during the hearing that they waived punitive damages as to respondent Byrne.

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. Respondents be and hereby are jointly and severally liable to and shall pay to claimants \$496,825 in compensatory damages;
2. Respondents Stratton, Porush and McDonnell be and hereby are jointly and severally liable to and shall pay to claimants \$837,490 in punitive damages;
3. Respondents be and hereby are jointly and severally liable and shall pay to claimants \$65,000 in attorneys' fees and expenses.

The panel based its award of punitive damages on the New Hampshire Blue Sky Laws and the Rules of Fair Practice.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the non-refundable filing fee of \$250.00 and have assessed the following Forum Fees:

3 pre hearing conferences x \$300	=	\$ 900.00
2 hearing sessions x \$1000	=	<u>2000.00</u>
Subtotal		2900.00
minus claimants hearing session deposit		<u>-1000.00</u>
Total Outstanding		\$1900.00

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Claimants be and hereby are liable for the sum of \$2900 representing 100% of the forum fees assessed.
Claimants have previously deposited \$1000 with NASD Regulations, Inc. and owe \$1900.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Name

J. Paul Finnegan, Esq.

Matthew D. Spinale, Jr.

Francis C. Cleary, Jr.
Francis C. Cleary, Jr., Esq.

I, Francis C. Cleary, Jr., Esq., do hereby certify that this is my decision in the above-referenced matter.

Francis C. Cleary, Jr.
Francis C. Cleary, Jr., Esq.

NASD Date of Decision: March 12, 1997

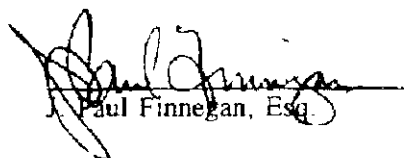
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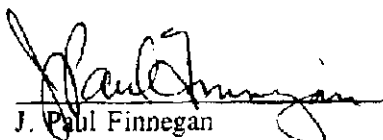
Concurring Arbitrators' Signatures
Name


J. Paul Finnegan, Esq.

Matthew D. Spinale, Jr.

Francis C. Cleary, Jr., Esq.

I, J. Paul Finnegan, Esq., do hereby certify that this is my decision in the above-referenced matter.


J. Paul Finnegan

NASD Date of Decision: March 12, 1997