

AWARD

NARD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

— G. John Stevens —

Claimant,

v.

No. 95-04000

Robert W. Koch and
Daniel F. Grasso

Respondents.

REPRESENTATION OF PARTIES

Claimant G. John Stevens ("Claimant") was represented by Marc E. Thomas, Esq. of Bendure & Thomas located in Detroit, Michigan.

Respondent Robert W. Koch ("Koch") and Daniel F. Grasso ("Grasso") (collectively referred to as "Respondents") did not appear at the hearing and were unrepresented. Respondents were previously represented by Amal Aly, Esq. of Tenzer Greenblatt LLP located in New York, New York. On or about December 30, 1996, Ms. Aly advised NASD Regulation, Inc. Office of Dispute Resolution that Tenzer Greenblatt LLP resigned as counsel for Respondents Koch and Grasso.

Stratton Oakmont, Inc. ("Stratton Oakmont") was originally named as a Respondent in this matter. As further discussed in "Other Issues Considered and Decided," pursuant to an Order entered by the United States District Court upon the application of the Securities Investor Protection Corporation, all matters concerning Stratton Oakmont, Inc. were indefinitely stayed. Stratton Oakmont was previously represented in this matter by Amal Aly, Esq. of Tenzer Greenblatt LLP located in New York, New York. On or about December 23, 1996, Ms. Aly advised NASD Regulation, Inc. Office of Dispute Resolution that Tenzer Greenblatt LLP resigned as counsel for Stratton Oakmont.

Frank J. Skelly, III ("Skelly") was also originally named as a Respondent in this matter. As further discussed in "Other Issues Considered and Decided," the Claimant advised the arbitration panel that he had reached a settlement with Respondent Skelly. Skelly was represented in this matter by Amal Aly, Esq. of Tenzer Greenblatt LLP located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about August 22, 1995.

Claimant's Submission Agreement was signed on August 18, 1995.

The Joint Statement of Answer was filed on or about October 23, 1995.

Respondents' Joint Motion to Strike Portions of the Statement of Claim and Supporting Memorandum of Law was filed on or about October 24, 1995. Claimant's Response thereto was filed on or about December 20, 1995.

Respondents' Joint Motion to Strike the Statement of Claim for Failure to Produce Documents was filed on or about July 24, 1996. Claimant's Response thereto was filed on or about August 20, 1996.

NASD Regulation, Inc. has no record that Respondents filed signed Submission Agreements.

HEARING INFORMATION

The hearing was held on April 3, 1997 for one (1) session in Southfield, Michigan.

CASE SUMMARY

Claimant alleged that Respondents were employed as registered representatives of Stratton Oakmont. Claimant contended that he was solicited by a cold call from Respondent Grasso to open an account with Stratton Oakmont. Claimant represented that his account was subsequently assigned to Skelly and then to Respondent Koch. Claimant asserted that he advised Respondent Grasso that he was interested in NYSE listed stocks, in preserving the amount of his original investment, and did not care to speculate. Claimant maintained that, over the following ten months, his account would suffer losses in excess of \$300,000. Claimant alleged that he was solicited to invest in various unsuitable investments, including: Master Glazier's Karate International, Inc.; Steven Madden Limited; and Computer Marketplace. Claimant contended that Respondents conducted trades in his account without authorization, failed to follow his orders, and manipulated the market to benefit themselves and to deceive and defraud Claimant. Claimant claimed that the conduct of Respondents violated the statutes and the common law of

the United States and the State of Michigan, including, but not limited to: The Securities Exchange Act of 1934, 15 USC § 78 (j)(b) and 17 CFR § 240.10b-5; 15 USC § 78i; The Securities Exchange Act of 1933, 15 USC § 77i; NASD Rules of Fair Practice regarding suitability, good faith and supervision, being Article III, §§ 1,2, & 27; and the Michigan Uniform Securities Act MCL §§ 451.601(a); - 701; - 810(a).

Respondents denied all liability to Claimant in the Joint Statement of Answer. Respondents alleged that all transactions identified in the Claim were carried out in accordance with Claimant's instructions and in conformity with all applicable laws, rules, and regulations. Respondents asserted affirmative defenses, including, but not limited to: (1) that the Claimant has failed to state a claim for which relief may be granted; (2) that the Claimant's claims are barred by the applicable statute of limitation; (3) that the damages claimed were caused solely by Claimant's own negligence; (4) that the Claimant failed to exercise due care and diligence; (5) that the Claimant should be estopped from bringing this arbitration; (6) that the Claimant authorized and directed the execution of all transactions in his securities account; (7) that the claims are barred by the applicable principals of waiver and ratification; (8) that the Claimant failed to mitigate his damages; (9) that Respondents acted in good faith; and (10) that the Claimant's claims are barred, in whole or in part, by the Statute of Fraud.

RELIEF REQUESTED

Claimant requested an award of damages in excess of \$300,000, interest on these sums since August 20, 1993, as well as his costs and attorney fees as allowed by the Michigan Uniform Securities Act, MCL 451.810 (a)(3).

Respondents requested that the claim be dismissed with prejudice and that the costs of this arbitration be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Respondents' Joint Motion to Strike Portions of the Statement of Claim was granted.

Respondents' Joint Motion to Strike the Statement of Claim for Failure to Produce Documents was denied.

Claimant originally named Stratton Oakmont, Inc. as a Respondent in this matter, together with Respondents Koch, Skelly, and Grasso. Pursuant to an Order entered by the United States District Court upon the application of the Securities Investor Protection Corporation, all matters

concerning Stratton Oakmont, Inc. were indefinitely stayed. The undersigned panel of arbitrators acknowledge that, pursuant to the United States District Court Order, the Claimant had no ability to continue this proceeding against Stratton Oakmont, Inc. so long as the stay is in place, but that this matter could proceed against the remaining named Respondents.

At the hearing, the Claimant advised the arbitration panel and NASD Regulation, Inc. that he had reached a settlement with Respondent Skelly. Accordingly, all claims of Claimant against Skelly were not adjudicated in this proceeding.

Respondents Koch and Grasso failed to appear at the hearing. Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators have determined that Respondents Koch and Grasso have been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents had received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondents Koch and Grasso did not file with NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration, but they are required to submit to arbitration pursuant to §10301 of the Code and having answered the claim are bound by the determination of the arbitration panel on all issues submitted.

The parties present at the hearing 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.

(This portion of the award intentionally left blank.)

AWARD

After considering the pleading, 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) That Respondents Robert W. Koch and Daniel F. Grasso are jointly and severally liable for and shall pay to Claimant G. John Stevens damages in the amount of One Hundred Ninety Thousand Dollars and No Cents (\$190,000.00), inclusive of interest, attorney fees, and costs. The authority for the award of attorney fees and costs is found in Michigan Uniform Securities Act, MCL 451.810 (a)(3); and
- (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 dismissed in their entirety with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) hearing session \times \$750 = \$750 in forum fees. Pursuant to §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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall refund the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant. Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant. Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the member surcharge in the amount of \$350 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Stratton Oakmont.

Pursuant to §10332(c) of the Code, Respondents Robert W. Koch and Daniel F. Grasso are jointly and severally liable for and shall pay forum fees in the amount of \$750.

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

Concurring Arbitrators' Signatures

\s\ Levi T. Gardner, III
Levi T. Gardner, III
Chairman
Public Arbitrator

April 23, 1997
Dated:

\s\ Benjamin A. Kerner
Benjamin A. Kerner, Esq.
Panelist
Public Arbitrator

April 10, 1997
Dated:

\s\ Harold I. Gach
Harold I. Gach, Esq.
Panelist
Industry Arbitrator

April 10, 1997
Dated:

For NASD Regulation use only.
Date award served on the parties: April 23, 1997

Affirmation

STATE OF Connecticut

} SS:
}

COUNTY OF Fairfield

I, Shane Ditzler, Esq., do hereby affirm upon my oath
as arbitrator that I am the individual described in and who executed this instrument,
which is my oath and award.

Shane Ditzler, Esq.
Signature of Arbitrator

DATE OF DECISION:

March 28, 1996

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Diane J. Getzler, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 15, 1996 and by the Respondent on January 10, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Respondent A.G. Edwards and Sons, Inc. is liable and shall pay to the Claimants Mary and Max Kaplan \$272.88 in actual damages.
2. The parties shall bear their respective costs.
3. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent A.G. Edwards & Sons, Inc. is liable and shall pay \$15.00 to the Claimants as reimbursement of one-half of the filing fee.