

STIPULATED AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

George Breu

and

Case Number: 95-05134

Name of Respondents

Stratton Oakmont, Inc.,
Kerry S. Brecker, and
Howard S. Gelfand

REPRESENTATION OF PARTIES

Claimant George Breu ("Claimant") was represented by Paul R. Erickson, Esq. and Colleen M. Fleming, Esq. of Gutglass, Erickson & Bonville located in Milwaukee, Wisconsin.

Respondents Stratton Oakmont, Inc. ("Stratton"), Kerry S. Brecker ("Brecker"), and Howard S. Gelfand ("Gelfand") (collectively referred to as "Respondents") were previously represented by Martin P. Unger, Esq. and Fredda L. Plesser, Esq. of Tenzer Greenblatt located in New York, New York. Tenzer Greenblatt resigned as counsel for Respondents on December 13, 1996.

CASE INFORMATION

The Statement of Claim was filed on or about October 27, 1995.

Claimants' Submission Agreement was signed on October 25, 1995.

The Joint Statement of Answer was filed on or about December 28, 1995. Respondents' Motion to Dismiss and to Strike Portions of the Claim was filed on or about December 28, 1995.

Respondents' Joint Memorandum of Law in Support of their Motion to Dismiss the Statement of Claim was filed on or about March 20, 1996.

Respondent Stratton's Submission Agreement was signed on November 8, 1995 by Daniel M. Porush, President of Stratton Oakmont, Inc.

Respondent Gelfand's Submission Agreement was signed on November 8, 1995.

Respondent Brecker's Submission Agreement was signed on November 8, 1995.

HEARING INFORMATION

A telephonic pre-hearing conference was held before the full panel of arbitrators to address the Motion to Dismiss and to Strike Portions of the Claim on May 22, 1996 for one (1) session. An additional telephonic pre-hearing conference before Chairperson Baron was held on November 8, 1996 for one (1) session.

CASE SUMMARY

Claimant alleged that he maintained an account at Respondent Stratton, and that Respondents Brecker and Gelfand were the account executives assigned to Claimant's account. Claimant contended that Respondents invested in Master Glaziers Karate Int'l, Inc., The Care Group, Inc., United Leisure Corp. and Select Media Communications and were making these recommendations using inflated and exaggerated financial histories of these investments. Claimant asserted that Respondents purchased high risk, speculative investments which were inconsistent, inappropriate and unsuitable on light of Claimant's investment objectives. Claimant maintained that Respondents made fraudulent and negligent statements and omissions of material fact regarding investments traded in Claimant's account. Claimant made claims including: (1) violations of Sections 10(B) and 20 of the Securities Exchange Act of 1934 and Rule 10B-5 of the Securities Exchange Commission; (2) intentional misrepresentation/negligent misrepresentation; (3) breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing; (4) violations of Wis. Stat. Ch. 551; and (5) violations of NYSE Rules 342, 401 and 405 "Know Your Customer Rules" and NASD Rules of Fair Practice, Article III Section 2 "Recommendations to Customers."

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 accordance with all applicable laws, rules, regulations, practices and agreements between Claimant and Respondents. Respondents contended that Respondents Brecker and Gelfand were at all times properly supervised. Respondents made various defenses, including, but not limited to, : (1) that Claimant has failed to state grounds upon which relief may be granted; (2) that this arbitration is barred by the applicable statutes of limitation; (3) that Claimant's claims are barred by applicable principals of waiver and ratification; and (4) that no fiduciary duty existed pursuant to New York law.

RELIEF REQUESTED

Claimant requested an award against Respondents finding them jointly and severally liable as follows: (1) for out-of-pocket losses of not less than \$225,000; (2) for loss of use of investing capital; (3) for costs of arbitration including reasonable attorneys fees; and any other costs deemed reasonable; (4) for punitive damages and exemplary damages; and (5) for such other relief as the arbitrators deem just and equitable.

Respondents requested that the Statement of Claim be dismissed in its entirety at Claimant's cost.

OTHER ISSUES CONSIDERED & DECIDED

Respondents' Motion to Dismiss and to Strike Portions of the Claim was denied.

STIPULATED AWARD

Pursuant to the attached settlement agreement reached by and among the parties, and affidavit of Paul R. Erickson, both attached as Exhibit A and made a part hereof by reference, the undersigned arbitrators hereby enter the following Award:

1. That Respondent Stratton Oakmont, Inc. is liable for and shall pay to Claimant George Breu the sum of Two Hundred and Thirty Nine Thousand Dollars and No Cents (\$239,00.00);
2. That Respondent Kerry S. Brecker is liable for and shall pay to Claimant George Breu the sum of Two Hundred and Thirty Nine Thousand Dollars and No Cents (\$239,000.00);
3. That Respondent Howard S. Gelfand is liable for and shall pay to Claimant George Breu the sum of Two Hundred and Thirty Nine Thousand Dollars and No Cents (\$239,000.00);
4. That other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
5. That 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 no hearing sessions and two pre-hearing sessions x \$300. Total forum fees = \$600. 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, NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$200 previously deposited with the NASD by the Claimant. NASD Regulation, Inc. shall retain the a portion of the hearing session deposit in the amount of \$300 previously deposited by the Claimant.

Respondents Stratton Oakmont, Inc., Kerry S. Brecker, and Howard S. Gelfand are jointly and severally assessed and shall pay forum fees in the amount of \$300.

Respondent Stratton Oakmont, Inc. is assessed and shall pay the Member Surcharge in the amount of \$300.

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

Concurring Arbitrators' Signatures

\s\ Rose Marie Baron, Esq.
Rose Marie Baron, Esq.
Chairperson
Public Arbitrator

January 28, 1997
Dated:

\s\ William H. Levit, Esq.
William H. Levit, Esq.
Panelist
Public Arbitrator

January 29, 1997
Dated:

\s\ Gerald A. Grossman, Esq.
Gerald A. Grossman, Esq.
Panelist
Industry Arbitrator

February 4, 1997
Dated:

For NASD Regulation use only:

Date Stipulated Award served on the parties:

February 6, 1997