

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Walter T. Dardis

and

95-05221

Name of Respondent

Stratton Oakmont, Inc.

REPRESENTATION OF PARTIES

Walter T. Dardis ("Claimant") was represented by Otto K. Hilbert, II, Esq., Reinhart, Boerner, Van Deuren, Norris & Rieselbach, P.C., Denver, Colorado.

Stratton Oakmont, Inc. ("Respondent") was represented prior to the hearing conducted on December 12, 1996, by Michael P. Gilmore, Esq., Wexler & Burkhart, P.C., Mitchel Field, New York.

CASE INFORMATION

The Statement of Claim was filed on or about November 2, 1995. Submission Agreement of Claimant Walter T. Dardis was signed on October 31, 1995.

Statement of Answer was filed by Respondent Stratton Oakmont, Inc. on or about December 27, 1995. Submission Agreement of Respondent Stratton Oakmont, Inc. was signed on November 29, 1995 by Daniel M. Porush.

HEARING INFORMATION

The hearing was held on Thursday, December 12, 1996 in Denver, Colorado for a total of one (1) session.

CASE SUMMARY

Claimant alleged that he was an unsophisticated investor who was persuaded to open an account at Respondent Stratton Oakmont, Inc. by Steven Caruso. Claimant further alleged that Mr. Caruso persuaded him to liquidate his life insurance and an annuity to invest in speculative securities. It was

further alleged that Mr. Caruso mischaracterized the risks associated with the investments into the highly speculative securities that he recommended. The claims for relief asserted by Claimant include: common law fraud; violations of the Colorado Securities Act; violations of federal securities statutes; churning; breach of fiduciary duty; negligence; and negligent supervision.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that all transactions in the Claimant's account were carried out in accordance with the Claimant's instructions and in conformity with all applicable rules, regulations, industry standards and practices. It was further stated by Respondent that the Claimant represented to it that he had the financial resources to trade in speculative securities. Respondent also stated that the Claimant identified his investment objectives as growth and speculation. Finally, Respondent stated that the Claimant had received confirmations and account statements and failed to object in a timely manner to the transactions complained of in this matter.

RELIEF REQUESTED

Claimant requested an award in an amount not less than \$158,666.61, interest, exemplary damages and attorneys' fees and costs.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its' costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The undersigned arbitrators have determined that Respondent Stratton Oakmont, Inc. 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.

Prior to the commencement of the hearing in this matter, Claimant had entered into a settlement agreement with Steven Caruso. As a result, the claims asserted against Steven Caruso in this matter were dismissed.

Prior to the commencement of the hearing of this matter, Claimant had entered into a settlement agreement with Respondent Stratton Oakmont, Inc. After the failure of Respondent Stratton Oakmont, Inc. to comply with the terms of that agreement, Claimant requested that the hearing on the merits be scheduled. Respondent asserted a motion to preclude Claimant from proceeding with a hearing on the merits and limiting the relief available to the Claimant to the terms set forth in the settlement agreement. After considering the written submissions of the parties, the undersigned arbitration panel denied Respondent's motion.

Immediately prior to the formal opening of the hearing on December 12, 1996, counsel for Respondent was contacted and provided an opportunity to participate in the hearing. The arbitration panel was informed that counsel was advised by the client not to make an appearance at the hearing on its' behalf.

The party present at the hearing 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 party present at the hearing agreed to receive a conformed copy of the award while the original(s) remain 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 Stratton Oakmont, Inc. shall be and hereby is liable for and shall pay to the Claimant Walter T. Dardis the sum of \$157,681.61 (One hundred fifty seven thousand six hundred eighty one dollars and sixty one cents) as compensatory damages. In making its' determination of liability in this matter, the undersigned have determined that the activities of Respondent Stratton Oakmont, Inc. is fraudulent.
2. Respondent Stratton Oakmont, Inc. shall be and hereby is liable for and shall pay to the Claimant Walter T. Dardis the sum of \$75,000 (seventy five thousand dollars) as punitive damages. In making this award of punitive damages, the undersigned have determined that this panel has the authority pursuant to the current caselaw to so award punitive damages.
3. Respondent Stratton Oakmont, Inc. shall be and hereby is liable for and shall pay to the Claimant Walter T. Dardis the sum of \$12,000 (twelve thousand dollars) as attorneys' fees and costs.
4. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There was one (1) session x \$750 = \$750 in forum fees. Pursuant to §10332(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 §10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Walter T. Dardis.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$350 previously paid by Respondent Stratton Oakmont, Inc. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

/s/ Morris Turkleson, Esq.
Morris Turkleson, Esq.
Public Arbitrator, Presiding Chair

Dated: December 12, 1996

/s/ Bradford J. Lam, Esq.
Bradford J. Lam, Esq.
Public Arbitrator

December 12, 1996

/s/ Bruce Brown
Bruce Brown
Industry Arbitrator

December 12, 1996