

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Romel J. and Barbara Mackelprang, Claimants v. Stratton Oakmont, Inc., Andrew S. Friedman
and Richard A. Miller, Respondents

Case Number: 95-05484

Hearing Site: Salt Lake City, Utah

REPRESENTATION OF PARTIES

For Claimants:

Delano S. Findlay, Esq.
Salt Lake City, Utah

For Respondent Andrew S. Friedman:

Andrew S. Friedman, pro se
Plainview, New York

For Respondent Richard A. Miller:

Steven A. Samide, Esq.
Mintz & Gold
New York City, New York

CASE INFORMATION

Statement of Claim filed on or about November 21, 1995

Claimants' Uniform Submission Agreement signed November 10, 1995

Respondents' Joint Statement of Answer filed February 22, 1996

Respondent Stratton Oakmont's Uniform Submission Agreement signed February 6, 1996

Respondent Richard A. Miller's Uniform Submission Agreement signed January 10, 1996

CASE SUMMARY

Claimant alleged breach of contract, violation of NASD rules, lack of suitability, breach of fiduciary duty, breach of duty to Claimants under the "know your customer" rule, unauthorized trading, violation of the Securities Exchange Act of 1934 § 10(b), violation of the Utah Code §§ 61-1-1 and 61-1-22, and breach of implied warranties under the agreement between Claimant and Respondent Stratton Oakmont, Inc.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of approximately \$2,595.00, plus interest (pre- and post-judgment), costs and attorney's fees. In addition, Claimant requested special damages as provided under Utah Code § 61-1-22(1)(b)(2) or, alternatively, punitive damages in the amount of \$5,000.00.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, and assessment of the costs of the arbitration against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Andrew S. Friedman did not file with NASD Dispute Resolution, Inc. a properly executed submission agreement, but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, is bound by the determination of the Arbitrator on all issues submitted.

Pursuant to an order entered by the United States District Court, Southern District of New York, dated January 29, 1997, all matters concerning Respondent Stratton Oakmont, Inc. were indefinitely stayed. Claimants chose to proceed against Respondents Andrew S. Friedman and Richard A. Miller, and chose not to proceed against Respondent Stratton Oakmont, Inc.

A hearing on the merits transpired on October 6, 1997. Claimants were present but Respondents Andrew S. Friedman and Richard A. Miller never appeared at the hearing. Upon the hearing's conclusion, Claimants requested permission from the Arbitrator to submit a subsequent affidavit supporting their claim for attorney's fees. Permission was granted. The Arbitrator withheld his final award pending receipt of the affidavit. However, no affidavit was ever received from Claimants.

On October 30, 1997, Claimants notified NASD Dispute Resolution, Inc. that they had settled with Respondent Richard A. Miller.

Claimants agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) This case constitutes an overt, knowing and intentional case of unauthorized trading and a

subsequent scheme or artifice to defraud by attempting to coerce and force Claimants to accept the unauthorized trade by threat of trading losses arising out of the unauthorized trade.

- 2) Sufficient evidence was presented to establish that the actual loss to Claimants by the actions of Respondents was \$2,595.00.
- 3) This case constitutes a case of clear and intentional fraud and deceit related to the knowing unauthorized transaction, and is an appropriate case for an award of punitive or other exemplary damages.
- 4) The Arbitrator finds that Utah law is applicable to this case as claimed in that all transactions were solicited in and completed within Utah.
- 5) Treble damages are allowed under the Utah Securities Act (Utah Code § 61-1-22) in lieu of or as a substitution for punitive damages when an intentional and knowingly intentional or reckless or wrongful act is committed in the sale of a security. This case factually meets the requirements of the Utah statutory provisions for treble damages. Accordingly, the total damage claim entered by claimants against Respondents is \$7,785.00.
- 6) While attorney's fees would normally be allowed under Utah law, no affidavit or other evidence of attorney fees was submitted and, therefore, the Arbitrator may not award attorney's fees.
- 7) Under Utah law, statutory interest runs on the total amount of the award at 12% simple annual interest, and is hereby awarded.
- 8) Claimants shall be entitled to reimbursement of any filing or other fees paid by them in this proceeding.
- 9) Claimants' claims against Respondent Richard R. Miller are dismissed in their entirety with prejudice.
- 10) Respondent Andrew S. Friedman shall pay Claimants the Award in the amount of \$7,785.00 plus 12% simple annual interest, and all filing and other fees paid by Claimants.
- 11) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	=	\$75.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Stratton Oakmont, Inc. was a party and the following fees were assessed:

Member Surcharge	=	\$100.00
Total Member Fees	=	\$100.00

Forum Fees and Assessments

The Arbitrator assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Arbitrator. The following fees are assessed:

1 Hearing session @ \$200/session	=	\$200.00
Hearing: October 6, 1997	1 session	
Total Forum Fees	=	\$200.00

The Arbitrator assessed \$200.00 of the forum fees jointly and severally to Respondents Andrew S. Friedman and Richard A. Miller.

Fee Summary

1. Claimants are jointly and severally charged with the following fees and costs:

Initial Filing Fee	=	\$75.00
Total Fees	=	\$75.00
Less Payments	=	\$(400.00)
Refund Due Claimants	=	\$(325.00)

2. Respondent Stratton Oakmont, Inc. is charged with the following fees and costs:

Member Fees	=	\$100.00
Total Fees	=	\$100.00

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Less Payments = \$(200.00)

Refund Due Respondent Stratton Oakmont, Inc. = \$(100.00)

3. Respondents Andrew S. Friedman and Richard A. Miller are charged jointly and severally with the following fees and costs:

Forum Fees = \$200.00

Total Fees = \$200.00

Less Payments = \$0.00

Balance Due NASD Dispute Resolution, Inc. = \$200.00

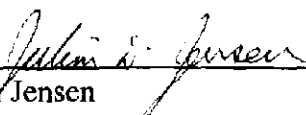
All balances are payable to NASD Dispute Resolution, Inc. and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

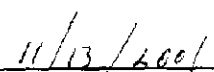
ARBITRATION PANEL

Julian Jensen

- Public Arbitrator

Arbitrator's Signature


Julian Jensen
Public Arbitrator


Signature Date

Date Served:

NOV 26 2001

Date of Service