

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Merrill McColl

96-00315

Name of Respondents

Stratton Oakmont, Inc.  
J. Paul Fallon

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 22, 1996, Claimant Merrill McColl ("Claimant"), who appeared Pro Se, alleged that Respondents J. Paul Fallon and Stratton Oakmont, Inc. encouraged Claimant to purchase unsuitable stocks and did not properly execute Claimant's buy/sell orders. Claimant specifically alleged that Respondents did not properly execute his buy and sell orders of Dual Star stocks. Claimant contended that Respondents misrepresented the risky nature of the stocks which they promoted and that the Respondents knowingly gave unsuitable investment advice. Claimant further contended that due to the wrongdoing of the Respondents, he suffered damages for which the Respondents should be held liable.

Respondents J. Paul Fallon and Stratton Oakmont, Inc., through their representative and outside counsel, Gregg Evangelist, of Ormsten & Evangelist, Jericho, NY, maintained that Claimant represented himself as a sophisticated investor and that Respondents recommended suitable investments based on financial information which Claimant provided. Respondents further maintained that a full disclosure was made of all stocks which Claimant purchased and that Claimant was fully informed of and aware of their speculative nature. Respondents contended that all trades which it executed on behalf of Claimant were fully authorized. Respondents further contended that they discharged their responsibilities in a professional and ethical manner and that all of Respondents' actions were well within the parameters of accepted brokerage procedure and all exchange and governmental regulations. Respondents asserted that they had committed no wrongdoing and requested that the claims against them be dismissed.

In a Reply to the Statement of Answer, Claimant reasserted that he was not an experienced investor and that Respondents gave him unsuitable investment advice by encouraging him to purchase an inordinate amount of speculative stocks. Claimant reiterated that the Respondents did not adequately disclose the nature of the investments which were promoted. Claimant further reiterated that Respondents improperly implemented his buy/sell orders of Dual Star, and that he is entitled to recover his losses.

**RELIEF REQUESTED**

Claimant Merrill McColl requested \$4,515.00 in actual damages.

Respondents J. Paul Fallon and Stratton Oakmont, Inc. requested that the claims of the Claimant be dismissed.

**AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Donald G. Hatt, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Merrill McColl on December 29, 1995, and by the Respondent J. Paul Fallon on March 4, 1996, but not by Stratton Oakmont, Inc. as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

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. Respondents J. Paul Fallon and Stratton Oakmont, Inc. are jointly and severally liable and shall pay to Claimant Merrill McColl, \$4,000.00 in actual damages.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Merrill McColl, shall be retained by the NASD, Inc. Respondents J. Paul Fallon and Stratton Oakmont, Inc. are jointly and severally liable and shall pay to the Claimant Merrill McColl, \$125.00 as reimbursement of the filing fee.

**AFFIRMATION**

STATE OF NEW YORK

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SS:

COUNTY OF ALBANY

I, DONALD G. HATT, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

Donald G. Hatt  
Signature of Arbitrator

DATE OF DECISION: June 20, 1996