

N.A.S.D. REGULATION AWARD

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Kern Gregory Rodeberg

96-00479

Name of Respondents

**Stratton Oakmont, Inc. (Bankrupt)
Richard Arthur Miller
Robert William Koch, II
Daniel Mark Porush**

REPRESENTATION

For claimant Kern Gregory Rodeberg ("claimant") appeared Mary K. Rodeberg, Esq. located in Atlanta, Georgia.

Respondent Stratton Oakmont, Inc. ("Stratton") filed a bankruptcy petition with the United States Bankruptcy Court for the Southern District of New York on January 24, 1997, thereby automatically staying further proceedings against it.

For respondent Richard Arthur Miller ("Miller"), appeared Jay Marc Israel, Esq. of the law firm of Wexler & Burkhart, P.C., located in Mitchel Field, New York and Steven G. Mintz of the law firm of Mintz & Gold located in New York City, New York.

For respondent Robert William Koch, II ("Koch"), appeared Steven G. Mintz of the law firm of Mintz & Gold located in New York City, New York. On May 29, 1997 which was after the hearing was conducted but before a final decision on the merits, respondent Robert William Koch filed for chapter 7 bankruptcy in the United States Bankruptcy Court Southern District of New York. Thus, claimant is enjoined from proceeding against Koch under Section 362 of the federal bankruptcy act.

For respondent Daniel Mark Porush ("Porush"), appeared Mark E. Gelfand, Esq. a sole practitioner located in Great Neck, New York.

CASE INFORMATION

Statement of Claim was filed January 31, 1996.

Claimant's Submission Agreement was signed on January 31, 1996.

A Joint Statement of Answer was filed by respondents' Stratton, Miller, Koch, and Porush on April 8, 1996. A Joint Amended Answer was filed by these respondents' on April 19, 1996.

Respondent Miller's Submission Agreement was signed on March 11, 1996.

Respondent Koch's Submission Agreement was signed on March 11, 1996.

Respondents Stratton and Porush's Submission Agreements were signed on May 1, 1996.

HEARING INFORMATION

Pre-hearing conferences:	December 10, 1996	-	1 session
	January 3, 1997	-	1 session
Hearing Dates/Sessions:	April 2, 1997	-	2 sessions
	April 3, 1997	-	2 sessions
	April 4, 1997	-	1 session
	April 23, 1997	-	2 sessions

The hearings were conducted under the auspices of NASD Regulation, Inc. and were held at locations in Atlanta, Georgia.

CASE SUMMARY

Claimant alleged that he is a resident of Atlanta, Georgia and had an account with respondent Stratton since August 1994. Claimant further alleged that respondent Koch was a senior vice president of Stratton, and respondent Porush was CEO and supervisor to Miller, who was a managing director of Stratton and also an agent and broker to claimant. Claimant went on to allege that, on October 26, 1994, pursuant to Miller's recommendation claimant authorized the purchase of 10,000 shares of Solomon Page Group, Ltd. ("SPG"), costing \$68,760.00, and issued a stop loss order if the shares dropped \$.25 per share and issued a sell order for the end of November 1994, regardless of stock performance. Claimant further alleged that Miller gave him the SPG prospectus dated October 20, 1994, but failed to include the supplement dated October 21, 1994, which announced the loss of SPG's largest client. Claimant asserted that, on November 1, 1994, Miller sent the prospectus supplement dated October 21, 1994, but that the purchase had already occurred, resulting in claimant's loss of \$68,760.00. Claimant further asserted that he had made numerous requests to respondent to sell the SPG stocks, and made numerous attempts to settle his claim, yet respondents' letter, dated August 23, 1995, failed to address the issues raised by claimant, and instead addressed the issue of unsuitability, which was not raised by claimant.

Claimant also asserted that Miller failed to execute claimant's stop loss order, claimant's order to sell by the end of November, 1994, and that all respondents failed to execute claimant's

orders to sell. Claimant contended that he had repeatedly requested statements on his SPG holdings, and the location of SPG's listing in the newspaper, yet Miller had "mostly ignored" these requests. Claimant also contended that Koch, Porush, and Stratton breached their duty to claimant by failing to supervise Miller. Claimant maintained that Miller had been involved in similar cases, and had been found liable to other customers.

Respondents maintained that the claimant was a sophisticated investor with a net worth of \$1,000,000.00. Respondents further maintained that claimant told Miller that his investment objectives were growth and speculation, and that claimant has profited from his previous purchases through Stratton. Respondents alleged that no misrepresentation of SPG stocks was made and that Miller disclosed SPG's loss of a major client verbally, and in the initial prospectus, or the supplemental prospectus dated October 21, 1994, which claimant received on November 1, 1994, and that claimant ratified his purchase by paying for the trade on November 6, 1994. Respondents maintained that between October 26, 1994, and November 30, 1994, SPG stock declined from approximately \$6.87 per share to \$3.75 per share, reducing claimant's holdings from \$68,750.00 to \$37,500.00.

Respondents further maintained that Stratton could not, and would not, have accepted a "stop loss" order, much less for a decrease in value of \$.25, and that claimant fabricated both the "stop- loss order" and the order to sell the stock on November 30, 1994, in an effort to recoup his losses. Respondents also maintained that between Thursday, November 10, 1994, and Friday, November 11, 1994, SPG stocks dropped from between \$6 1/2 to \$6 3/4 to around \$5 1/2 to \$6 9/16, yet when Miller informed claimant on Friday, of the drop, claimant told him to hold his position, despite the stock having dropped more than claimant's claimed "loss limit". Respondents further maintained that the following Sunday, November 13, claimant's facsimile to Miller stating that he had no idea where the stock was trading was false. Respondents also maintained that, on November 14, 1994, Miller left messages for claimant to call him back, in an effort to update claimant on the stocks, but claimant did not return the calls. Respondents contended that, between November 15, 1994, and November 30, 1994, Miller spoke with claimant several times informing him of the current stock value, but claimant told Miller that he would hold the stock for another 60 days before reassessing his position. Respondents also contended that, from December 1994 to February 1995, Miller left several messages for claimant, but claimant never called back or communicated with Stratton in any way. Respondents alleged that, between March of 1995, and July 1995, claimant sent several letters to Miller and Koch demanding money, and respondents made no payments, but did attempt to contact claimant to discuss the situation, but claimant never took or returned those calls. Respondents further alleged that, claimant's claim that he issued numerous requests to sell the stocks is false. Respondents also alleged that, on August 28, 1996, claimant wrote to Porush, the CEO at Stratton, and for the first time, issued an order to sell the SPG stock, which was promptly executed with the proceeds going to claimant.

Respondents maintained that all respondents acted appropriately, and that Miller was properly supervised. Respondents further maintained that, claimant's claims are barred because

claimant's fail to state a claim upon which relief can be granted, claimant directed, authorized, and consented to the transactions at issue; claimant assumed the risk of loss; claimant failed to exercise diligence; claimant was contributory negligence; claimant has waived any claims against respondents and is barred by the doctrines of waiver and estoppel from asserting those claims; claimant failed to mitigate his damages; respondents acted in good faith at all times; the statute of limitations; claimant has no private right of action; and that claimant's claim against Koch and Porush, who had no involvement, are patently frivolous, and are asserted in bad faith.

RELIEF REQUESTED

Claimant requested compensatory damages in the sum of \$221,937.00 which includes actual damages, reasonable attorneys' fees. Claimant further requested punitive damages in the amount of \$293,000.00 plus such other relief as the panel deems just and proper.

Respondents' requested that all claimants claims against them be dismissed and that they be awarded all of their costs and expenses, including reasonable attorneys' fees and forum fees, in defending against the claims.

OTHER ISSUES CONSIDERED & DECIDED

The parties 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 originals remain on file with NASD Regulation.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution as follows:

1. Respondents Richard Arthur Miller and Daniel Mark Porush be and hereby are jointly and severally liable and shall pay to claimant Kern Gregory Rodeburg \$35,127.50 in compensatory damages.
2. Respondents Richard Arthur Miller and Daniel Mark Porush be and hereby are jointly and severally liable and shall pay to claimant Kern Gregory Rodeburg simple interest at 12% per annum from April 23, 1997 until date of payment.
3. Respondents Richard Arthur Miller and Daniel Mark Porush be and hereby are jointly and severally liable and shall pay to claimant Kern Gregory Rodeburg 25,085.00 in attorney's fees.
4. The claims of claimant Kern Gregory Rodeburg against respondent Robert William Koch, II are stayed pursuant to his bankruptcy filing.
5. All other requests for relief are denied.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$250.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:

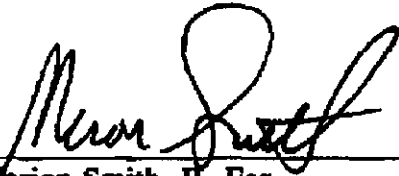
2 pre-hearing conferences x \$300.00	=	\$ 600.00
7 hearing sessions x \$1,000.00	=	\$7,000.00
less hearing session deposit \$1,000.00	=	<u>\$1,000.00</u>
Total outstanding	=	\$6,600.00

Respondents Richard Arthur Miller and Daniel Mark Porush be and hereby are jointly and severally liable for \$7,825.00 in forum fees. Therefore, respondents Richard Arthur Miller and Daniel Mark Porush shall pay to claimant Kern Gregory Rodeburg \$1,250.00 as reimbursement of the hearing session deposit and filing fee. In addition, respondents Richard Arthur Miller and Daniel Mark Porush shall pay to NASD Regulation \$6,600.00 in satisfaction of outstanding forum fees.

Fees are payable to the NASD Regulation, Inc.

ARBITRATORS' SIGNATURE

I, Marion Smith, II, Esq., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.



Marion Smith, II, Esq.
Public - Chairperson

I, Julia S. Levy, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Julia S. Levy
Public Arbitrator

I, Edwin Barclay Coggan, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Edwin Barclay Coggan
Industry Arbitrator

Date of Decision: August 29, 1997

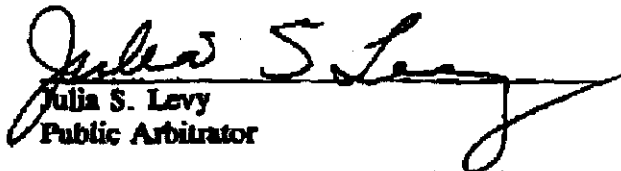
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ARBITRATORS' SIGNATURE

I, Marion Smith, II, Esq., do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Marion Smith, II, Esq.
Public - Chairperson

I, Julia S. Levy, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.


Julia S. Levy
Public Arbitrator

I, Edwin Barclay Coggan, do hereby swear or affirm, that I am the individual described herein, and who executed this instrument which is my oath and award.

Edwin Barclay Coggan
Industry Arbitrator

Date of Decision: August 29, 1997

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Marion Smith, II, Esq.
Public - Chairperson

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Julia S. Levy
Public Arbitrator

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Edwin Barclay Coggan
Industry Arbitrator

Date of Decision: August 29, 1997