

NATIONAL ASSOCIATION  
OF SECURITIES DEALERS, INC.  
**RECEIVED**  
JAN 21 1997  
ARBITRATION-CHICAGO

**AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Burnell Moliere,

Claimant,

and

No. 96-00945

Stratton Oakmont, Inc.,

Respondent.

**REPRESENTATION OF PARTIES**

Claimant Burnell Moliere ("Claimant") was represented at the hearing by Randall Moore.

Respondent Stratton Oakmont, Inc. ("Respondent") failed to appear at the hearing. Respondent was previously represented by Gregg R. Evangelist, Esquire of Ormsten & Evangelist, located in Jericho, New York. Gregg R. Evangelist withdrew as counsel for Respondent prior to the hearing.

**CASE INFORMATION**

Claimant Burnell Moliere's Statement of Claim was filed on or about March 4, 1996. Claimant Burnell Moliere's Submission Agreement was signed on February 29, 1996.

Respondent Stratton Oakmont, Inc.'s Statement of Answer was filed on or about May 22, 1996. Respondent Stratton Oakmont, Inc.'s Submission Agreement was signed on May 15, 1996 by Daniel M. Porush, President of Stratton Oakmont, Inc.

**HEARING INFORMATION**

No pre-hearing conferences were held.

The hearing was held on December 13, 1996 for one (1) session.

The hearing was held in New Orleans, Louisiana.

### **CASE SUMMARY**

Claimant Burnell Moliere ("Claimant") alleged that Respondent Stratton Oakmont, Inc. engaged in fraudulent sales practices and manipulated the market price of Nova Capitol stock. Claimant asserted that based on Respondent's recommendations he purchased 6,500 shares of Nova Capitol stock at \$8.00 per share for a total purchase price of \$52,000.00 in August of 1990. Claimant alleged that shortly after this purchase, the price of Nova Capitol stock increased to approximately \$10.00 per share. Claimant maintained that he subsequently contacted Respondent and requested that this stock be sold, but Respondent stated that this stock would increase to \$14.00 or \$15.00 per share within weeks and refused to execute Claimant's request to sell. Claimant contended that the price per share began to drop and the 6,500 shares were finally sold in February of 1992 at \$2.875 per share for a total sale price of \$18,687.50. Claimant claimed a net loss of \$33,312.50, which was offset by proceeds from a disgorgement fund in the amount of \$9,194.69, resulting in a \$24,117.81 loss after reimbursement.

Respondent denied the allegations set forth in the Statement of Claim. Respondent set forth the following affirmative defenses: (1) the Statement of Claim fails to state a cause of action upon which relief can be granted; (2) the claims are barred in whole or in part pursuant to an agreement between the parties; (3) New York law applies to this proceeding pursuant to the customer agreement; (4) all risks inherent in investing in the securities markets and in the investments Claimant purchased were fully explained to Claimant and he knowingly, willingly, and voluntarily assumed the risks of investing in the market; (5) Respondent discharged its responsibilities in a professional and ethical manner and its actions were within the parameters of accepted brokerage procedure and all exchange and governmental regulations; (6) Claimant is barred from recovery since he has approved, authorized, and ratified Respondent's actions; (7) Claimant is barred from recovery due to his greed, negligence, comparative fault, lack of diligence and failure to conduct his financial affairs reasonably and responsibly; (8) Claimant's alleged damages have no causal relationship with any act committed by or legally attributed to Respondent; (9) Claimant's alleged wrongdoing on the part of Respondent was not the proximate cause of the losses for which Claimant seeks recovery; and (10) Claimant is limited to actual damages.

### **RELIEF REQUESTED**

Claimant Burnell Moliere requested an award in the amount of \$24,117.81 for compensatory damages.

Respondent Stratton Oakmont, Inc. requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs and attorney fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made on behalf of Claimant Burnell Moliere, the undersigned arbitrator has determined that Respondent Stratton Oakmont, Inc. had been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrator has also 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.

### **AWARD**

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

1. That Respondent Stratton Oakmont, Inc. is liable for, and shall pay to Claimant Burnell Moliere the sum of Twenty Four Thousand One Hundred and Seventeen Dollars and Eighty One Cents (\$24,117.81) for compensatory damages, plus an award of interest at the Louisiana legal rate which shall begin to accrue on March 4, 1996 and shall continue to accrue until the date this Award is paid in full;
2. That Respondent Stratton Oakmont, Inc. is liable for, and shall reimburse Claimant Burnell Moliere for his hearing session deposit in the amount of Three Hundred Dollars and No Cents (\$300.00); and
3. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$300 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there was one (1) hearing session x \$300 = \$300 in forum fees. Pursuant to §10332(b) of 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. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$100 and shall retain as forum fees the hearing session deposit in the amount of \$300 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant Burnell Moliere.

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Respondent Stratton Oakmont, Inc. is liable for, and shall pay the member surcharge fee in the amount of \$200 pursuant to §10333 of the Code.

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

S. David Holladay  
S. David Holladay  
Chairperson  
Public Arbitrator

1/13/97  
Dated:

For NASD Regulation use only:

Date Award served on the parties: January 21, 1997