

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimants

Peter and Jeanne M. Celiberti

96-01053

Name of Respondents

Daniel Porush
James Kelly

REPRESENTATION

Claimants Peter and Jeanne M. Celiberti ("Claimants") were represented by Timothy J. Dennin, Esq., New York, NY.

Respondent Daniel Porush ("Porush") was represented by Mark E. Gelfand, Esq., Great Neck, NY.

Respondent James Kelly did not appear.

CASE INFORMATION

The Statement of Claim was filed March 8, 1996.

Claimants' Uniform Submission Agreement was signed February 9, 1996.

The Joint Statement of Answer of Porush and Kelly (collectively "Respondents") was filed May 29, 1996.

Porush's Uniform Submission Agreement was signed April 18, 1996.

Kelly did not submit an executed agreement to arbitrate.

HEARING INFORMATION

Hearing Date/Sessions: May 20, 1997/two sessions

Hearing Location: Hyatt Hotel
Baltimore, MD

CASE SUMMARY

Claimants alleged that Respondents, employed by Stratton Oakmont, made material misrepresentations to Claimants to induce Claimants to authorize transactions which resulted in Stratton Oakmont being able to manipulate the market in Stratton Stocks for their own pecuniary benefits and to the extreme detriment of Claimants. In addition, Claimants alleged that Respondents made unauthorized trades in Claimants' account. Claimants alleged that Respondents' actions resulted in fraud and gross negligence of their account through a series of misrepresentations and omissions of material facts, which Claimants relied upon. As a result, Claimants alleged that they had a portfolio concentrated in unsuitably risky securities.

Claimants alleged that Respondents refused to follow Claimants' instructions to sell securities and send the proceeds to Claimant. Claimants alleged that Respondents had been informed that Claimants were risk adverse and emphasized that their objective was growth with safety as Mrs. Celiberti had been out of work for a year due to illness. Claimants alleged that Respondents failed to inform Claimants of the risks of Initial Public Offerings ("IPOs") and penny stocks; rather assuring them of substantial profits with very little risk. Claimants alleged that Respondents used a technique to get customers such as Claimants lulled into a sense of security by purchasing a well known stock such as Dr. Pepper quickly followed by such speculative and unsuitable stock as Select Media, United Leisure, Master Glaziers Karate International, Inc., and Dual Star. Claimants alleged that when they tried to call Respondents regarding the unauthorized trades or the losses appearing on their statements, Respondents refused to return their calls. Claimants alleged that Respondents violated the antifraud provisions of the 1933 and 1934 federal securities Acts; SEC Rule 10b-5, RICO, common law fraud, the applicable Blue Sky Laws and the regulations promulgated thereunder. In addition, Claimants alleged that Respondents actions resulted in negligence, breach of fiduciary duty, and breach of contract.

Respondents denied the allegations as asserted in the Statement of Claim. Respondents maintained that Claimants are sophisticated investors who have traded in speculative securities at Stratton Oakmont and other brokerage firms. Respondents maintained that Claimants represented that they had a net worth of approximately \$500,000.00 and an annual income of approximately \$100,000.00. In addition, Respondents maintained that Claimants stated that their investment objective was to invest in speculative activity and growth stocks. Respondents maintained that Claimants were sent a letter, immediately after they opened their account, which clearly disclosed the nature of the securities in which Stratton Oakmont dealt. Respondents further maintained that Claimants account was managed in conformity with applicable laws, rules and regulations and all monthly statements and confirmations of transactions clearly stated when Stratton Oakmont made a market in such securities. Respondents maintained that when Claimants purchased securities during the initial public offerings, the clearing agents sent Claimants a prospectus for each company which detailed the financial and other information relating to the company, as well as a description of the securities being sold and the risk factors associated. Respondents raised the defenses of the applicable statute of limitations under the federal securities laws; estoppel; ratification; waiver; failure to mitigate; and a lack of fiduciary duty. Respondents maintained that any losses suffered by Claimants were the result of Claimants' own decisions and actions as well as fluctuations of the market.

RELIEF REQUESTED

Claimants requested damages in the amount of \$223,000.00; pre-award interest; punitive damages; and the costs and expenses of this arbitration including reasonable attorney's fees.

Respondents requested that the Statement of Claim be dismissed with prejudice and the costs of this arbitration be assessed to Claimants.

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 the NASD.

The panel determined that pursuant to the by-laws of the NASD and Rule 10301 of the NASD Regulation Code of Arbitration Procedure, Respondent Kelly is required to submit to this arbitration notwithstanding his failure to file an executed agreement to arbitrate. Therefore, Respondent Kelly is bound by the panel's rulings and determinations.

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. That Respondents Daniel Porush and James Kelly are jointly and severally liable to and shall pay to Claimants damages in the amount of \$215,000.00.
2. That Respondents Daniel Porush and James Kelly are jointly and severally liable to and shall reimburse to Claimants \$750.00 for the hearing session deposit previously submitted to the NASD Regulation.
3. That the claim for punitive damages is denied.
4. That each party shall pay its own costs and expenses, including attorney's fees, with the exception of the Forum Fees as discussed below.
5. That any and all other relief, not specifically addressed herein, is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions x \$750.00 = \$1,500.00


Forum Fees are assessed to Respondents Daniel Porush and James Kelly, jointly and severally. Respondents shall receive credit for the \$750.00 hearing session deposit previously submitted by Claimants to the NASD Regulation and ordered to be reimbursed to Claimants. Therefore, Respondents have a net assessment due to the NASD Regulation of \$750.00.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

DATE

CONCURRING ARBITRATORS' SIGNATURES

6/18/97


Sandra Lee Dolan, Presiding
Public Arbitrator

Thomas B. Corey
Public Arbitrator

William A. Healy
Industry Arbitrator

Date Decision Served by NASD Regulation: June 19, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

Sandra Lee Dolan, Presiding
Public Arbitrator

5/29/97

Thomas B. Corey
Thomas B. Corey
Public Arbitrator

William A. Healy
Industry Arbitrator

Date Decision Served by NASD Regulation:

June 19, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

Sandra Lee Dolan, Presiding
Public Arbitrator

Thomas B. Corey
Public Arbitrator

5/28/97

William A. Healy
William A. Healy
Industry Arbitrator

Date Decision Served by NASD Regulation:

June 19, 1997