

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

James W. and Viola A. Cope

96-01596

Name of Respondents

Stratton Oakmont, Inc.
Biltmore Securities, Inc.
J.B. Oxford & Company

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 12, 1996, Claimants James W. and Viola A. Cope ("Claimants"), who appeared Pro Se, alleged that they held a joint account with Respondent Stratton Oakmont, Inc. and that its representative, David J. Singleton, sold J. Cope 150 shares of Quaker Oats Co. ("Quaker") on May 3, 1995 which was cleared through Respondent J.B. Oxford & Company ("JBO"). Claimants further alleged that on October 2, 1995, J. Cope was contacted by Robert Denton ("Denton") on behalf of Respondent Biltmore Securities, Inc. ("Biltmore"), the firm then holding the Quaker shares, who recommended that he sell Quaker and purchase shares of IDM Environmental Corporation ("IDM") with the proceeds which he agreed to do. Claimants also alleged that in mid-October 1995, Denton recommended the purchase of \$10,000.00 to \$20,000.00 of a new issue called UTS-Hemispherex Biopharma, Inc. ("UTS") of which he eventually agreed to purchase \$5,000.00 at \$3.50 a share. Claimants contended that they received only 500 shares totaling \$1,750.00. Claimants also contended that on November 2, 1995, the day of UTS' initial offering, Denton again called recommending additional purchases so J. Cope authorized 1,000 shares at \$7 3/8 per share. Claimants asserted that they received a confirmation for 1,000 shares at \$8.375 per share and that after unsuccessfully objecting to the price, they wanted the transaction rescinded and refused to pay for the 1,000 shares. Claimants further asserted that on November 9, 1995 they received a prospectus for UTS indicating that on November 3, 1995 the US District Court of the Eastern District of Pennsylvania had preliminarily enjoined UTS from dispersing proceeds from the public offering. Claimants also asserted that on November 13, and 15, 1995, Biltmore without authorization sold 1000 shares of UTS and 500 shares of IDM for a loss. Claimants alleged that as a result of the above, they have suffered a loss for which the Respondents should be held liable.

Respondent Biltmore Securities, Inc. through its representative, Peri Erlanger, Esq., of the law firm of Bernstein & Wasserman, LLP, located in New York, NY, denied all allegations of unauthorized trading, unfair treatment and withholding information. Respondent maintained that on September 27, 1995, J. Cope purchased 1,000 shares of IDM with proceeds from selling Quaker. Respondent further maintained that on November 2, 1995, Denton sold 500 shares of UTS to Claimants and had not guaranteed any specified amount as this was in IPO. Respondent also maintained that on November 2, 1995, pursuant to J. Cope's request, a preliminary prospectus was sent overnight to him along with a 10b-6 disclosure letter. Respondent contended that on November 2, 1995, J. Cope place a market order for 1,000 shares of UTS which was executed at \$8.3750. Respondent further contended that Claimants failed to pay for the 1,000 shares of UTS bought on November 2, 1995, so on November 10, 1995, after giving Claimants an opportunity to pay, it sold 1,000 units of UTS and 500 shares of IDM to cover the account debit. Respondent also contended that as a result of the above, it should not be held liable.

Respondents Stratton Oakmont, Inc. and J.B. Oxford & Co. through their representative, Gregg R. Evangelist, Esq., of counsel for the law firm of Ormsten & Evangelist, located in Jericho, NY, maintained that the transactions in dispute were effected by Biltmore. Respondents further maintained that the Claimants have not complained about the Quaker transaction, and in any event, it was conducted in accordance with all applicable laws. Respondents also maintained that JBO acted solely as a clearing agent for the transactions, therefore, all claims against should be dismissed. Respondents contended that as a matter of law, the clearing agent cannot be held liable for the claims of the Claimants.

RELIEF REQUESTED

Claimants James W. and Viola A. Cope requested \$3,717.50 in actual damages plus expenses and interest.

Respondents Stratton Oakmont, Inc., Biltmore Securities, Inc. and J.B. Oxford & Company requested that the claims be dismissed in their entirety.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joseph B. Russell, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on May 15, 1996, and by Respondents Stratton Oakmont, Inc. and J.B. Oxford & Company on June 18, 1996, and not by Respondent Biltmore Securities, Inc. as is 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. The claims of the Claimants James W. and Viola A. Cope against Respondents Stratton Oakmont, Inc. and J.B. Oxford & Company are dismissed in their entirety.
2. The Respondent Biltmore Securities, Inc. is liable and shall pay to the Claimants James W. and Viola A. Cope \$3,350.00 in actual damages.
3. The Respondent Biltmore Securities, Inc. is liable and shall pay to the Claimants James W. and Viola A. Cope simple interest at the rate of 9% per annum from November 2, 1995 to date of payment of the award.
4. The parties shall bear their respective costs.
5. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondent Biltmore Securities, Inc. is liable and shall pay to the Claimants James W. and Viola A. Cope \$125.00 as reimbursement of the filing fee.

AFFIRMATION

I, JOSEPH B. RUSSELL, ESQ., do hereby swear or affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed his instrument, which is my award.



Signature of Arbitrator

DATE OF DECISION: