

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Robert W. Davidson

96-01681

Name of Respondent

Paul Sewcharran

REPRESENTATION

Claimant Robert W. Davidson ("Claimant") was represented by Gary C. Adler, Esq., O Connor & Hannan, Washington, D.C.

Respondent Paul Sewcharran ("Respondent") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed on April 18, 1996.

Claimant's Uniform Submission Agreement was signed June 6, 1996.

Respondent's Statement of Answer was filed August 21, 1996.

Respondent's Uniform Submission Agreement was signed on August 9, 1996.

HEARING INFORMATION

Hearing Date/Sessions: February 13, 1997/two sessions

Hearing Location: NASD Regulation Headquarters
Washington, D.C.

CASE SUMMARY

Claimant alleged, among other things, that prior to Claimant deciding to purchase securities through Respondent and his employer, Stratton Oakmont, Claimant received Stratton Oakmont materials by mail which substantially misrepresented its track record. Claimant alleged that the Stratton Oakmont materials touted its success as a marketmaker in the stock of Octagon. Claimant alleged that he relied on the Octagon representations in deciding to do business with Stratton Oakmont and Respondent. Claimant alleged that these materials fraudulently failed to disclose to Claimant that, in fact, the market price of Octagon had plummeted since the initial public offering, and that Octagon itself had been the subject of a regulatory inquiry.

Claimant alleged that Respondent induced him to authorize the purchase of 5,000 shares of Select Media Communications, Inc. ("SMTV") on February 3, 1995 and an additional 7,000 shares of SMTV on

February 15, 1995. Claimant alleged that on February 15, 1995, Claimant spoke by telephone with Respondent and told him that if the market price of the SMTV stock fell to \$6, or any price below \$6, Respondent was to sell the SMTV without further authorization from Claimant. Claimant alleged that he confirmed this in a telecopied letter of the same date to Respondent. Claimant alleged that Respondent admitted receiving this letter no later than February 17, 1995. Claimant alleged that on February 17, 1995, the stock price fell to \$5.75, which was the close for that day. Claimant alleged that Respondent ignored Claimant's verbal and written instructions to sell the stock since it was below \$6. Claimant alleged that on February 21, 1995, the stock rose to 6 and 1/8th. Claimant alleged that Respondent, in an effort to avoid responsibility for failure to sell the stock pursuant to Claimant's prior instructions, was indefinite with Claimant during a telephone conversation on February 21, 1995, as to whether he had ever received Claimant's February 15, 1995 facsimile. Claimant alleged that in order to be certain that there was no misunderstanding as to his instructions, Claimant telecopied to Respondent on February 21, 1995 an additional copy of the February 15 letter of instructions. Claimant alleged that the SMTV stock again fell to below \$6. Claimant alleged, however, Respondent continued to ignore Claimant's instructions to sell the stock. Claimant alleged that he attempted to reach Respondent on several occasions, and Respondent failed to respond to Claimant's inquiries. Claimant alleged that Respondent actually understood Claimant's instructions to sell the SMTV stock at \$6 or at any price below that in order to get Claimant out of the stock at the highest possible level. Claimant alleged that Respondent's willful and knowing failure to follow Claimant's instructions caused Claimant substantial damage because the SMTV stock continued to fall in price. Claimant alleged that the last statement received by Claimant indicated that the per share price of SMTV was \$.14 and that the total value of the stock was \$1,680.00 as of December 31, 1996. Moreover, Claimant alleged that there is no market for the stock since it has not traded since the summer of 1995.

Respondent denied the allegations of wrong-doing as asserted in the Statement of Claim. Respondent maintained that he was the broker at Stratton Oakmont assigned Claimant's account. Respondent maintained that Claimant never informed Respondent that he was not suitable for, or interested in, speculative securities. To the contrary, Respondent maintained that the Claimant expressed interest in speculative securities and informed Respondent that he had traded in speculative securities previously. In addition, Respondent maintained that the SMTV was suitable as Claimant had a portfolio in excess of \$500,000.00 and had income in excess of \$100,000.

Respondent maintained that the price of SMTV slid through \$6.00 per share, making it impossible to sell out Claimant's portfolio at that price. Respondent maintained that he made no fewer than four telephone calls to Claimant when the price of the stock dropped below \$6.00, in order to obtain specific instructions; but those telephone calls were not returned by Claimant for four days. Respondent maintained that when telephone contact was made four days later, the price was \$5.4375 per share. Respondent maintained that Claimant was specifically offered an opportunity to sell at that price, but Claimant refused. Respondent maintained that Stratton Oakmont was then suspended from trading for one month, but when trading resumed, Claimant had an opportunity to sell at \$4.4375 and still Claimant refused. Respondent maintained that it was impossible to follow Claimant's instructions and in any event claimant took no action to mitigate his damages.

RELIEF REQUESTED

Claimant requested damages, amended at hearing, of \$156,867.00.

Respondent requested that the Statement of Claim be dismissed and the costs and expenses of this arbitration be assessed to Claimant.

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 considered Respondent's Request the Denial of Jurisdiction and for Adjournment of the Hearing due to the bankruptcy proceedings of a necessary party, Stratton Oakmont, and Claimant's Response thereto, and denied the Request.

The panel confirmed that the hearing and award as to Respondent Sewcharran is filed without prejudice to any rights the Claimant may have against Stratton Oakmont, Inc.

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 Respondent is liable to and shall pay to Claimant \$10,000.00.
2. That each party shall bear its own costs and expenses, with the exception of the Forum Fees as specified below.
3. That any and all relief not specifically addressed herein is denied.

FORUM FEES

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

2 sessions x \$500.00 = \$1,000.00

Forum Fees are assessed to Claimant at \$500.00 and to Respondent at \$500.00. Claimant is to receive credit for the \$500.00 hearing session deposit previously submitted to the NASD Regulation, leaving Claimant with no further assessment due.

Respondent has a net assesement due of \$500.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

March 5, 1997

Herbert B. Cohn

Herbert B. Cohn, Chairman
Public Arbitrator

Larry J. Murphy
Public Arbitrator

John B. Nahan
Industry Arbitrator

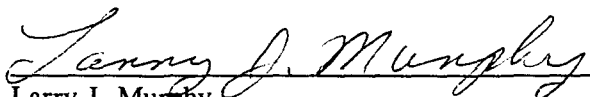
Date Decision Served by NASD Regulation: March 12, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

Herbert B. Cohn, Chairman
Public Arbitrator

3-4-97



Larry J. Murphy
Public Arbitrator

John B. Nahan
Industry Arbitrator

Date Decision Served by NASD Regulation: March 12, 1997

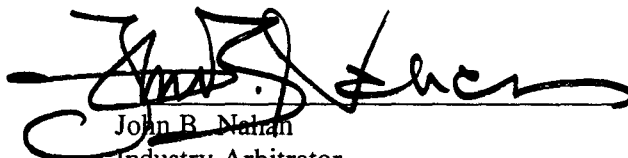
DATE

CONCURRING ARBITRATORS' SIGNATURES

Herbert B. Cohn, Chairman
Public Arbitrator

Larry J. Murphy
Public Arbitrator

Mar. 3^d 1997



John B. Nahan
Industry Arbitrator

Date Decision Served by NASD Regulation: March 12, 1997