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AWARD

NASD Regulation, Incorporated Office of Dispute Resolution

In the Matter of Arbitration Between

Joseph Arcangeli,

Claimant,

and

No. 96-02432

Stratton Oakmont, Inc., Joshua Shapiro,
Select Media Communications, Jordan Belfort,
Mark Daniel Porush, Patrick Hayes, and
Mitch J. Gutkowski,

Respondents.

REPRESENTATION OF PARTIES

Claimant, Joseph Arcangeli ("Claimant"), was represented by Louie Quijano, Ph.D of Public Investors Arbitrators, Ltd., located in Los Angeles, California.

Respondents Stratton Oakmont, Inc. ("Stratton"), Joshua Shapiro ("Mr. Shapiro"), Jordan Belfort ("Mr. Belfort"), Mark Daniel Porush ("Mr. Porush"), and Patrick Hayes ("Mr. Hayes") were represented in pleadings by Bradley M. Whalen, Esquire of Doyle, Rider, Restrepo, Harvin & Robbins, L.L.P., located in Houston, Texas. Thereafter, Stratton was not represented, Mr. Shapiro was not represented, Mr. Belfort was represented by Franklin D. Ormsten, Esquire of Ormsten & Evangelist, located in Jericho, New York, Mr. Porush was represented by Mark E. Gelfand, Esquire, located in Great Neck, New York, and Mr. Hayes was represented pro se.

Respondents Select Media Communications ("Select") and Mitch J. Gutkowski ("Mr. Gutkowski") were not represented in this matter.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about June 7, 1996. Claimant's Amended Statement of Claim was filed on or about October 9, 1996.

Claimant's Submission Agreement was signed on July 22, 1996.

Stratton and Mr. Shapiro's Motion to Dismiss and Statement of Answer was filed on or about September 23, 1996. Stratton, Mr. Shapiro, Mr. Porush, Mr. Belfort, and Mr. Hayes' Statement of Answer to Claimant's Amended Statement of Claim was filed on or about October 29, 1996.

Respondents, Stratton, Mr. Shapiro, Mr. Belfort, Mr. Porush, Mr. Hayes, Select, and Mr. Gutkowski, did not submit properly executed submission agreements.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on August 13, 1997 for two (2) sessions.

The hearing was held in Houston, Texas.

CASE SUMMARY

Claimant brought this action to recover the loss of his investment allegedly resulting from the acts of respondent Mr. Shapiro, an employee of respondent Stratton at all relevant times, and Mr. Belfort, Mr. Porush, and Mr. Hayes, respondent Stratton's executive officers and employees at all relevant times. Claimant also brought this action against respondent Select and its President, Mr. Gutkowski. According to Claimant, in or about December of 1994 Mr. Shapiro cold called him and, through a script that was written by Stratton and ratified by its named officers in this claim, attempted to induce Claimant into buying shares. Claimant reported that in or about January of 1995 he finally agreed to invest with Stratton and advised Mr. Shapiro that he, Claimant, was investing his life savings. Claimant stated that Mr. Shapiro assured him that the principal would be guarded with conservative investments and that Mr. Shapiro would only advise him of what to invest in. On or about January 1995, according to Claimant, Mr. Shapiro called him and vehemently advised him that stock issues entitled Dualstar Technologies Corporation and Dr. Pepper-7-Up Companies Incorporated were doing very good and to invest his money, \$73,000.00, in these stocks, which Claimant did. Claimant further stated that between January 5, 1995 and March 1995, Mr. Shapiro called him and recommended investing in Select, but Mr. Shapiro never sent Claimant a prospectus or disclosed to Claimant that Select was a penny stock and that Stratton was a market maker for Select. Claimant asserted that he called Mr. Shapiro and instructed him to stop buying Select stock because he was losing money, but Mr. Shapiro would tell Claimant that Select stock would get better the next day. Claimant asserted the following causes of action: (1) misrepresentation of material facts with intentional failure to disclose material facts; (2) suitability; (3) churning; (4) breach of contract; (5) breach of fiduciary duty; (6) failure to supervise and control; (7) fraud, deceit with manipulative schemes, devices; (8) conspiracy and complicity to commit fraud in violation of the civil R.I.C.O. and securities R.I.C.O. acts; and (9) professional negligence.

To the extent that Claimant alleged any wrongdoing by respondents Stratton, Mr. Shapiro, Mr. Porush Mr. Belfort, and Mr. Hayes, said respondents denied such allegations. Respondents Stratton, Mr. Shapiro, Mr. Porush Mr. Belfort, and Mr. Hayes stated that the Statement of Claim did not fairly and adequately advise them of the claims brought against them, and the factual support for those claims. They also stated that Claimant had also failed to plead fraud with the requisite specificity. Respondents Stratton, Mr. Shapiro, Mr. Porush Mr. Belfort, and Mr. Hayes also asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested an award for: compensatory damages of \$73,000.00; treble damages, totaling \$219,000.00; and punitive damages of \$208,000.00.

Respondents Stratton, Mr. Shapiro, Mr. Porush Mr. Belfort, and Mr. Hayes requested that the claims asserted against them be denied and that Claimant be required to file a Statement of Claim that would give said respondents fair notice.

OTHER ISSUES CONSIDERED AND DECIDED

All claims in this matter asserted against Stratton Oakmont, Incorporated were indefinitely stayed pursuant to *Securities Investor Protection Corp. v. Stratton Oakmont, Inc.*, No. 97 Civ 0592 (S.D.N.Y. Jan. 29, 1997) (order mandating bankruptcy protection, including that all proceedings against Stratton Oakmont, Incorporated that was or could have been commenced before the commencement of this action be stayed).

Pursuant to Claimant's written request dated February 6, 1997, respondents Select Media Communications and Mitch J. Gurkowski were dismissed with prejudice.

Upon review of the file and the representations made by/on behalf of Claimant, the undersigned arbitrators have determined that respondent Joshua Shapiro has been properly served with the Statement of Claim pursuant to §§ 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that respondent Joshua Shapiro had received due notice of the hearing as required under § 10318 of the Code.

Respondents Joshua Shapiro, Jordan Belfort, Mark Daniel Porush, and Patrick Hayes did not file with NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration, but are required to submit to arbitration pursuant to § 10301 of the Code and having answered the claim are bound by the determination of the arbitration panel on all issues submitted.

Prior to the hearing in this matter, respondent Jordan Belfort filed an emergency motion to dismiss.

On August 5, 1997, the panel of arbitrators denied this motion.

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 original(s) remain on file with the NASD Regulation, Incorporated Office of Dispute Resolution.

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. Respondent Joshua Shapiro is liable for and shall pay claimant Joseph Arcangeli compensatory damages of \$73,000.00;
2. 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 \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were two hearing sessions x \$750 = \$1,500 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (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, the NASD Regulation, Incorporated Office of Dispute Resolution shall retain the non-refundable filing fee of \$200 and shall retain as forum fees the hearing session deposit of \$750 previously deposited with the NASD Regulation, Incorporated Office of Dispute Resolution by claimant Joseph Arcangeli.

Respondent Joshua Shapiro is liable for and shall pay the NASD Regulation, Incorporated Office of Dispute Resolution forum fees in the amount of \$750.

Respondent Joshua Shapiro is liable for and shall pay to claimant Joseph Arcangeli the amount of \$750 as reimbursement of his hearing session deposit.

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

9/10/97

Concurring Arbitrators' Signatures

Raymond C. Kerr, Esquire
Raymond C. Kerr, Esquire
Chairperson
Public Arbitrator

September 16, 1997
Dated:

Bertrand C. Moser, Esq.
Bertrand C. Moser, Esquire
Panelist
Public Arbitrator

September 16, 1997
Dated:

Jack C. Payne
Jack C. Payne
Panelist
Industry Arbitrator

September 18, 1997
Dated:

For NASD use only:
Date Award was served on the parties: September 18, 1997