

**AWARD**

**NASD REGULATION, INC.**

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In the matter of the Arbitration Between

**Name of Claimant(s)**

G. Bernard Kallio  
Irene V. Kallio

Arbitration  
No. 96-02718

**Name of Respondent(s)**

Daniel M. Porush

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**REPRESENTATION**

For Claimants: Thomas J. Flaherty, Esq., Hillsboro, Oregon

For Respondent Daniel M. Porush: Mark E. Gelfand, Esq., Hicksville,  
New York

**CASE INFORMATION**

Statement of Claim filed: August 20, 1996

Amended Statement of Claim filed: March 20, 1997

Claimants' Response to Daniel M. Porush's Motion to Dismiss filed:  
September 26, 1997

Claimants' Submission Agreement signed: June 18, 1996

Statement of Answer and Motion to Dismiss filed by Respondent  
Daniel M. Porush: August 20, 1997

Respondent Daniel M. Porush's Submission Agreement signed: August  
20, 1997

**HEARING INFORMATION**

Pre-Hearing Conference Date(s)/Session(s):

March 10, 1997 (one session)

November 24, 1997 (one session)

**Date Served:**

Hearing Date(s)/Session(s): June 16, 1998 (two sessions)  
June 17, 1998 (two sessions)

Hearing Location: Portland, Oregon

#### CASE SUMMARY

Claimants alleged the following claims with respect to various securities investments: 1) Federal Securities Law Claim; 2) Federal RICO Claim; 3) State Securities Law Claim; 4) Common Law Fraud; 5) Breach of Fiduciary Duty; 6) Negligence; and 7) Conversion.

Respondent Daniel M. Porush denied Claimants' allegations of wrongdoing and alleged that he acted in good faith at all times and did not directly or indirectly induce the act or acts constituting the violations or causes of action alleged in Claimants' Claim. Respondent Porush also asserted affirmative defenses.

#### RELIEF REQUESTED

Claimants requested an award in their favor as follows:

1. On Claimants' First, Third, Sixth and Seventh Claims for Relief, for actual damages of \$463,860.00, and additional sums representing repayment of costs to run their account and excessive fees and commissions, interest on the above sums at 9% per annum, lost dividends and earnings on the above sum, and lost principal and portfolio value in a sum to be determined at arbitration;

2. On Claimants' Second Claim for Relief, for treble damages where actual damages were \$463,860.00 plus sums representing repayment of the costs to run the account, excessive fees and commissions, interest on these sums at 9% per annum, lost dividends and earnings, and lost principal and portfolio value in sums to be determined at arbitration; and for their costs of suit and reasonable attorney fees;

3. On Claimants' Fourth and Fifth Claims for Relief, for actual damages in the sum of \$463,860.00 plus reimbursement of the costs of running the account, excessive fees and commissions, interest at the rate of 9% per annum, lost dividends and earnings, and lost principal and portfolio value in a sum to be determined at arbitration plus punitive damages in the sum of \$500,000.00.

#### OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, the panel of arbitrators was advised of the Order entered by the United States District Court for the

Southern District of New York upon the application of the Securities Investor Protection Corporation under the Securities Investor Protection Act with respect to Stratton Oakmont, Inc. and further advised that the above-captioned dispute is stayed with respect to Stratton Oakmont, Inc.

On or about December 8, 1997, the panel of arbitrators denied Daniel M. Porush's Motion to Dismiss; and granted the Motion to Dismiss by J.B. Oxford & Company.

At the outset of the evidentiary hearing, the panel of arbitrators was advised that Claimants reached a settlement with Biltmore Securities, Inc., Paul C. Schemitz, and David M. Beall. The panel also noted that Claimants dismissed with prejudice, all claims asserted against Biltmore Securities, Inc.

Respondent Daniel M. Porush did not appear at hearing. The panel determined that Respondent Porush received proper notice of the hearing and ruled to proceed in his absence.

The panel of arbitrators determined that it does not have jurisdiction with respect to RMS Network, Inc. since RMS Network, Inc. is not a member of NASD Regulation, Inc. (NASD) and did not voluntarily submit to NASD jurisdiction.

The parties present at hearing agreed that the Award in this matter may be executed in either counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties present at hearing agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

#### 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 Daniel M. Porush is solely liable for and shall pay to Claimants the sum of \$521,806.00 in compensatory damages.
2. Respondent Daniel M. Porush is solely liable for and shall pay to Claimants the sum of \$1,500,000.00 in punitive damages pursuant to Chester v. McDaniel, 264 Or 303, 504 P.2d 726 (1973).
3. Respondent Daniel M. Porush is solely liable for and shall pay to Claimants the sum of \$67,500.00 in attorney's fees and costs pursuant to ORS 59.115(2).

**FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund Claimants' hearing session deposit in the amount of \$1,000.00. Forum fees are assessed against Respondent Daniel M. Porush in the amount of \$6,000.00, calculated as follows: Two pre-hearing sessions times \$1,000.00 plus four hearing sessions times \$1,000.00.

Fees are payable to NASD Regulation, Inc.

**OTHER FEES**

Pursuant to Rule 10319 of the NASD Code of Arbitration Procedure, Respondent Daniel M. Porush is assessed a postponement fee in the amount of \$1,000.00 in connection with the postponement of the hearing sessions that were scheduled to take place September 29 - October 1, 1997.

**ARBITRATORS**

<u>Name</u>	<u>Public / Industry</u>
Robert E.L. Bonaparte, Esq.	Public Arbitrator
Douglas Gordon Smith, Esq.	Public Arbitrator
Ryan Darwish	Industry Arbitrator

**Concurring Arbitrators' Signatures**

  
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Robert E.L. Bonaparte, Esq.

\_\_\_\_\_  
Douglas Gordon Smith, Esq.

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Ryan Darwish

Date of Decision: \_\_\_\_\_

Date Served:

AUG 14 1998

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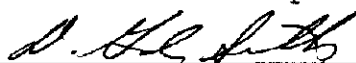
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