

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Shuang Tong,

Claimant,

v.

Case Number 96-03856

Bonnie Vandenberg, and  
Robert William Koch, II,

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimant Shuang Tong ("Claimant") appeared pro se.

Respondent Bonnie Vandenberg ("Vandenberg") was represented by Martin P. Unger, Esq. of Tenzer Greenblatt, LLP located in New York, New York. Respondent Vandenberg was previously represented by Gregg R. Evangelist, Esq. of Ormsten & Evangelist located in Jericho, New York.

Respondent Robert William Koch, II ("Koch") did not appear at the hearing and was unrepresented. Respondent Koch was previously represented by Gregg R. Evangelist, Esq. of Ormsten & Evangelist located in Jericho, New York.

### **CASE INFORMATION**

The Statement of Claim was filed on or about August 30, 1996.

Claimant's Submission Agreement was signed on August 28, 1996.

Respondents' Joint Statement of Answer was filed on or about November 7, 1996.

Respondent Vandenberg's Submission Agreement was signed on June 10, 1997.

NASD Regulation, Inc. Office of Dispute Resolution has no record that Respondent Koch filed a properly executed Submission Agreement.

### HEARING INFORMATION

The hearing was held on June 24, 1997 for one (1) session in New Orleans, Louisiana.

### CASE SUMMARY

Claimant alleged that he maintained an account with Stratton Oakmont and that Respondent Vandenberg was the broker assigned to his account. Claimant contended that Respondent Vandenberg contacted him regarding Consolidated Western Pacific Resources Corp. stock ("CWNPF"). Claimant asserted that Respondent Vandenberg told him that she would "book" him \$30,000 in profits in 45 days. Claimant maintained that Respondent Vandenberg told him that the company had just found a big field, rich in resources, and that, for these reasons, Claimant agreed to buy 10,000 shares of CWNPF at \$3 3/32 for a total cost of \$30,947.50. Claimant alleged that Respondent Vandenberg also solicited him to buy 30,000 shares of N-Vision, Inc. stock ("NVSN") and stated that the stock would be in the double digits within two weeks. Claimant contended that he agreed to buy 10,000 shares at \$9 5/8 for a total cost of \$96,260. Claimant asserted that he sold the 10,000 shares of CWNPF at \$2 1/2 for total proceeds of \$24,990 to buy the NVSN stock. Claimant alleged that after he learned that N-Vision was an extremely risky, tiny company which was losing money, Claimant called Respondent Vandenberg and asked her to close his account. Claimant contended that he subsequently received a call from Steve Cantor, a Vice President of Stratton Oakmont, who advised Claimant that closing the account would be financial suicide. Claimant alleged that he asked Cantor not to call him anymore, and that Cantor did not close the account. Claimant contended that Respondent Koch called Claimant and advised him that he would rectify the damages caused by Respondent Vandenberg. Claimant asserted that Respondent Koch told him to sell the rest of his MVSI stock and buy more NVSN stock, and that Claimant told him to "do" the trades. Claimant maintained that Respondent Koch sold 3,190 shares of MVSI at \$9 1/2 for total proceeds of \$30,295 and bought 4,550 shares of NVSN at \$6 5/8 at a total cost of \$30,153.75. Claimant maintained that he wasn't sure the trades were a good idea and again told Stratton Oakmont to close the account. Claimant asserted that Respondent Koch told him to give him another chance, and that the Claimant told him he would wait for another IPO that was coming out.

Respondents denied all liability to Claimant in the Joint Statement of Answer. Respondents alleged that all transactions were carried out in accordance with all applicable laws, rules, regulations, industry standards and practices. Respondents contended that Claimant was a well informed investor who engaged in a course of trading at Stratton Oakmont wherein he accepted the benefits of that trading and apparently now sues to recover losses from transactions which did not perform to his satisfaction. Respondents asserted that they bear no responsibility for those losses. Respondents argued that various new account documents were sent to Claimant, including a risk disclose letter and a customer agreement which indicated "growth companies

and "speculative activity" as Claimant's investment objectives. Respondents maintained that the Claimant fully authorized all transactions, followed his investments, paid for his transactions, and made all the decisions in his account. Respondents alleged that monthly statements of account were sent to the Claimant and were not timely objected to, constituting ratification and acceptance of the transactions.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$79,511.00.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice.

### **OTHER ISSUES CONSIDERED & DECIDED**

Prior to the hearing on the merits, Respondent Vandenberg filed a Motion to Dismiss asserting, in part, that the Claimant had failed to comply with a prior order of the panel relating to discovery. After considering the Motion, as well as Claimant's Response thereto, Respondent Vandenberg's Motion to Dismiss was denied without prejudice prior to the hearing on the merits. The Motion to Dismiss is hereby dismissed with prejudice in this final award.

Respondent Vandenberg's Motion to Participate in the Hearing Via Telephone was granted. Both Respondent Vandenberg and her attorney, Martin P. Unger, appeared at the hearing via telephone.

As previously indicated, Respondent Koch did not appear at the hearing. Prior to hearing, NASD Regulation, Inc. Office of Dispute Resolution had advised the arbitrators that a certified letter directed to Respondent Koch relating to the hearing date and notice of selection of arbitrators was returned unclaimed. The undersigned arbitrators have determined that Respondent Koch had received due notice of the hearing as required under §10315 of the NASD Code of Arbitration Procedure ("Code") and that arbitration of the matter would proceed pursuant to §10318 of the Code. Specifically, the undersigned arbitrators find that Respondent Koch had constructive notice of the hearing by virtue of his failure to provide NASD Regulation, Inc. with a current address after answering the Statement of Claim.

Respondent Koch did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the Code and having answered the claim is bound by the determination of the arbitration panel on all issues submitted.

The parties who appeared at the hearing 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 NASD Regulation, Inc. 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 Bonnie Vandenberg is liable for and shall pay to Claimant Shuang Tong damages in the amount of Seven Thousand Dollars and No Cents (\$7,000.00);
- (2) Respondent Robert William Koch, II is liable for and shall pay to Claimant Shuang Tong damages in the amount of Four Thousand Five Hundred Seventy Four Dollars and No Cents (\$4,574.00); and
- (3) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically enumerated are hereby dismissed in their entirety with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each hearing session before a single arbitrator. There was one pre-hearing conference x \$300 = \$300 in forum fees. There was one (1) hearing session x \$500 = \$500 in forum fees. Total forum fees = \$800. Pursuant to §10332(b) of 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, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150 and shall refund the hearing session deposit in the amount of \$700 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant.

Pursuant to §10333 of the Code, Stratton Oakmont, Inc. is liable for its member surcharge in the amount of \$300.

Pursuant to §10332(c) of the Code, Respondents Bonnie Vandenberg and Robert William Koch, II are jointly and severally liable for and shall pay all forum fees in this matter which is the amount of \$800.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Concurring Arbitrators' Signatures

\s\ William T. D'Zurilla, Esq.  
William T. D'Zurilla, Esq.  
Chairperson  
Public Arbitrator

June 26, 1997  
Dated:

\s\ Barry Ashe, Esq.  
Barry Ashe, Esq.  
Panelist  
Public Arbitrator

June 26, 1997  
Dated:

\s\ Timothy B. Alack  
Timothy B. Alack  
Panelist  
Industry Arbitrator

June 26, 1997  
Dated:

For NASD Regulation use only:  
Date award served on the parties: June 30, 1997