

N.A.S.D. REGULATION AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Vern W. & Janet I. Vanderbur
Vern W. & Janet I. Vanderbur as Trustees of the
Money Purchase Plan and Profit Sharing Plan of
Western State Elevator Co., Inc.

96-04388

Name of Respondents

Stratton Oakmont, Inc.
Daniel Mark Porush
Robert William Koch
Marc Ocello

REPRESENTATION OF PARTIES

For Claimant: David Goldman, Esq., Wendel Rosen Black & Dean, Oakland, California.
For Daniel Porush: Mark E. Gelfand, Esq., Hicksville, New York.
For Marc Ocello: Irving M. Einhorn, Esq., Los Angeles, California.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about October 3, 1996.
Claimants' Submission Agreement was signed on October 23, 1996.
The Amended Statement of Claim was filed on or about March 3, 1997.
Daniel Porush's Answer to the Amended Claim was filed on or about May 5, 1997.
Marc Ocello's Answer to the Amended Claim was filed on or about June 17, 1997.
Marc Ocello's Submission Agreement was signed on June 26, 1997.
Daniel Porush's Motion to Dismiss was filed on or about May 5, 1997.
Claimant's Memorandum of Points and Authorities in Opposition to the Motion to Dismiss was filed on or about June 4, 1997.

HEARING INFORMATION

Pre-hearing conferences were held on: January 23, 1997 one session;
September 11, 1997 one session.

The hearing was held in San Francisco, California on: June 25, 1998-one session.

CASE SUMMARY

Claimants allege that subsequent to their purchase of MVSI stocks and warrants the Respondents failed to follow Claimants written instructions to sell their positions in MVSI. Claimants further allege that Respondents actions were motivated by Respondents scheme to manipulate the market for MVSI for their own gain.

Respondent Daniel Porush denies each and every claim asserted in the Statement of Claim.

Respondent Marc Ocello denies each and every claim asserted in the Statement of Claim. Marc Ocello specifically argues that he was not handling the Claimants accounts.

RELIEF REQUESTED

In his initial claim Claimant requested an award in the amount of \$204,529.79 plus interest in compensatory damages plus unspecified punitive damages, and costs including attorneys' fees. Claimant amended his request at the hearing to seek an award of \$209,344.02 in compensatory damages, \$42,131.17 in interest, \$250,000.00 in punitive damages, and costs including attorneys' fees of \$27,301.51.

Respondents requested that each and every claim be dismissed and further request an award of costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

All action was stayed as to Stratton Oakmont, Inc. due to the Bankruptcy Order issued January 29, 1997.

All action was stayed as to Robert William Koch due to the Bankruptcy Order dated August 31, 1997.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondents Daniel Porush and Mark Ocello received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

The parties agreed to receive conformed copies of the award while the original remains 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 panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant is awarded and Daniel Porush and Mark Ocello shall pay to Claimant, jointly and severally, the sum of \$209,344.02 representing compensatory damages;
2. Claimant is awarded and Daniel Porush and Mark Ocello shall pay to Claimant, jointly and severally, the sum of \$42,131.17 representing interest;
3. Claimant is awarded and Daniel Porush and Mark Ocello shall pay to Claimant, jointly and severally, the sum of \$250,000.00 representing punitive damages [(Hobbs v. Bateman Eichler, Hill, Richards, Inc. (1985) 164 Cal.App.3d 174, 194), (Black v. Shearson, Hammil & Co. (1968) 266 Cal.App.2d 362, 369), (Toole v. Richardson-Merrell, Inc. (1967) 251 Cal.App.2d 689, 713)];
4. Claimant is awarded and Daniel Porush and Mark Ocello shall pay to Claimant, jointly and severally, the sum of \$27,301.51 representing costs, including attorneys' fees (California Civil Code Sec. 3333, (Twomey, supra)).

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference with one arbitrator and \$750 for each pre-hearing conference with more than one arbitrator. There was 1 session x \$750 plus 2 pre-hearing conferences x \$750 = \$2,250 in total forum fees. Pursuant to §10332(b) of the NASD Regulation, Inc., Office of Dispute Resolution 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, Daniel Porush and Marc Ocello are assessed all forum fees jointly and severally.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. shall **retain** the non-refundable filing fee in the amount of \$200 and shall **refund** the hearing session deposit made by the Claimants in the amount of \$750.

Pursuant to Rule 10333 of the Code, Respondent Stratton Oakmont Inc. shall pay to NASD Regulation, Inc. the \$350 past due member surcharge previously invoiced.

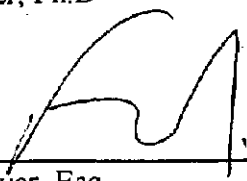
Fees are payable to the NASD, Regulation, Inc.

NASD Arbitration No. 96-04388

Award Page 4 of 4

Thomas C. McNally, III, Esq.

Amy Seltzer, Ph.D



Frank Weaver, Esq.

Public / Industry

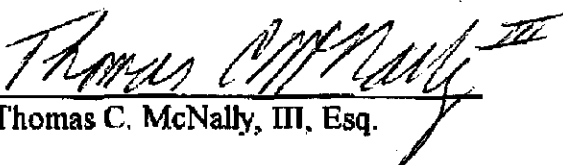
Public Arbitrator
Presiding Chair

Public Arbitrator

Industry Arbitrator

Date Served:

AUG 03 1998


Thomas C. McNally, III, Esq.

Amy Seltzer, Ph.D

Frank Weaver, Esq.

Public / Industry

Public Arbitrator
Presiding Chair

Public Arbitrator

Industry Arbitrator

Date Served:

AUG 03 1998

Thomas C. McNally, III, Esq.



Amy Seltzer, Ph.D

Frank Weaver, Esq.

Public / Industry

Public Arbitrator
Presiding Chair

Public Arbitrator

Industry Arbitrator

Date Served:
AUG 03 1998