

NASD REGULATION, INC.
MODIFIED AWARD

In the Matter of the Arbitration Between

Name of Claimant

Bill Poznik

vs.

Case No.
96-04506

Name of Respondent

Daniel M. Porush
Stacey Yonkus
Steven P. Sanders
Stratton Oakmont, Inc.

REPRESENTATION

For Claimant Bill Poznik ("Claimant") appeared John R. Blake, Esq. of the law offices Bowditch & Dewey, located in Worcester, Massachusetts.

For Respondent Daniel M. Porush ("Porush") appeared Mark E. Gelfand, Esq., a sole practitioner with offices located in Hicksville, New York. By letter dated January 11, 1999, Mr. Gelfand withdrew as representative for Porush. Subsequently, Porush did not participate in this matter.

Respondent Stacey Yonkus ("Yonkus") did not enter an appearance in this matter.

Respondent Steven P. Sanders ("Sanders") appeared pro se.

Respondent Stratton Oakmont, Inc. ("Stratton Oakmont") did not enter an appearance in this matter.

CASE INFORMATION

Claimant's Statement of Claim was filed on October 9, 1996.
Claimant's Submission Agreement was signed on September 27, 1996.
Claimant's Amended Submission Agreement was signed on February 3, 1997.
Claimant's First Amended Statement of Claim was filed on February 14, 1997.

Porush's Statement of Answer was filed on May 6, 1997.
Porush's Submission Agreement was signed on May 6, 1997.

Yonkus did not file a Statement of Answer or a properly executed Submission Agreement.

Sanders' Statement of Answer was filed on May 22, 1997.
Sanders' Submission Agreement was signed on May 20, 1997.

Stratton Oakmont did not file a Statement of Answer or a properly executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conference: August 21, 1998 - 1 session

Hearing Date/Session: January 19, 1999 - 1 session

The hearing was conducted at the offices of NASD Regulation, Inc. located in Boston, Massachusetts.

CASE SUMMARY

Claimant alleged that, in May, 1994, he received a cold call from Yonkus at which time he advised Yonkus that high risk scared him, that his investments needed to be safe and that until that time his investments had been in mutual funds. Claimant maintained that, after Yonkus assured Claimant that her recommendations would fit his investment goals, he agreed to open an account with Stratton Oakmont. Claimant contended that on his new account form, he misunderstood the meaning of the three choices listed for investment objectives and, as a result, he allowed Yonkus to check off the "growth companies/speculative activities" as his investment objective, despite his oral assertions to the contrary. Claimant maintained that, between June, 1994 and January, 1995, the transactions in his account all involved unsuitably risky investments recommendations by Yonkus which he followed and which resulted in a substantial loss to him. Claimant contended that Yonkus did not disclose to him that Stratton Oakmont was a market-maker which was selling securities to him from its inventory at a mark up. In addition, Claimant contended that Respondents were continuing a course of fraudulent activity by dumping shares previously underwritten by Stratton Oakmont on public customers, after which, Stratton Oakmont stopped supporting the market and the prices of the shares plunged to their true value.

Porush generally denied all allegations. Porush maintained that he was suspended from acting in any supervisory capacity from March, 1994 through March, 1995 and could not, therefore, have had any supervisory role in Claimant's account. Porush further maintained that the securities purchased in Claimant's account were in accordance with Claimant's stated investment objectives and were consistent with his risk tolerance and financial circumstances as disclosed to his registered representative.

Sanders maintained that he never met or had any dealings or communications with Claimant and that, during the period Claimant maintained his account at Stratton Oakmont, he was a salaried employee in Stratton Oakmont's order room and worked as a head trader. Sanders further maintained that he was responsible for executing orders based upon information contained in

order tickets prepared by registered representatives and approved by supervisors responsible for Stratton Oakmont's retail business.

RELIEF REQUESTED

Claimant requested compensatory damages in the sum of \$230,005.00 plus punitive damages, interest, costs and attorneys' fees.

Porush requested that all claims against him be dismissed in their entirety and that the costs of this arbitration be assessed against Claimant.

Sanders requested that all claims against him be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

Claimant, the only party who attended the hearing, 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, Claimant, the only party who attended the hearing, has agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc.

Pursuant to bankruptcy filings, all proceedings were stayed against Yonkus and Sanders. Therefore, Yonkus and Sanders did not participate in the hearings in this matter.

Pursuant to the order entered by the United States District Court, upon application of the Securities Investor Protection Corp., under the Securities Investor Protector Act, all proceedings were stayed against Stratton Oakmont. Therefore, Stratton Oakmont did not participate in the hearings in this matter.

The panel made the following determinations concerning Porush, who did not appear at the hearing in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure ("Code"), the arbitrators found subject matter jurisdiction over this entire controversy.
2. The panel found that Porush was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Porush pursuant to Rule 10301 of the Code.
3. The panel found that Porush was required to file a Statement of Answer and Submission Agreement with NASD Regulation, Inc. pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Porush pursuant to Rule 10314(a) of the Code.
4. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation, Inc. provided Porush with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further

determined to proceed with the hearing without Porush whose absences was unexcused.

In addition, the panel notes the following:

1. The hearing was attended by the panel members and claimant's counsel, who participated by telephone. Claimant's counsel informed the panel that he and his client did not attend the hearing because he was advised in November, 1998 by Porush's counsel that Porush was in jail. Claimant's counsel apparently assumed that the case would be postponed.
2. Porush's counsel was advised in November, 1998 that the case would proceed as scheduled on January 19, 1999 unless he complied with the procedures for requesting a postponement which he failed to do.
3. The arbitrators determined, because all parties were duly notified of the hearing and no postponement was properly made, to hear Claimant's counsel by telephone and proceed with their decision based upon the pleadings. Claimant's counsel stated that he was willing to rely upon his Statement of Claim.

By letter dated March 11, 1999, the arbitrators determined that the original Award dated March 4, 1999 contained an oversight in the "Award" and "Forum Fees" sections. Items 2, 3 and 4 in the "Award" section and Items 1 and 2 in the "Forum Fees" section have been modified below.

MODIFIED 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. The panel found that, in their dealings with Claimant and his account during the period described in the Statement of Claim, Stratton Oakmont and Yonkus engaged in fraudulent misrepresentations and omissions of material facts known to them, made unsuitable recommendations, and failed to perform their fiduciary obligations, to the damage of Claimant in the amount of \$230,005.00.
2. The panel found that Sanders, Stratton Oakmont and Yonkus have been discharged in bankruptcy from their liability in this matter. However, the panel further found that Porush and Sanders were "controlling persons" of Stratton Oakmont and Yonkus and, therefore, are responsible for any fraudulent misrepresentations or omissions of material facts, unsuitable recommendations, or failure to perform fiduciary obligations by Stratton Oakmont or Yonkus during the period described in the Statement of Claim.
3. Therefore, Porush be and hereby is liable for and shall pay to Claimant compensatory damages in the amount of **TWO HUNDRED THIRTY THOUSAND FIVE DOLLARS (\$230,005.00)** plus interest at the rate of 8% per

annum from December 29, 1995 until the award is paid.

4. Porush be and hereby is liable for and shall pay to Claimant the sum of \$750.00 to reimburse Claimant for the hearing session deposit previously submitted to NASD Regulation, Inc.
5. All other requests are hereby denied.

MODIFIED FORUM FEES

Pursuant to Rule 10332(c) of the Code, the arbitrators have determined that NASD Regulation, Inc. will retain the \$200.00 non-refundable filing fee submitted by Claimant and have assessed the following forum fees:

1 Pre-Hearing Conference (with full panel)	=	\$ 750.00
1 Hearing Sessions x \$750.00	=	\$ 750.00

1. Porush be and hereby is liable for the sum of 1,500.00, representing the total amount of forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation and, therefore, Porush shall pay to NASD Regulation, Inc. the sum of \$750.00, representing the balance of forum fees due and outstanding.
2. Porush be and hereby is liable for and shall pay to Claimant the sum of \$750.00 as provided in the "Award" section above.

ARBITRATION PANEL

Tom L. Peterson, Esq.	-	Public Chairperson
Kirby B. Scarborough, Esq.	-	Public Arbitrator
Richard O. Hanson	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

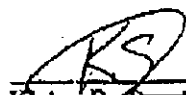

Tom L. Peterson, Esq.

Date of decision: March 12, 1999

ARBITRATION PANEL

Tom L. Peterson, Esq.	.	Public Chairperson
Kirby B. Scarborough, Esq.	-	Public Arbitrator
Richard O. Hanson	-	Industry Arbitrator

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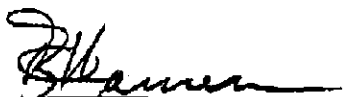
Kirby B. Scarborough, Esq.

Date of decision: March 12, 1999

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CONCURRING ARBITRATOR'S SIGNATURE



Richard O. Hanson

Date of decision: March 12, 1999