

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant(s)

Charles Draper, Jr.,
Charles Draper, Sr. and
Draper Machine Works, Inc.
(a Washington Corporation)

Arbitration
No. 96-04834

Name of Respondent(s)

Daniel M. Porush

REPRESENTATION

For Claimants: Christopher B. Wells, Esq., Lane Powell Spears
Lubersky LLP, Seattle, Washington

For Respondent: Mark E. Gelfand, Esq., Great Neck, New York

CASE INFORMATION

Statement of Claim filed: October 28, 1996

Claimants' Opposition to Respondent Daniel M. Porush's Motion to
Dismiss and to Strike and Cross-Motion for a partial decision as a
matter of law filed: June 6, 1997

Claimants' Submission Agreements signed as follows:

Charles Draper, Jr.: October 28, 1996

Charles Draper, Sr.: October 25, 1996

Draper Machine Works, Inc.: October 28, 1996

Statement of Answer and Motion to Dismiss and Strike filed by
Respondent: March 31, 1997

Respondent's Submission Agreement signed: April 7, 1997

HEARING INFORMATION

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

July 14, 1997 (one session)

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

Hearing Location: Seattle, Washington

CASE SUMMARY

Claimants alleged violations of Washington state, New York state and United States law. Claimants further alleged the following causes of action with respect to their investments in various securities: 1) Breach of Contract and Breach of Fiduciary Duty; 2) Negligent Misrepresentation and Professional Negligence; 3) Willful and Bad Faith Conversion of Property; 4) Common Law Fraud; 5) Violations of Registration and Anti-Fraud Provisions of State Securities Acts of Washington and New York; 6) Violation of Washington Consumer Protection Act; 7) Federal Securities Fraud; 8) Federal RICO Claims; and 9) Punitive Damages Claims.

Respondent Daniel M. Porush denied Claimant's allegations of wrongdoing. In his Motion to Dismiss, Respondent Porush alleged that there is absolutely no mention of any specific statement in the Statement of Claim of any direct action committed by Porush. Respondent Porush further alleged that a thorough reading of Claimants' Claim makes it crystal clear that the only allegations against Porush are non-specific and broad legal conclusions with no allegations of fact. Respondent Porush also asserted affirmative defenses.

RELIEF REQUESTED

Claimants requested the following relief:

1. Under RCW 21.20.430 and other statutory claims, refund of Claimants' contributions plus prejudgment interest at eight percent (8%) from the date of each contribution, reduced by the amount refunded in August 1996, plus costs and attorney fees;
2. Damages for unfair business practices in violation of RCW 19.86, trebled to the limits provided by RCW 19.86.090 plus reasonable attorney fees and costs;
3. Damages for fraud, negligent misrepresentation, breach of fiduciary duties and breach of contract in amounts to be shown at the hearing, plus prejudgment interest on the amounts invested from the date of each investment;
4. Damages for violation of the RICO statutes, including losses of \$369,806.20 plus prejudgment interest at eight percent, trebled to an amount not less than \$1,109,418.60 plus a trebled prejudgment interest component, plus attorney fees and costs allowed under 15 U.S.C. Sections 1962(c) and 1964(c);
5. Punitive damages in the maximum amount allowed by applicable law;

6. An order immediately blocking out at least \$500,000.00 of funds held in accounts created under Stratton's consent orders with state regulators or funds sought by the NASD in disciplinary proceedings, such funds to be set aside for this claim; and

7. Such other relief as the Panel may deem just and proper.

Respondent Porush requested an award dismissing the claims contained in the Statement of Claim with prejudice and requested that costs of this Arbitration be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

The panel noted the bankruptcy filings with respect to Stratton Oakmont, Inc., Jordan Shamah and Thomas Cosma and further noted that the above-captioned matter is stayed with respect to these Respondents.

At hearing, Claimant's counsel informed the panel that Claimants had settled with Respondent James Ryan.

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

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 NASD Regulation, Inc. (NASDR).

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. On or about July 14, 1997, the panel denied Respondent's Motions to Dismiss and Strike.

2. All claims by Charles Draper, Jr. are dismissed.

3. Respondent Daniel M. Porush is liable for and shall pay to Claimant Charles Draper, Sr. the sum of \$175,254.18 which includes interest to date.

4. Respondent Daniel M. Porush is liable for and shall pay to Claimant Draper Machine Works, Inc. the sum of \$69,320.86 which includes interest to date.

5. Respondent Daniel M. Porush is liable for and shall pay to Charles Draper, Sr. and Draper Machine Works, Inc. the sum of \$77,727.81 in attorney's fees pursuant to the authority of the Securities Act of Washington, RCW 21.20.430.

6. Claimants' claims for punitive damages are denied.

7. The parties shall each bear their respective costs of this proceeding.

FORUM FEES


Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: NASDR shall refund Claimants' hearing session deposit in the amount of \$1,000.00. Forum fees shall be assessed against Respondent Daniel M. Porush in the amount of \$3,000.00, calculated as follows: One pre-hearing session times \$1,000.00, plus two hearing sessions times \$1,000.00.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Frederic E. Dorkin, Esq.	Public Arbitrator
Joan Helen Lukasik, JD	Public Arbitrator
Paul A. Maffeo	Industry Arbitrator

Concurring Arbitrators' Signatures



Frederic E. Dorkin, Esq.

Joan Helen Lukasik, JD

Paul A. Maffeo

Date of Decision: 3/16/98

Date Served: 04/29/98

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Paul A. Maffeo	Industry Arbitrator

Concurring Arbitrators' Signatures

Frederic E. Dorkin, Esq.

Joan Helen Lukasik, JD

Paul A. Maffeo

Date of Decision:

signed
4/6/98

Date served: 04/29/98

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Date of Decision: _____

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