

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:
Gregg Boster vs. Stratton Oakmont, Inc. and John Carbone.

Case Number: 96-5094

Hearina Site: Minneapolis, Minnesota

REPRESENTATION OF PARTIES

Claimant, Gregg Boster ("Boster") hereinafter referred to as "Claimant": Eric J. Peck, Esq., Lindquist & Vennum, Minneapolis Minnesota. Claimant was formerly represented by Rebecca E. Bender of Bender and Associates, P.A., located in Minneapolis, Minnesota.

Respondent John Carbone ("Carbone") hereinafter referred to as "Respondent": pro se.

Respondent Stratton Oakmont, Inc: did not appear.

CASE INFORMATION

Statement of Claim filed on or about: November 11, 1996

Claimant signed the Uniform Submission Agreement: date unspecified

Statement of Answer filed by Respondent Carbone on or about: February 10, 1997

Claimant's Motion for Default Judgment filed on or about: January 15, 1997

Respondent Carbone's Motion to Dismiss filed on or about: September 9, 1999

Claimants Response to Motion to Dismiss filed on or about: December 3, 1999

CASE SUMMARY

Claimant asserted the following causes of action: Violation of §80A.01, et. seq. Of the Minnesota Blue Sky Law, Breach of Contract, Violation of Minnesota Statute § 325F.68 et. seq., common law fraud, negligent misrepresentation, negligence, negligent supervision, liability under respondeat superior. The causes of action relate to alleged lack of diversification in Claimants Investment portfolio.

Unless specifically admitted in his Answer, Respondent Carbone denied the allegations made in the Statement of Claim and asserted the following defenses: Carbone did not state that U.S. Surgical "would" go up in value; Claimant was qualified for the investments Carbone recommended based on Claimants's investment history and financial status indicated on Claimant's account form.

RELIEF REQUESTED

Claimant requested: compensatory damages of approximately \$200,000.00, plus twice the

amount paid to Respondents as commissions; market-adjusted damages; rescission; punitive damages; attorney's fees; prejudgment interest; prejudgment margin interest; post-judgment interest; costs; NASD fees; other further relief as deemed equitable by the Panel including disciplinary referrals.

Respondent Carbone requested: dismissal, unspecified

OTHER ISSUES CONSIDERED AND DECIDED

Respondent John Carbone did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Respondent Stratton Oakmont, Inc. filed for Bankruptcy on January 24, 1997, and is subject to a bankruptcy stay. Claims against Stratton Oakmont, Inc. were not adjudicated by the Panel.

The Panel denied Respondent Carbone's Motion to Dismiss.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims are dismissed with prejudice;
- 2.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) That any relief not specifically enumerated, including punitive damages is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$200.00
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Member Fees:

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$350.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$750.00 = \$ 750.00
Pre-hearing conference: December 7, 1999 1 session

Two (2) Hearing sessions x \$750.00 = \$1,500.00
Hearing Date: February 24, 2000 2 sessions

Total Forum Fees = \$2,250.00

The Panel has assessed \$1,125.00 of the forum fees to Gregg Boster.

The Panel has assessed \$1,125.00 of the forum fees to John Carbone

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Gregg Boster, requested awards, \$15.00

Fee Summary

Claimant, Gregg Boster, be and hereby is solely liable for:

Initial Filing Fee	= \$ 200.00
Administrative Costs	= \$ 15.00
<u>Forum Fees</u>	<u>= \$ 1,125.00</u>
Total Fees.	= \$ 1,340.00
<u>Less payments</u>	<u>= 0.00</u>
Balance Due NASD Regulation, Inc.	= \$ 1340.00

Respondent, John Carbone, be and hereby is solely liable for:

<u>Forum Fees</u>	<u>= \$ 1,125.00</u>
Total Fees	= \$ 1,125.00
<u>Less payments</u>	<u>= 0.00</u>
Balance Due NASD Regulation, Inc.	= \$ 1,125.00

Respondent, Stratton Oakmont, Inc., be and hereby is solely liable for:

Member Fees	=	350.00
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Total Fees = \$ 350.00

Less payments **= \$ 0.00**

Balance Due NASD Regulation, Inc.	= \$ 350.00
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All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)

Emily F. Seesel
Emily F. Seesel, Esa.
Public Arbitrator, Presiding Chair

March 14. >—
Signature Date

Angela R. Banga, Esq.
Public Arbitrator

Signature Date

Jacque E. Foust
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Respondent, Stratton Oakmont, Inc., be and hereby is solely liable for:

Member Fees	=	350.00
Total Fees	= \$	350.00
Less payments	=	0.00
Balance Due NASD Regulation, Inc.	= \$	350.00

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)

Emily F. Seesel, Esq.
Emily F. Seesel, Esq.
Public Arbitrator, Presiding Chair

03/14/00
Signature Date

Angela R. Banga, Esq.
Angela R. Banga, Esq.
Public Arbitrator

3/22/00
Signature Date

Jacque E. Foust
Jacque E. Foust
Industry Arbitrator

03/08/00
Signature Date

Date of Service (For NASD office use only)

Respondent, Stratton Oakmont, Inc., be and hereby is solely liable for:

<u>Member Fees</u>	=	350.00
Total Fees	= \$	350.00
<u>Less payments</u>	=	0.00
Balance Due NASD Regulation, Inc.	= \$	350.00

All balances are due to NASD Regulation, Inc

Concurring Arbitrators' Signature(s)

Emily F. Seesel, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Angela R. Banga, Esq.
Public Arbitrator

Signature Date

Jacque E. Foust
Jacque E. Foust
Industry Arbitrator

March 8, 2000
Signature Date

Date of Service (For NASD office use only)