

NASD AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Joseph and Joan Billy

96-05457

Name of Respondents

Scott Forman
Adam Friedland
Lawrence Smith
Daniel Porush

REPRESENTATION

Claimants Joseph and Joan Billy ("Claimants") were represented by Richard W. Vallario, Esq., Nutley, NJ.

Respondent Scott Forman ("Forman") was not represented at the hearing.

Respondent Adam Friedland ("Friedland") was not represented at the hearing.

Respondent Lawrence Smith ("Smith") was not represented at the hearing.

Respondent Daniel Porush ("Porush") was not represented at the hearing.

CASE INFORMATION

Statement of Claim filed: December 5, 1996

Claimants' Submission Agreement signed on: November 26, 1996

Joint Statement of Answer filed by Forman and Friedland on: January 29, 1997

Forman's Submission Agreement signed on: February 11, 1997

Friedland's Submission Agreement signed on: February 10, 1997

Statement of Answer filed by Smith on: March 7, 1997

Smith's Submission Agreement signed on: March 3, 1997

Statement of Answer filed by Porush on: February 20, 1997

Porush's Submission Agreement signed on: February 20, 1997

HEARING INFORMATION

Hearing Date/Sessions: June 22, 1998 - one session

Hearing Location: NASD Regulation, Office of Dispute Resolution, New York, NY

CASE SUMMARY

Claimants alleged that they opened an account with Stratton Oakmont, Inc. in May 1995. Claimants alleged that their account was originally serviced by Smith and subsequently by Forman and Friedland, who took over as account representatives in May 1996. Claimants alleged that, during May 1996, they authorized an initial purchase of 25,000 warrants of MVSII, Inc., a publicly traded stock, which order was completed. Claimants alleged that, thereafter, Forman and/or Friedland initiated several unauthorized sales and repurchase of this same stock in a like amount, and N-Vision stock, resulting in a nominal gain for Claimants, but substantial commissions to Forman and/or Friedland. Claimants alleged that, on August 9, 1996, they authorized the purchase of 26,500 shares of N-Vision at a total cost of \$162,323.00. Claimants alleged that, on August 13, 1996, they attempted to call Forman or Friedland to order the sale of this position and that, when neither would take or return the call, they sent a fax directing the sale of the N-Vision position. Claimants alleged that Forman then responded by phone and advised that a stop-loss order would be placed at 5 7/8. Claimants alleged that, over the next several days, the price of N-Vision dropped below the stop-limit price. Claimants alleged that they made numerous calls to Forman to determine if their position had been sold but were unable to get a response. Claimants alleged that, upon determining that the position was not sold, they initiated a transfer of the account to Charles Schwab. Claimants alleged that, as soon as the transfer was complete, the entire N-Vision position was sold for a loss of \$64,047.50, measured from the value at the stop-loss order price. Claimant alleged that Forman, Friedland, and Smith, as registered representatives handling the account of the Claimants, failed to properly respond to the directions of their customers, failed to execute orders, and engaged in unauthorized trading. Claimants alleged that Porush failed to properly supervise, manage, control, and train registered representatives Forman, Friedland, and Smith.

Forman and Friedland, in their joint statement of answer, denied all allegations of wrongdoing on their part contained in Claimants' claim. Forman and Friedland specifically denied that they did not respond to Claimants' calls and, instead, maintained that they made numerous attempts to contact Claimants to update them on their account and discuss how to proceed. Forman and Friedland maintained that Claimants never responded to these telephone calls, even though Forman and Friedland left messages to call them.

Smith, in his statement of answer, denied all allegations of wrongdoing on his part contained in Claimants' claim. Smith maintained that he resigned from Stratton Oakmont, Inc. on July 24, 1995, and, thereafter, was not responsible for Claimants' account. Smith maintained that it was Stratton Oakmont's responsibility to notify Claimants of his resignation and promptly assign a new representative.

Porush, in his statement of answer, denied all allegations of wrongdoing on his part contained in Claimants' claim. Porush specifically denied that he failed to properly supervise, manage, control, or train Forman, Friedland, and Smith.

RELIEF REQUESTED

Claimants requested damages from all Respondents, jointly, severally, or individually, in the total amount of \$87,995.00 plus interest, attorneys' fees, and costs.

Forman and Friedland requested dismissal of the Statement of Claim, reimbursement for their costs and expenses, and such other and further relief as is just and proper.

Smith requested that Claimants' claim against him be dismissed.

Porush requested that Claimants' claim be dismissed with prejudice and that he be reimbursed for his costs.

OTHER ISSUES CONSIDERED & DECIDED

The party present at 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, the party present at the hearing agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc. ("NASD Regulation").

At the hearing, Claimants withdrew their claim against Respondent Lawrence Smith. Claimants' proceeded with their claim against Forman, Friedland, and Porush.

The Panel determined that notwithstanding Forman, Friedland, and Porush's failure to participate at the hearing, pursuant to Rule 10301 of the Code of Arbitration Procedure, each was required to submit to the Panel's jurisdiction and that each submitted an answer and executed a submission agreement. Therefore, the Panel exercised its jurisdiction over Forman, Friedland, and Porush and each is bound by the Panel's rulings and determinations herein.

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. That Respondents Scott Forman, Adam Friedland and Daniel Porush are jointly and severally liable to Claimants and shall pay the Claimants the sum of \$62,037.50 plus interest at the New York statutory rate of 9% per annum from August 14, 1996 until the date the award is paid.
2. That the parties shall bear their own costs and attorneys' fees except as forum fees are addressed herein.
3. That all other requests for relief are denied in their entirety.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Non-refundable filing fee of \$150 was paid by Claimants.

Hearing session deposit of \$500 was paid by Claimants.

1 hearing session x \$500 = \$500

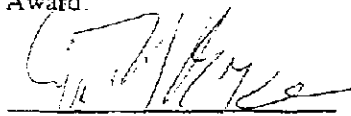
Forum Fees Assessed Against: Respondents Forman, Friedland and Porush. NASD Regulation shall retain the non-refundable filing fee and hearing session deposit previously filed by the Claimants. Respondents Forman, Friedland, and Porush shall reimburse Claimants for their above mentioned fees previously deposited with NASD Regulation. Therefore, Forman, Friedland and Porush shall jointly and severally reimburse to Claimants the amount of \$650 to cover the fees previously deposited.

DATE SIGNED

Concurring Arbitrators' Signatures

I, Cynthia L. Boyce, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

7/31/98



Cynthia L. Boyce, Esq., Chairperson
Public Arbitrator

I, Anne Cugliani, do hereby affirm, pursuant to
article 7507 of the Civil Practice Law & Rules,
that I am the individual described herein and
who executed this instrument which is my Award.

Anne Cugliani, Panelist
Public Arbitrator

I, William Wong, do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

William Wong, Panelist
Industry Arbitrator

Date Award Served by NASD Regulation:

July 31, 1998

DATE SIGNED

Concurring Arbitrators' Signatures

I, Cynthia L. Boyce, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

Cynthia L. Boyce, Esq., Chairperson
Public Arbitrator

I, Anne Cugliani, do hereby affirm, pursuant to
article 7507 of the Civil Practice Law & Rules,
that I am the individual described herein and
who executed this instrument which is my Award.

7/27/98

Anne Cugliani
Anne Cugliani, Panelist
Public Arbitrator

I, William Wong, do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

William Wong, Panelist
Industry Arbitrator

Date Award Served by NASD Regulation:

July 31, 1998

DATE SIGNED

Concurring Arbitrators' Signatures

I, Cynthia L. Boyce, Esq., do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

Cynthia L. Boyce, Esq., Chairperson
Public Arbitrator

I, Anne Cugliani, do hereby affirm, pursuant to
article 7507 of the Civil Practice Law & Rules,
that I am the individual described herein and
who executed this instrument which is my Award.

Anne Cugliani, Panelist
Public Arbitrator

I, William Wong, do hereby affirm,
pursuant to article 7507 of the Civil Practice Law
& Rules, that I am the individual described herein
and who executed this instrument which is my Award.

7/31/98

William Wong, Panelist
Industry Arbitrator

Date Award Served by NASD Regulation: July 31, 1998