

NASD REGULATION, INC.
AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of an Arbitration
between:

Lars-Erik Jonsson

NASD NO. 96-05601

Claimant,

v.

Stratton Oakmont, Inc., Daniel Porush, Leonard Dunn, Jordan I. Shamah, Patrick Gerard Hayes, Howard Scott Gelfand, Mathias Valentine Tiffert, Steven P. Sanders, Robert William Koch, Keith L.J. Connolly and Todd Haufler

Respondents.

REPRESENTATION OF PARTIES

Claimant Lars-Erik Jonsson, was represented by Thomas A. Hargett, Esq. of the Indianapolis office of Maddox Koeller Hargett & Caruso.

Respondent Daniel Porush was represented by Mark E. Gelfand, Esq. of Great Neck, New York.

Respondents, Keith L.J. Connolly and Todd Haufler, were represented by Ronald Shindler of Fowler, White, Burnett, Hurley, Banick & Strickroof, of Miami, Florida.

Respondent Patrick Gerard Hayes was represented by Franklin D. Ormsten, Esq. of Ormsten and Evangelist of Jericho, New York.

Respondent Howard Scott Gelfand was pro-se.

CASE INFORMATION

Claimant Lars-Erik Jonsson's Statement of Claim was filed with the

9809028

NASD Regulation, Inc.
Office of Dispute Resolution
Arbitration No. 96-05601
Award Page 2 of 8

NASD on or about December 18, 1996.

Claimant Lars-Erik Jonsson's Uniform Submission Agreement was executed on December 13, 1996.

Respondent Daniel Porush's Statement of Answer was filed with the NASD on or about May 4, 1997.

Respondent Daniel Porush's Uniform Submission Agreement was executed on March 24, 1997.

Respondent Patrick Gerard Hayes' Statement of Answer was filed with the NASD on or about February 4, 1997.

Respondent Patrick Gerard Hayes' Uniform Submission Agreement was executed on January 21, 1997.

Respondent Steve Sanders' Statement of Answer was filed with the NASD on or about February 21, 1997.

Respondent Steve Sanders' Uniform Submission Agreement was executed on February 18, 1997.

HEARING INFORMATION

The hearing was held on August 3, 1998 for one (1) session and August 4, 1998 for one (1) session in Chicago, Illinois.

CASE SUMMARY

In his Statement of Claim, the Claimant asserted that, between May 1996 and December of 1996, through a continuing and unrelenting series of high pressure sales tactics, omissions and misrepresentations of material facts, as well as outright lies. He was solicited, induced and/or coerced by the Respondents into purchasing, on a cash, borrowed and/or margin basis, more than \$461,000 of high risk and speculative securities.

The Claimant asserted the following legal claims against the

NASD Regulation, Inc.
Office of Dispute Resolution
Arbitration No. 96-05601
Award Page 3 of 8

Respondents: fraud, negligence, negligent supervision, breach of fiduciary duty, breach of contract and respondent superior under the common laws of the State of Illinois; violations of Sections 2110, 2310, 2120 and 3010 of the NASD's Conduct Rules; violation of the Illinois Securities Act; and violation of the Illinois Consumer Fraud and Deceptive Business Practice Act.

In their Statements of Answer, the Respondents Daniel Porush, Patrick Gerard Hayes and Steve Sanders denied any, and all allegations of wrongdoing that had been set forth in the Statement of Claim. The Respondents specifically denied all allegations as to their employment of "boiler-room" sales practices, the misrepresentation and omission of material facts, the refusal to honor requests to sell securities, and that any guarantees were made as to the future price performance of any of the Securities that were purchased by the Claimant.

In addition to all of the above, the Respondents also asserted numerous separate affirmative and absolute defenses to the Statement of Claim.

OTHER ISSUES

Upon review of the file and documents admitted into evidence at hearing, the undersigned arbitrators have determined as follows:

1. Each of the Respondents were properly served with the Statement of Claim in accordance with Rule 10314 of the NASD Code of Arbitration Procedure (the "Code");
2. Respondents Howard S. Gelfand, Keith L.J. Connolly and Todd Haufler did not file executed Uniform Submission Agreements with the NASD, but are required to submit to the arbitration of this dispute in accordance with Rules 10101 and 10301 of the Code, and, having answered the claim and otherwise fully participated in the arbitration of this dispute prior to the hearing, are required to be and shall be bound by the determination of the undersigned arbitrators;

3. Each of the Respondents were properly served with the Notice of the Selection of the Panel of Arbitrators in accordance with Rule 10310 of the Code;

4. None of the respondents appeared at hearing. However, each of the Respondents were properly served with the Notice of the Time and Place for the Hearing in accordance with Rule 10315 of the Code and, pursuant to Rule 10318, the arbitrators determined that the hearing would proceed in the respondents absence;

5. Respondents Stratton Oakmont, Inc., Jordan I. Shamah, Leonard Dunn, Robert William Koch, Steven P. Sanders, Mathias Valentine Tiffert, Patrick Gerard Hayes, Keith L.J. Connolly and Todd Haufler who were named as Respondents in this matter, have filed petitions for relief under Chapter 7 of the United States Bankruptcy Code. Accordingly, pursuant to Section 362 of the Bankruptcy Code, Stratton Oakmont, Inc., Jordan I. Shamah, Leonard Dunn, Robert William Koch, Steven P. Sanders, Mathias Valentine Tiffert, Patrick Gerard Hayes, Keith L.J. Connolly and Todd Haufler have been removed as Respondents in this proceeding and shall not be bound by the Award rendered herein.

RELIEF REQUESTED

Claimant requested an Award against the Respondents as follows:

(a) For the sum of \$194,719, jointly and severally, representing his alleged compensatory damages;

(b) For the sum of \$50,000.00, jointly and severally, representing his lost interest and/or lost appreciation thereon;

(c) For the sum of \$950, jointly and severally, representing reimbursement of the filing fees and hearing session deposit associated with the initiation of this

NASD Regulation, Inc.
Office of Dispute Resolution
Arbitration No. 96-05601
Award Page 5 of 8

matter;

(d) For an award of \$1,852.00, jointly and severally, representing reimbursement of the costs and expenses associated with the prosecution of this proceeding, in accordance with the Illinois Securities Act and the Illinois Consumer Fraud and Deceptive Business Practice Act;

(e) For an award, jointly and severally, in such amount as may be deemed necessary, reasonable and equitable under the circumstances presented, representing attorney's fees, in accordance with the Illinois Securities Act and the Illinois Consumer Fraud and Deceptive Business Practice Act;

(f) For the imposition of all forum fees solely against the Respondents; and

(g) For the imposition of punitive damages in such an amount as may be deemed fair, just and equitable under the circumstances presented.

Respondents requested that the Statement of Claim be dismissed in its entirety.

SPECIFIC ISSUES CONSIDERED AND DECIDED

Upon review of the file and documents admitted into evidence at hearing, the undersigned arbitrators have determined and specifically find as follows:

1. Respondents Daniel Porush and Howard Scott Gelfand were the supervisors of Respondents Keith L.J. Connolly and Todd Haufler; directly and/or indirectly controlled the activities of Respondents Keith L.J. Connolly and Todd Haufler; and did not sustain the burden of proof, nor offer any evidence whatsoever, that they did not know, and the exercise of reasonable care could not have

NASD Regulation, Inc.
Office of Dispute Resolution
Arbitration No. 96-05601
Award Page 6 of 8

known, of the existence of the facts by reason of which the liability asserted against them in the Statement of Claim was alleged to have existed;

2. Each of the Respondents obtained money from the Claimant through actual fraud, false pretenses and the willful and malicious false representation of material facts which they knew to be false and which were justifiably relied upon by the Claimant;

3. The conduct of each of the Respondents, with respect to the Claimant, was willful, malicious and performed with either the actual intent of causing financial injury to the Claimant and/or under circumstances where such financial injury was substantially certain to occur.

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. Respondents Howard Scott Gelfand and Daniel Porush are jointly and severally liable for and shall pay to Claimant Lars-Erik Jonsson the sum of \$208,440.00 representing his compensatory damages;

2. In addition, Respondents Howard Scott Gelfand and Daniel Porush are jointly and severally liable for and shall pay to Claimant Lars-Erik Jonsson the sum of \$29,196.00 representing lost interest;

3. Furthermore, Respondents Howard Scott Gelfand and Daniel Porush are jointly and severally liable for and shall pay to Claimant Lars-Erik Jonsson the sum of \$1,852.00 representing reimbursement of the costs and expenses associated with the prosecution of this proceeding, in accordance with the Illinois Securities

NASD Regulation, Inc.
Office of Dispute Resolution
Arbitration No. 96-05601
Award Page 7 of 8

Act and the Illinois Consumer Fraud and Deceptive Business Practice Act;

4. Additionally, Respondents Howard Scott Gelfand and Daniel Porush are jointly and severally liable for and shall pay to Claimant Lars-Erik Jonsson the sum of \$14,070.00 representing necessary, reasonable and equitable attorney's fees, in accordance with the Illinois Securities Act and the Illinois Consumer Fraud and Deceptive Business Practice Act;

5. Respondents Howard Scott Gelfand and Daniel Porush are also jointly and severally liable for and shall pay to Claimant Lars-Erik Jonsson the sum of \$2,084,000.00 representing punitive damages for their conduct herein. In deciding to award punitive damages, the panel considered the arguments of counsel, the evidence presented at hearing and the authority provided by claimant, and determined that authority existed for an award of damages to the Claimant, Lars-Erik Jonsson;

6. Respondents Howard Scott Gelfand and Daniel Porush are jointly and severally liable for and shall pay to Claimant, interest on each and all of the preceding amounts, from the date of service of this award until the date of full payment thereof, at the annual rate of ten percent (10%) per annum; and

7. All other claims and requests for relief, not specifically awarded herein, have been considered and each of them are hereby denied with prejudice.

OTHER COSTS

NASD Regulation, Inc. shall retain the \$750.00 postponement fee paid by Keith L.J. Connolly for the postponement of the May 27, 28 and 29, 1998 scheduled arbitration of this matter.

NASD Regulation, Inc.
Office of Dispute Resolution
Arbitration No. 96-05601
Award Page 8 of 8

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300.00 for each pre-hearing conference. A hearing session is any meeting between the parties and the arbitrators which lasts four (4) hours or less.

Pursuant to Rule 10332 of the Code, the NASD shall retain the non-refundable filing fee of \$200.00 that was paid by the Claimant and shall retain, as forum fees, the hearing session deposit of \$750.00 that was previously deposited by the Claimant.

Respondents Howard Scott Gelfand and Daniel Porush are jointly and severally liable to and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution forum fees in the amount of \$750.00. In addition, Respondents Howard Scott Gelfand and Daniel Porush are jointly and severally liable for and shall pay to the Claimant, Lars-Erik Jonsson, the sum of \$950.00, representing reimbursement of the claim filing fee and forum fee paid by Claimant. Fees are payable to NASD Regulation, Inc., Office of Dispute Resolution.

Concurring Arbitrators

Date

/s/ Bernard F. Doyle, Jr., Esq.
Bernard F. Doyle, Jr., Esq.
Chairperson, Public Arbitrator

August 27, 1998

/s/ Roger B. Johnston
Roger B. Johnston
Public Arbitrator

August 28, 1998

/s/ Lawrence Tepper, CPA
Lawrence Tepper, CPA
Industry Arbitrator

August 31, 1998

For ODR Use Only/Date of Award: September 2, 1998