

**AWARD**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

Name of Claimants

Harold A. and Meryl N. Robinson; Harold A. Robinson Trust;  
Harold A. Robinson; and Harold A. Robinson Revocable Trust

96-05726

Name of Respondents

Stratton Oakmont, Inc.; Marc Burton; Stacey Yonkus;  
Jordan R. Belfort; Kenneth S. Greene; Daniel M. Porush; and  
William Walsh

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**REPRESENTATION**

For Claimants: Harold A. and Meryl N. Robinson; Harold A. Robinson Trust; Harold A. Robinson; and Harold A. Robinson Revocable Trust ("Robinson") were represented by Thomas C. Wagner, Esq. of Chatman, Gaines & Stern, located in Cleveland, Ohio.

For Respondents: Stratton Oakmont, Inc. ("Stratton") was in SIPC liquidation and did not appear at hearing. Marc Burton ("Burton") represented himself, did not appear at hearing, but was permitted to submit a written defense. Stacey Yonkus ("Yonkus") filed for bankruptcy and did not appear. Jordan R. Belfort ("Belfort") represented himself, but did not appear at hearing. Kenneth S. Greene ("Greene") was represented by Francine Miller, Esq. of Hoffman, Pollok & Pickholz, L.L.P. of New York, New York, but did not appear at hearing. Daniel M. Porush ("Porush") was represented by Mark E. Gelfand, Esq. of Hicksville, New York, but did not appear at the hearing. William Walsh ("Walsh") was represented by Norman B. Arnoff, Esq. of Capuder & Arnoff, P.C., located in New York, New York,

**CASE INFORMATION**

Statement of Claim filed: December 24, 1996.

Claimants' Submission Agreement signed on: December 18, 1996 and January 31, 1997.

Amended Statement of Claim filed on: June 26, 1997.

Statement of Answer and Motion for Summary Dismissal filed by Respondent Burton on: May 23, 1997.

Respondent Burton's Submission Agreement signed on: June 3, 1997.

Statement of Answer filed by Respondent Belfort on: September 17, 1997.  
Statement of Answer filed by Respondent Porush on: August 20, 1997.  
Respondent Porush's Submission Agreement signed on: August 18, 1997.  
Statement of Answer filed by Respondent Walsh on: March 5, 1997.  
Respondents Stratton, Yonkus and Greene did not file a Statement of Answer.  
Respondents Stratton, Yonkus, Belfort, Greene and Walsh did not file executed submission agreements.

Claimants' Memorandum in Opposition to Respondent Marc Burton's "Motion for Summary Dismissal" filed on: June 26, 1997.

#### HEARING INFORMATION

Pre-Hearing Conference: July 18, 1997 before the full panel.  
Hearing Dates/Sessions: October 29, 1998 for One (1) session.  
Hearing Location: Cleveland, Ohio.

#### CASE SUMMARY

Claimants alleged that Respondents engaged in a pattern and practice of misrepresenting the purchasing provisions of several purchases of IPOs, requiring Claimants to purchase common stock and warrants at market prices in order to obtain stock under the IPO. In addition, Claimants alleged that Respondents, in spite of their knowledge of certain companies financial condition, failed to advise Claimants of the deteriorating condition of the companies in which Claimants had positions. It was further alleged that unauthorized purchases of stock took place in spite of Claimants' express instructions to not make the purchase. Also, many of the purchases and investments made were unsuitable for a retired, unsophisticated investor like Mr. Robinson. Claimants asserted claims for intentional misrepresentation, fraud, breach of fiduciary duties, breach of contract and failure to supervise.

Respondent Burton denied the material allegations of the Statement of Claim, alleging that he was assigned to the account because the Claimants were disappointed with the performance of the account when Yonkus was the broker. Burton carefully devised a strategy to help Claimants recoup some of the losses, the Claimants were fully informed of the risks of this strategy and authorized all purchases. The losses incurred were solely the result of the Claimants' own investment decisions. In addition, Burton asserted several affirmative defenses for the panel's consideration.

Respondent Belfort denied the material allegations of the Claim, alleging that for most, if not all, of the period complained of, he was not associated with Stratton, had no direct dealings with Yonkus, and was not a principal officer and shareholder of Stratton. In addition, Belfort asserted several affirmative defenses considered by the panel.

Respondent Porush denied the material allegations of the Claim and asserted several affirmative defenses considered by the panel.

Respondent Walsh denied any liability, asserting that while he held the title of compliance officer, he did not have any supervisory responsibilities and was not involved in any management decisions.

### **RELIEF REQUESTED**

Claimants requested entry of an award for damages in excess of \$500,000.00 and punitive damages.

Respondent Burton requested that the panel dismiss the claim in its entirety with prejudice and that he be awarded cost and expenses, as well as any other relief the panel deemed just and proper. Respondent Belfort requested that the claim be dismissed. Respondent Porush requested that the claims be dismissed with prejudice and the costs assessed against the Claimants. Respondent Walsh requested that the claims against him be dismissed.

### **OTHER ISSUES CONSIDERED & DECIDED**

On February 4, 1997, the parties were advised that pursuant to filings under the Securities Investor Protection Act, all matters concerning Respondent Stratton Oakmont, Inc. were stayed indefinitely.

On May 16, 1997, Respondent Stacey Yonkus filed a bankruptcy action in the United States Bankruptcy Court, Eastern District of New York. Pursuant to §362 of the Bankruptcy Code, all actions against this respondent were stayed.

By letter dated June 30, 1998, the Claimants dismissed their claims against Respondent William Walsh.

On October 21, 1998, the Office of Dispute Resolution received a letter from Respondent Greene advising that he had reached a settlement with the Claimant. On November 13, 1998, Claimants and Respondent Kenneth Greene filed a Stipulation of Dismissal with prejudice.

On October 28, 1998, the panel denied a request for Respondent Burton to appear at hearing telephonically. Respondent Burton filed a Motion to Provide a Written Statement on the same date. On October 29, 1998, the panel granted the motion.

The panel denied Respondent Burton's Motion for Summary Dismissal.

The parties in attendance 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 parties in attendance agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators have determined that Respondents Burton, Belfort, and Porush received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondents Stratton, Yonkus, Belfort, Greene and Walsh did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration, but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and are bound by the determination of the arbitration panel on all issues submitted.

#### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Marc Burton is liable for and shall pay to Claimants Harold A. and Meryl N. Robinson; Harold A. Robinson Trust; Harold A. Robinson; and Harold A. Robinson Revocable Trust the sum of Sixty Two Thousand (\$62,000.00) Dollars in actual damages;
2. In addition to the above damages, Respondents Jordan R. Belfort and Daniel M. Porush are jointly and severally liable for and shall pay to Claimants Harold A. and Meryl N. Robinson; Harold A. Robinson Trust; Harold A. Robinson; and Harold A. Robinson Revocable Trust the sum of Sixty Nine Thousand (\$69,000.00) Dollars in actual damages;
3. Pursuant to the above paragraphs, the total damages awarded to Claimants are One Hundred Thirty One Thousand (\$131,000.00) Dollars;
4. The claims against Respondents William Walsh and Kenneth S. Greene are dismissed with prejudice;
5. The claims against Respondents Stratton Oakmont, Inc. and Stacey Yonkus are stayed and no action was taken against these Respondents;
6. The parties shall bear their own costs of arbitration, including attorneys' fees, except

for those specifically enumerated herein; and

7. Any relief not specifically awarded is hereby denied.

**OTHER COSTS**

The postponement fee assessed against Claimants on July 31, 1998 is waived by the panel.

**FORUM FEES**

Pursuant to Rule 10332[c] of the Code of Arbitration Procedure, the following Forum Fees are assessed: One pre-hearing before full panel x \$1,000.00 = \$1,000.00; One hearing session x \$1,000.00 = \$1,000.00; Total Forum Fees = \$2,000.00.

NASD Regulation, Inc. shall retain the \$250.00 claim filing fee and refund the \$1,000.00 hearing session deposit previously paid by the Claimants. In addition, Respondents Marc Burton, Jordan R. Belfort and Daniel M. Porush are jointly and severally liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$2,000.00 as forum fees.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures  
Name

Date

\_\_\_\_\_  
Robert C. Devlin, Esq.  
Public Arbitrator  
Chairperson

\_\_\_\_\_  
*Charles R. Miller*  
Charles R. Miller, Esq.  
Public Arbitrator

\_\_\_\_\_  
*February 22, 1999*

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Elayne S. Mitchell, CFP  
Industry Arbitrator

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NASD Regulation, Inc., Office of Dispute Resolution  
Arbitration No. 96-05726  
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NATIONAL ASSOCIATION  
OF NATIONAL ASSOCIATION INC.  
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Industry Arbitrator

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Industry Arbitrator

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