

AWARD

NASD REGULATION, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Donald Birch

Arbitration
No. 97-00096

Name of Respondent(s)

Steve Kleinmann
Daniel M. Porush
Jeffrey Shneider

REPRESENTATION

For Claimant: John A. Bender, Jr., Esq., Weiss Jensen Ellis & Howard, Seattle, Washington

For Respondents: Steve Kleinmann and Jeffrey Shneider: Jay M. Israel, Esq., Wexler & Burkhart, P.C., Mitchel Field, New York

For Respondent Daniel M. Porush: Mark E. Gelfand, Esq., Hicksville, New York

CASE INFORMATION

Statement of Claim filed: January 2, 1997

Claimant's Response to Steve Kleinmann's, Jeffrey Shneider's and Daniel M. Porush's Motion to Dismiss filed: on or about September 8, 1997

Claimant's Submission Agreement signed: January 24, 1997

Joint Statement of Answer and Motion to Dismiss filed by Respondents Jeffrey Shneider and Steve Kleinmann: March 31, 1997

Statement of Answer and Motion to Dismiss and to Strike filed by Respondent Daniel M. Porush: April 14, 1997

Affidavit of Joseph DelDuca in support of Respondent Porush's Motion to Dismiss filed: May 22, 1997

Respondent Daniel M. Porush's Submission Agreement signed: April 14, 1997

Respondents Steve Kleinmann and Jeffrey Shneider did not file Submission Agreements. However, they are subject to NASD Regulation, Inc. (NASD) jurisdiction in accordance with Rule 10301 of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

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

August 18, 1997 (one session)
September 29, 1997 (one session)
December 22, 1997 (one session)

Hearing Date(s)/Session(s): June 9, 1998 (one session)

Hearing Location: Seattle, Washington

CASE SUMMARY

Claimant alleged that Respondents misrepresented the nature, security, and liquidity of the stocks sold in his account; the transactions were unsuitable for Claimant in his generally conservative account; Respondents convinced Claimant to invest in risky trading strategies leading to losses in violation of Claimant's investment objectives and specific instructions, without a rational basis; and that Respondents committed intentional fraud on the securities markets, causing harm to a Washington resident. Claimant further alleged that the aforementioned conduct violated the securities laws of Washington, and the U.S.A. and constituted a breach of fiduciary obligation undertaken by Respondents, and further alleged that the fraudulent nature of these actions lead to liability under Washington's Consumer Protection Act.

Respondents Jeffrey Shneider and Steve Kleinmann denied each and every allegation of wrongdoing in Claimant's Claim, and alleged that all transactions which occurred in Claimant's account at Stratton Oakmont, Inc. were carried out in accordance with Claimant's instructions and in conformity with all applicable rules, regulations, industry standards and practices. Respondents Shneider and Kleinmann also asserted affirmative defenses.

Respondent Daniel M. Porush denied knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the Statement of Claim and alleged that he was not the Claimant's broker of record, never communicated with the Claimant, never made recommendations of any kind to the Claimant and never knew of the Claimant's existence until the commencement of this Arbitration. Respondent Porush further denied the allegations contained in the paragraph of the Statement of

Claim that mentions him by name. Respondent Porush also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested damages in the amount of \$232,000.00 plus \$50,000.00 in lost opportunity costs, plus attorney's fees in the amount of \$50,000.00.

Respondents Jeffrey Shneider and Steve Kleinmann requested that the panel dismiss the Statement of Claim in its entirety; award Respondents their costs and expenses of this arbitration; and grant Respondents such other and further relief as is just and proper.

Respondent Daniel M. 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 Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, the panel of arbitrators was advised of the Order entered by the United States District Court for the Southern District of New York upon the application of the Securities Investor Protection Corporation under the Securities Investor Protection Act with respect to Stratton Oakmont, Inc. and advised of the bankruptcy filing with respect to Steven P. Sanders. The panel was further advised that the above-referenced dispute is stayed with respect to these Respondents.

On or about December 22, 1997, the panel of arbitrators reviewed and considered the positions of the parties relative to the Motion to Dismiss/More Definite Statement of Claim filed by Respondents Jeffrey Shneider and Steve Kleinmann; and the Motion to Dismiss and to Strike by Respondent Daniel M. Porush. The panel denied Respondents Shneider and Kleinmann's Motion to Dismiss and Motion for a More Definite Statement of Claim; and denied Respondent Porush's Motion to Dismiss and to Strike.

Respondents did not appear at hearing. The panel determined that Respondents received proper service and notice of the hearing and ruled to proceed in their 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 the NASD.

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 Jeffrey Shneider, Steve Kleinmann and Daniel M. Porush are jointly and severally liable for and shall pay to Claimants the sum of \$211,764.00 together with interest thereon at the rate of 12% per annum from December 9, 1996, until payment of award.

2. Respondents Jeffrey Shneider, Steve Kleinmann and Daniel M. Porush are jointly and severally liable for and shall pay to Claimants the sum of \$15,000.00 in attorney's fees pursuant to RCW 21.20.430.

3. The parties shall each bear their respective costs in this matter.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund Claimant's hearing session deposit in the amount of \$750.00. Forum fees are assessed against Respondents, jointly and severally, in the amount of \$2,550.00, calculated as follows: One pre-hearing session times \$300.00, plus two pre-hearing sessions times \$750.00, plus one hearing session times \$750.00.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Katherine Hendricks, Esq.	Public Arbitrator
James R. Phippard, Esq.	Public Arbitrator
Frank A. Pritchard, Jr.	Industry Arbitrator

Concurring Arbitrators' Signatures


Katherine Hendricks, Esq.

James R. Phippard, Esq.

Frank A. Pritchard, Jr.

Signed June 22, 1998
Date of Decision: _____

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James R. Phippard, Esq.	Public Arbitrator
Frank A. Pritchard, Jr.	Industry Arbitrator

Concurring Arbitrators' Signatures

Katherine Hendricks, Esq.


James R. Phippard, Esq.

Frank A. Pritchard, Jr.

Date of Decision: 6-9-98

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:

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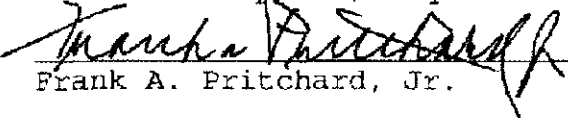
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Katherine Hendricks, Esq.	Public Arbitrator
James R. Phippard, Esq.	Public Arbitrator
Frank A. Pritchard, Jr.	Industry Arbitrator

Concurring Arbitrators' Signatures

Katherine Hendricks, Esq.

James R. Phippard, Esq.



Frank A. Pritchard, Jr.

Date of Decision: 6/9/98

Date Serve: 06/26/98