

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimants

Thomas A. and Kathleen Vyrostek

vs.

97-00147

Name of Respondents

Daniel Porush
Scott Forman

REPRESENTATION

Claimants Thomas A. and Kathleen Vyrostek ("Claimants") were represented by Kristen W. Ulbrich, Esq., Adler, Pollock & Sheehan, Inc., Providence, Rhode Island.

Respondent Daniel Porush ("Porush") was represented by Mark E. Gelfand, Esq., Hicksville, New York.

Respondent Scott Forman ("Forman") appeared pro se.

CASE INFORMATION

Claimants' Statement of Claim was filed January 10, 1997.

Claimants' Amended Statement of Claim was filed August 7, 1997.

Claimants' Uniform Submission Agreement was signed January 3, 1997.

Porush's Statement of Answer was filed March 10, 1997.

Porush's Statement of Answer to the Amended Statement of Claim was filed August 19, 1997.

Porush's Uniform Submission Agreement was signed March 10, 1997.

Forman's Statement of Answer was filed June 12, 1997.

Forman did not execute an agreement to arbitrate.

HEARING INFORMATION

Prehearing Conference Date/Sessions: March 11, 1998/one session

Hearing Dates/Sessions: November 9, 1998/one session
December 4, 1998/one session

Prehearing and hearing sessions were via telephonic conference call.

CASE SUMMARY

Claimants alleged that Respondents Porush and Forman, while registered representatives with Stratton Oakmont, induced them to invest in unsuitable securities and engaged in such fraudulent activities as churning, misappropriation, negligence, market manipulation, negligent supervision, breach of contract and a breach of fiduciary duty. Specifically, Claimants alleged that they received a cold call from Forman in June of 1994, attempting to induce Claimants to open an account with Stratton Oakmont. Eventually, Claimants asserted that Forman persuaded them to open an account and authorize the purchase of 200 shares of Dr. Pepper/Seven-Up Cos., Inc. ("7Up"). Claimants contended that in August 1994 Forman used funds from Claimants' account to purchase Select Media and Octagon. In both instances, Claimants alleged that Forman used a combination of high pressure tactics, misrepresentations as well as omissions of relevant information.

Claimants alleged that Porush failed to adequately supervise Forman in the management of their account. In addition, Claimants alleged that the actions of Porush and Forman in churning their account with unsuitable investments, constituted a breach of contract, common law conversion/misappropriation through unauthorized transactions, unjust enrichment, a breach of fiduciary duty, negligence, negligent supervision, market manipulation and unfair and deceptive trade practices.

Respondent Forman denied the allegations of wrong-doing as asserted in the Statement of Claim. Forman maintained that Claimants were sophisticated investors who managed their account and any loss would be attributable to their own investment decisions. Forman further maintained that he acted in good faith and exercised at least that degree of care, diligence and skill which ordinarily prudent persons would exercise in similar circumstances. Forman contended that all securities purchased in Claimants' account was in accordance with their stated investment objectives and were consistent with their risk tolerance and financial circumstances. Furthermore, Forman raised the affirmative defenses of a failure to state a claim upon which relief can be granted; claims barred by the applicable statutes of limitation; estoppel; ratification; waiver; laches; and assumption of risk.

Respondent Porush denied the allegations of fraudulent conduct as asserted by Claimants. In addition, Porush maintained that he never had any contact with Claimants and was never aware of Claimants. Porush contended that Claimants failed to plead fraud with specificity as required by law and that any losses suffered by Claimants were not proximately caused by any action, or inaction, by Porush. Porush raised the affirmative defenses of a failure to state a claim upon which relief can be granted; claims barred by the applicable statutes of limitation; estoppel; ratification; waiver; laches; assumption of risk; a failure to mitigate damages; and a failure to show Claimants' losses caused by any lack of supervision of Forman.

RELIEF REQUESTED

Claimants requested a minimum of \$500,000.00; punitive damages in an amount between \$1,000.00 and \$500,000.00; disgorgement of commissions and markups; pre-award interest; attorney's fees and the costs of this arbitration as well as a specific finding of fraud to protect

Claimants in the event Respondents Porush or Forman attempt to file for bankruptcy to escape liability.

Forman requested that Claimants' claims be dismissed in their entirety and that all costs be assessed to Claimants.

Porush requested that Claimants' claims be dismissed in their entirety and that all costs be assessed to Claimants.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

The undersigned arbitrators determined that Respondent Porush received due notice of the hearing as required under Rule 10315 of the NASD Code of Arbitration Procedure (the "Code") having filed a Statement of Answer to the Statement of Claim and to the Amended Statement of Claim and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondent Forman did not file with the NASD Regulation, Inc. Office of Dispute Resolution ("NASD") a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the Code and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Panel considered Claimants' Request to have the hearing on the merits via telephone conference call and the lack of objection from Respondents, and granted the Request.

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. That Respondents Porush and Forman are jointly and severally liable to and shall pay to Claimants \$124,017.00, plus 6% simple interest from January 11, 1999 until paid; and
2. That the claim for punitive damages is denied; and
3. That each party shall bear its own costs and expenses with the exception of forum fees as specified below; and
4. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Rule 10332(b) of the Code defines a hearing session as any meeting between the arbitrators and the parties, including a prehearing conference, which lasts four hours or less. Pursuant to Rule 10332(c) of the Code, the following forum fees are assessed:

1 prehearing conference call x \$750.00 =	\$ 750.00
2 hearing sessions x \$750.00 =	\$1,500.00
Total Forum Fees =	\$2,250.00

Forum Fees are assessed in equal shares to each party. Claimants shall receive credit for the \$750.00 hearing session deposit previously submitted to the NASD Regulation, leaving no further assessment for Claimants.

Respondents each have a forum fee assessment due of \$750.00.

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

DATE

1/21/79

CONCURRING ARBITRATORS' SIGNATURES


Cynthia Turner, Presiding Arbitrator
Public Arbitrator

Louis E. Seltzer
Public Arbitrator

David Austin Mallach
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 26, 1979

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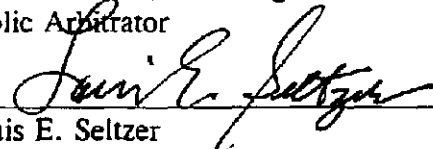
Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

DATE

CONCURRING ARBITRATORS' SIGNATURES

1/18/99

Cynthia Turner, Presiding Arbitrator
Public Arbitrator


Louis E. Seltzer
Public Arbitrator

David Austin Mallach
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 26, 1999

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DATE

CONCURRING ARBITRATORS' SIGNATURES

Cynthia Turner, Presiding Arbitrator
Public Arbitrator

Louis E. Seltzer
Public Arbitrator

11/14/99



David Austin Mallach
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 26, 1999