

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Stan Collins, Sherrie Collins, and Michael Collins, (Claimants) vs. SG Cowen Securities Corp.  
and Nicholas Michael, (Respondents)

Case Number: 01-01873

Hearing Site: Columbus, Ohio

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**REPRESENTATION OF PARTIES**

Claimants Stan Collins, Sherrie Collins, and Michael Collins ("M. Collins"), hereinafter collectively referred to as "Claimants": Kevin R. McDermott, Esq., Schottenstein, Zox & Dunn L.P.A., Columbus, OH.

Respondent, SG Cowen Securities Corp. ("Cowen"): Andrew R. Harvin, Esq., Doyle, Restrepo, Harvin & Robbins, L.L.P., Houston, TX. Previously represented by: Dina M. Cary, Esq., Coolidge Wall Womsley & Lombard, Dayton, OH.

Respondent, Nicholas Michael ("Michael"): James M. Hill, Esq., McNamee & Hill, Dayton, OH. Previously represented by: Dina M. Cary, Esq., Coolidge Wall Womsley & Lombard, Dayton, OH.

**CASE INFORMATION**

Statement of Claim filed on or about: April 11, 2001.

Stan Collins signed the Uniform Submission Agreement: April 19, 2001.

Sherrie Collins signed the Uniform Submission Agreement: April 19, 2001.

M. Collins signed the Uniform Submission Agreement: April 19, 2001.

Joint Statement of Answer filed by Cowen and Michael on or about: June 22, 2001.

Cowen did not submit a signed Uniform Submission Agreement.

Michael did not submit a signed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: suitability; churning; negligence; common

law fraud; breach of fiduciary duty; respondeat superior; and control person liability. Claimants' claim involved the stocks of Computer Concepts Corp., Cypress Semiconductor, Diamond Multimedia Systems, Inc., Oak Technologies, Summit Technologies, Namibian Minerals Corp., Healthgate Data Corp., High Speed Access Corp., and Internet.com Corp.

Unless specifically admitted in their Answer, Cowen and Michael denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted and the Statement of Claim is barred, in whole or in part, by the applicable statutes of limitation.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$605,000.00, plus interest, costs, attorneys' fees, benefit of the bargain damages, lost opportunity costs, model portfolio damages, punitive damages, and such other relief as is deemed necessary and proper.

Cowen and Michael requested that the Statement of Claim be dismissed with prejudice, and that they be awarded their costs, fees, and any other relief to which they are legally or equitably entitled.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Cowen and Michael did not file with NASD Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Pursuant to Rule 10313 of the NASD Code of Arbitration Procedure, the parties agreed to proceed with a Panel of two arbitrators following the withdrawal of arbitrator Kathleen T. SuSong.

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.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Cowen and Michael are jointly and severally liable for and shall pay to Stan Collins and Sherrie Collins the sum of \$303,600.00 as compensatory damages.

2. Cowen and Michael are jointly and severally liable for and shall pay to M. Collins the sum of \$65,000.00 as compensatory damages.
3. Claimants' request for punitive damages is hereby denied.
4. All other requests for relief are hereby denied.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 375.00

#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, SG Cowen Securities Corp. is a party.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

#### Adjournment Fees

Adjournments requested during these proceedings:

June 25 & 26, 2002, adjournment by Claimants	= WAIVED
Sept. 26 & 27, 2002, adjournment by Cowen and Michael	= WAIVED

#### Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$2,400.00
Pre-hearing conferences:	
December 12, 2001	1 session
July 1, 2002	1 session
Six (6) Hearing sessions x \$1,200.00	= \$7,200.00
Hearing Dates:	
November 13, 2002	2 sessions
November 14, 2002	2 sessions
November 15, 2002	2 sessions
Total Forum Fees	= \$9,600.00

1. The Panel has assessed \$4,800.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$4,800.00 of the forum fees jointly and severally against Cowen and Michael.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$4,800.00</u>
Total Fees	= \$5,175.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Dispute Resolution	= \$3,600.00

2. Cowen is solely liable for:

<u>Member Fees</u>	<u>= \$6,100.00</u>
Total Fees	= \$6,100.00
<u>Less payments</u>	<u>= \$6,100.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Cowen and Michael are jointly and severally liable for:

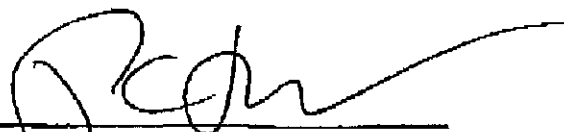
<u>Forum Fees</u>	<u>= \$4,800.00</u>
Total Fees	= \$4,800.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$4,800.00

All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Philip C. Johnston	-	Public Arbitrator, Presiding Chair
Michael Guy	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



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Philip C. Johnston  
Public Arbitrator, Presiding Chair

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Signature Date

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Michael Guy  
Non-Public Arbitrator

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Signature Date

December 11, 2002

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Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

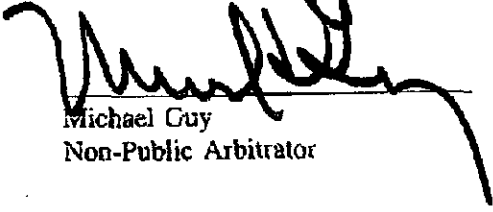
Philip C. Johnston  
Michael Guy

Public Arbitrator, Presiding Chair  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Philip C. Johnston  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

  
Michael Guy  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

December 11, 2002

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Date of Service (For NASD Dispute Resolution use only)