

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Estate of Ann Cuneo

Case Number: 03-02032

Name of the Respondents
Cowen & Co., SG Cowen Securities, Corp.,
Société Générale, S.A., Lehman Brothers, Inc.,
and Lehman Brothers Holdings, Inc.

Hearing Site: Chicago, Illinois

NATURE OF THE DISPUTE

Customer v. Member Firms and Non-Member Firms

REPRESENTATION OF PARTIES

Howard S. Suskin, Esq., Suzanne J. Prysak, Esq., and Hillary A. Victor, Esq. of the firm Jenner & Block, LLC, located in Chicago, Illinois, represented Claimant, the Estate of Ann Cuneo, ("Cuneo Estate").

David Weiner, Esq., and Charna Eve Sherman, Esq., of the firm Squire Sanders & Dempsey, LLP, located in Cleveland, Ohio, represented Respondents Cowen & Co., ("Cowen").

P. Benjamin Duke, Esq., and Linda C. Goldstein, Esq. of the firm Covington & Burling, located in New York, New York, represented SG Cowen Securities, Corp., ("SG Cowen") and Société Générale, S.A., ("Société Générale").

H. Nicholas Berberian, Esq., Patrick G. King, Esq., and August H. Schupp, Esq., of the firm Neal Gerber & Eisenberg, located in Chicago, Illinois, represented Lehman Brothers, Inc., ("Lehman Brothers") and Lehman Brothers Holdings, Inc., ("Lehman Brothers Holdings").

CASE INFORMATION

The Cuneo Estate filed the Statement of Claim on or about March 21, 2003. Co-Administrators Ronald L. Stout and Breda Hickey Stout signed the Uniform Submission Agreement, on behalf of the Estate of Cuneo, on March 19, 2003.

Respondent Cowen filed a Statement of Answer on June 18, 2003. Respondent Cowen & Co. signed the Uniform Submission Agreement June 17, 2003.

Respondents SG Cowen and Société Générale filed a Joint Statement of Answer on June 9, 2003. Respondent SG Cowen signed the Uniform Submission Agreement June 23, 2003, and Respondent Société Générale signed the Uniform Submission Agreement on June 23, 2003. Respondents SG Cowen and Société Générale's Amended Statement of Answer was filed on September 29, 2004.

Respondents Lehman Brothers and Lehman Brothers Holdings filed a Joint Statement of Answer on June 30, 2003. Respondent Lehman Brothers signed the Uniform Submission Agreement July 1, 2003, and Respondent Lehman Brothers Holdings signed the Uniform Submission Agreement on July 1, 2003.

Motions

Claimant

Claimant filed a Motion to Bar and Dismiss Defenses and Entry of Default Award Against SG Cowen Respondents on September 10, 2004. Respondent SG Cowen filed a Response in Opposition on September 24, 2004. Claimant replied on September 30, 2004.

Respondent Cowen

Respondent Cowen filed a Motion to Dismiss Time-Barred Claims on September 13, 2004. Claimant filed a Response in Opposition on September 24, 2004. Respondent Cowen replied on September 30, 2004.

Respondent Cowen filed a Motion to Dismiss Punitive Damages on September 15, 2004. Claimant filed a Response in Opposition on September 24, 2004. Respondent Cowen replied on September 30, 2004.

Respondent Cowen orally proffered a Motion to Dismiss Claims on October 22, 2004. Respondent Cowen filed a Brief in Support of its Motion to Dismiss on November 12, 2004.

Respondents SG Cowen and Société Générale

Respondents SG Cowen and Société Générale filed a Motion for Leave to File Amended Answer on August 16, 2004. Claimant filed a Response in Opposition on September 2, 2004. Respondents SG Cowen and Société Générale filed a Reply Memorandum in Further Support on September 9, 2004.

Respondents SG Cowen and Société Générale filed a Motion to Dismiss Time-Barred Claims on September 13, 2004. Claimant filed a Response in Opposition on September 24, 2004. Respondents replied on September 30, 2004.

Respondents SG Cowen and Société Générale filed a Motion to Dismiss Claimant's Claims for Punitive Damages September 13, 2004. Claimant filed a Response in Opposition on September 24, 2004. Respondents SG Cowen and Société Générale filed a Reply Memorandum in Further Support of their Motion on September 30, 2004.

Respondents SG Cowen and Société Générale orally proffered a Motion to Dismiss Claims on October 22, 2004 and filed a Memorandum in Support of their Motion to Dismiss Claims on November 12, 2004.

Respondents Lehman Brothers and Lehman Brothers Holdings

Respondents Lehman Brothers and Lehman Brothers Holdings filed a Motion to Strike Settlement Agreements and all References thereto from the Record on November 5, 2003. Claimants filed a Response in Opposition on November 12, 2003.

CASE SUMMARY

Claimant Estate of Cuneo asserted Respondents committed fraud and misrepresentation in violation of section 10(b) of the Securities and Exchange Act of 1934, Rule 10b-5 of the Securities and Exchange Commission, the Investment Advisors Act; and the Illinois Consumer Fraud and Deceptive Business Practices Act; failed to supervise in violation of section 20(a) of the Securities and Exchange Act of 1934; committed conversion and common law fraud; participated in civil conspiracy; aided and abetted; breached their fiduciary duty; negligently misrepresented material facts; were negligent; breached their contract with Claimant; and made promises to Claimant giving rise to promissory estoppel.

The causes of action relate to Respondents' supervision of Frank Gruttadauria while handling the late Ms. Cuneo's account(s) during the tenure his employment at each firm.

Unless specifically admitted in its Answer, Respondent Cowen denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; alleged damages are set off by amounts owed by Claimant to Respondent; failure to mitigate; Gruttadauria operated outside Cowen's authority; claims are barred, in whole or in part, under the doctrines of recoupment, laches, estoppel, and unclean hands, lack of legally cognizable damages, contributory and/or comparative negligence and applicable statutes of limitations.

Unless specifically admitted in their Joint Answer, Respondents SG Cowen and Société Générale denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim; claims are barred, in whole or in part, by contributory and/or comparative negligence; no legal, equitable, or factual basis for an award of damages; any claims brought on behalf of Ann Cuneo's family or beneficiaries of the Estate are barred because Ann Cuneo's family and beneficiaries of the Estate are not parties to this action; claims are barred, in whole or in part, by the doctrines of estoppel

and waiver; no legal, equitable, or factual basis for an award of damages for pain or mental anguish; no legal or equitable basis for an award of attorney's fees; and no entitlement to punitive or compensatory damages exceeding out-of-pocket losses.

Unless specifically admitted in their Joint Answer, Respondents Lehman Brothers and Lehman Brothers Holdings denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim; no legally cognizable damages; no basis in law for attorney's fees and/or punitive damages; improper activity of Gruttadauria is outside the scope of Lehman Brothers and Lehman Brothers Holding's authority; Gruttadauria's improper activity was in his capacity as the Estate's executor, not as an employee; and the Estate is legally and equitably estopped from asserting these claims against Lehman Brothers and Lehman Brothers Holdings.

RELIEF REQUESTED

Claimant Estate of Cuneo requested compensatory damages in the amount of \$70,000,000.00, punitive damages, interest, attorney's fees, costs, and any such relief the Panel deems just and equitable.

Respondents each requested denial and dismissal of claims.

OTHER ISSUES CONSIDERED AND DECIDED

In an order dated December 29, 2003, the Panel denied Respondent Lehman Brothers and Lehman Brothers Holdings Motion to Strike Settlement Agreements and All References thereto from the Record.

Claimant voluntarily dismissed Respondents Lehman Brothers, Inc., and Lehman Brothers Holdings, Inc., from this arbitration on June 2, 2004, with prejudice.

In an order dated September 20, 2004, the Panel granted SC Cowen and Société Générale's Motion for Leave to file Amended Answer.

In an order dated October 8, 2004, the Panel denied Claimant's Motion to Bar and Dismiss Defenses and for Entry of Default Award against SG Cowen and Société Générale except to the extent the Panel ordered Respondents were barred from presenting evidence, or otherwise using in their defense, any document which was submitted on September 7, 2004, unless it had been tendered to Claimants prior to September 7, 2004, or used for rebuttal. In the same October 8, 2004 order, the Panel granted Respondent Cowen's and SG Cowen and Société Générale's respective Motions to Dismiss Time-Barred Claims, but only with respect to those causes of action the Panel finds from the evidence at the hearing to be violations of the Illinois Securities Act, as provided in 815 ILCS 5/12; in the absence of evidence persuading the Panel to the contrary, Illinois law, 735 ILCS 5/13-215, will govern to determine which causes of action are time barred. On October 8, 2004, the Panel also granted Respondent Cowen & Co's and SG Cowen and Société Générale's respective Motions to Dismiss

Claimant's Claims for Punitive Damages with respect to those causes of action arising during the life of Ann Cuneo and denied with respect to those causes of action arising after her death.

There was sufficient evidence presented to find for Claimant on breach of fiduciary duty, negligence, or breach of contract of the Statement of Claim, thus the Motion to Dismiss by Respondents presented orally at the hearing October 22, 2004 is denied as to those counts but granted as to all other counts in that Statement of Claim.

FINDINGS

After extensive discussions, the Panelists make the following findings:

1. There is insufficient evidence to support the allegation that Frank Gruttadauria (hereinafter "Gruttadauria") wrongfully took funds or securities belonging to Ann Cuneo or the Estate of Ann Cuneo.
2. At all relevant times, Gruttadauria did cause Ann Cuneo and the Estate of Ann Cuneo to receive funds, which may have been wrongfully taken from clients of Gruttadauria other than Ann Cuneo or the Estate.
3. Some or all of the transfers of funds to Ann Cuneo caused by Gruttadauria may have been the result of fraud or some other wrongful conduct perpetrated by him on other clients, but not on Ann Cuneo or her Estate.
4. None of the above-referenced transfers of funds to Ann Cuneo or her Estate caused Ann Cuneo or her Estate to be financially or otherwise injured.
5. The transfers of funds caused by Gruttadauria may arise from the wrongful manipulation of stock brokerage accounts owned by Gruttadauria's clients other than Ann Cuneo or her estate. This manipulation is akin to embezzlement and not transactions contemplated by the Illinois Securities Act (hereinafter "ISA"); therefore, the ISA statute of repose, Section 815 ILCS 5/13, is not applicable.
6. Ann Cuneo directed Gruttadauria to execute trades on her behalf.
7. Gruttadauria did not execute trades that Ann Cuneo had directed him to execute on her behalf.
8. Gruttadauria fraudulently concealed the fact that he was not executing the trades she had directed him to execute. The applicable statute of limitations is Section 735 ILCS 5/13-215.
9. The remaining Respondents failed to properly supervise Gruttadauria, which facilitated Gruttadauria's failure to execute Ann Cuneo's trades and his ability to conceal the fact that he was not executing those trades.
10. The evidence presented did not identify any specific trade which Gruttadauria failed to execute, but did establish that Ann Cuneo lost her right to have her trades executed, which the Panel finds has nominal value.
11. There was insufficient evidence presented to conclude that Gruttadauria removed, destroyed or otherwise tampered with any documents belonging to or related to Ann Cuneo which were maintained at any of her residences; thus, the Panel makes no adverse inference against Respondents based on spoliation.

12. The Panel found cause to award punitive damages against the Respondents, but consistent with the Panel's ruling in its Order dated October 8, 2004, the Panel found it does not have the authority to award such damages under Illinois tort law, since punitive damages do not survive the death of the injured.

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. Société Générale, S.A., Cowen & Co., and SG Cowen Securities, Corp. are jointly and severally liable for and shall pay to the Estate of Ann Cuneo the nominal sum of \$1.00, one dollar, as compensatory damages, plus interest at the rate of 9% to begin to accrue on the date of service of this award and ceases to accrue upon payment of the award.
2. Société Générale, S.A., Cowen & Co., and SG Cowen Securities, Corp. are jointly and severally liable for and shall pay to the Estate of Ann Cuneo the sum of \$700,000.00 as attorney's fees and costs, exclusive of NASD filing fees and forum fees. The Panel finds authority to award attorney's fees pursuant to the Illinois tort law.
3. Société Générale, S.A., Cowen & Co., and SG Cowen Securities, Corp. are jointly and severally liable for and shall pay to the Estate of Ann Cuneo the sum of \$600.00 as reimbursement for the non-refundable filing fee paid by the Estate.
4. Any and all relief not specifically addressed herein, including punitive damages, is 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	= \$ 600.00
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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. Accordingly, Lehman Brothers, Cowen, and SG Cowen are assessed the following fees:

Member surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Five (5) Pre-hearing sessions with Panel at \$1,200.00 = \$ 6,000.00

Pre-hearing conferences:	November 13, 2003	1 session
	December 19, 2003	1 session
	September 13, 2004	1 session
	September 20, 2004	1 session
	October 5, 2004	1 session

Fifteen (15) Hearing sessions at \$1,200.00 = \$18,000.00

Hearing Dates:	October 18, 2004	2 sessions
	October 19, 2004	2 sessions
	October 20, 2004	2 sessions
	October 21, 2004	2 sessions
	November 1, 2004	2 sessions
	November 4, 2004	3 sessions
	November 5, 2004	2 sessions

Total Forum Fees = \$24,000.00

The Panel has assessed \$24,000.00 of the forum fees jointly and severally to Société Générale, S.A., Cowen & Co., and SG Cowen Securities, Corp.

FEE SUMMARY

Claimant Estate of Ann Cuneo is solely liable for:

Initial Filing Fee	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 1,800.00
Refund due from NASD Dispute Resolution	= \$ 1,200.00

Respondent Lehman Brothers, Inc., is solely liable for:

Member Fees	= \$ 10,000.00
Total Fees	= \$10,000.00
Less payments	= \$10,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Cowen & Co., is solely liable for:

Member Fees	= \$ 10,000.00
Total Fees	= \$10,000.00
Less payments	= \$ 4,500.00
Balance Due NASD Dispute Resolution	= \$ 5,500.00

Respondent SG Cowen Securities, Corp., is solely liable for:

Member Fees	= \$ 10,000.00
Total Fees	= \$10,000.00
Less payments	= \$10,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Société Générale, S.A., Cowen & Co., and SG Cowen Securities, Corp. are jointly and severally liable for:

Forum Fees	= \$24,000.00
Total Fees	= \$24,000.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$24,000.00

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

ARBITRATION PANEL

Gary L. Grolle, Esq.	-	Public Arbitrator, Presiding Chairperson
Irving A. Chesler, J.D.	-	Public Arbitrator
Larry M. Dreyfus, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Gary L. Grolle
Gary L. Grolle, Esq.
Public Arbitrator, Presiding Chairperson

02/11/05
Signature Date

/s/ Irving A. Chesler
Irving A. Chesler, J.D.
Public Arbitrator

02/11/05
Signature Date

/s/ Larry M. Dreyfus
Larry M. Dreyfus, Esq.
Non-Public Arbitrator

02/11/05
Signature Date

02/11/05

Date of Service (For NASD Dispute Resolution office use only)

Respondent Cowen & Co., is solely liable for:

Member Fees	= \$ 10,000.00
Total Fees	= \$10,000.00
Less payments	= \$ 4,500.00
Balance Due NASD Dispute Resolution	= \$ 5,500.00

Respondent SG Cowen Securities, Corp., is solely liable for:

Member Fees	= \$ 10,000.00
Total Fees	= \$10,000.00
Less payments	= \$10,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Société Générale, S.A., Cowen & Co., and SG Cowen Securities, Corp. are jointly and severally liable for:

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Larry M. Dreyfus, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Gary L. Grolle, Esq.
Public Arbitrator, Presiding Chairperson

February 11, 2005
Signature Date

Irving A. Chesler, J.D.
Public Arbitrator

Signature Date

Larry M. Dreyfus, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 03-02032

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Respondent Cowen & Co., is solely liable for:

Member Fees	= \$ 10,000.00
Total Fees	= \$10,000.00
Less payments	= \$ 4,500.00
Balance Due NASD Dispute Resolution	= \$ 5,500.00

Respondent SG Cowen Securities, Corp., is solely liable for:

Member Fees	= \$ 10,000.00
Total Fees	= \$10,000.00
Less payments	= \$10,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Société Générale, S.A., Cowen & Co., and SG Cowen Securities, Corp. are jointly and severally liable for:

Forum Fees	= \$24,000.00
Total Fees	= \$24,000.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$24,000.00

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Concurring Arbitrators' Signatures

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 Public Arbitrator, Presiding Chairperson

Signature Date

Irving A. Chesler

Irving A. Chesler, J.D.
 Public Arbitrator

2/11/05

 Signature Date

 Larry M. Dreyfus, Esq.
 Non-Public Arbitrator

Signature Date_____
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 03-02032
Award Page 8 of 8

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Member Fees	= \$ 10,000.00
Total Fees	= \$10,000.00
Less payments	= \$ 4,500.00
Balance Due NASD Dispute Resolution	= \$ 5,500.00

Respondent SG Cowen Securities, Corp., is solely liable for:

Member Fees	= \$ 10,000.00
Total Fees	= \$10,000.00
Less payments	= \$10,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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