

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

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In the Matter of the Arbitration Between:

Jan Arnett (Claimant) vs. Whale Securities Co. L.P., Sands Brothers & Co., Carl Garceran, and SG Cowen Securities Corp. (Respondents)

Case Number: 04-07257

Hearing Site: New York, New York

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Nature of the Dispute: Customer vs. Members and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant Jan Arnett hereinafter referred to as "Claimant" appeared *pro se*.

Respondent SG Cowen Securities Corp. hereinafter referred to as "SG Cowen":  
Joseph J. Sullivan, III, Esq., Sheindlin & Sullivan, LLP, New York, NY.

Respondent Sands Brothers, & Co., Ltd. hereinafter referred to as "Sands Brothers":  
David A. Gehn, Esq., Gusrae, Kaplan, Bruno & Nussbaum, New York, NY. Previously  
represented by Ariel Berschadsky, Esq., Attorney at Law, New York, NY. Previously  
represented by Roger Bendelac, Harbor Consultants LTD, New York, NY.

Respondent Whale Securities Co. LP. hereinafter referred to as "Whale Securities."  
Whale Securities did not enter an appearance in this matter.

Respondent Carl Garceran hereinafter referred to as "Garceran." Garceran did not enter  
an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: October 14, 2004.  
Response to SG Cowen's Motion to Dismiss: December 29, 2005.  
Response to Sands Brothers' Motion to Dismiss: August 24, 2006.  
Claimant signed the Uniform Submission Agreement: December 15, 2004.

Statement of Answer and Motion to Dismiss filed by Respondent SG Cowen on or  
about: March 11, 2005.  
SG Cowen did not submit the Uniform Submission Agreement.

Respondent Sands Brothers did not submit a Statement of Answer or Uniform  
Submission Agreement.  
Motion to Dismiss filed by Respondent Sands Brothers: August 4, 2006.

Respondent Whale Securities did not submit a Statement of Answer or Uniform Submission Agreement.

Respondent Garceran did not submit a Statement of Answer or Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, negligence, breach of fiduciary duty, omission of facts, misrepresentation, churning, manipulations. The causes of action relate to securities including Nextel and GST.

Unless specifically admitted in its Answer, Respondent SG Cowen denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$33,112.00 and punitive damages in the amount of \$16,000.

Respondent SG Cowen requested the dismissal of the Statement of Claim in its entirety.

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

Upon review of the file and the representations made by the Claimant, the undersigned arbitrator (the "Arbitrator") determined that Respondents Whale Securities and Garceran have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent SG Cowen did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim is bound by the determination of the Arbitrator on all issues submitted.

Respondents Sands Brothers, Whale Securities and Garceran did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code are bound by the determination of the Arbitrator on all issues submitted.

By Order of the Arbitrator dated May 5, 2006, SG Cowen was dismissed from the proceeding.

By letter dated October 17, 2006, Claimant withdrew his claim against Sands Brothers.

The Claimant has 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 Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Whale Securities and Garceran are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$33,112.00 plus interest at the rate of five percent per annum from November 1, 1998 until October 1, 2006.
2. Respondents Whale Securities and Garceran are jointly and severally liable for and shall pay to Claimant costs in the amount of \$175.00 to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
3. 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	= \$ 175.00
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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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, SG Cowen Securities Corp. and Sands Brothers & Co. are parties.

##### **SG Cowen Securities Corp.**

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

##### **Sands Brothers & Co.**

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

October 17, 2006 adjournment by Claimant	= Waived
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### **Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$1,800.00
Pre-hearing conferences: November 16, 2005	1 session
September 28, 2005	1 session
May 5, 2006	1 session
September 20, 2006	1 session
One (1) Hearing session @ \$450.00 per session	= \$ 450.00
Hearing Date: October 18, 2006	1 session
Total Forum Fees	= \$2,250.00

1. The Arbitrator has assessed \$1,800.00 of the forum fees jointly and severally to Respondents Whale Securities and Garceran.
2. The Arbitrator has assessed \$450.00 of the forum fees to Respondent SG Cowen.

### **Fee Summary**

1. Claimants are solely liable for:	
Initial Filing Fee	= \$ 175.00
Total Fees	= \$ 175.00
Less payments	= \$ 625.00
Refund Due Claimant	= \$ 450.00

*As stated in the "Award" section above, Respondents Whale Securities and Garceran shall reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.*

2. Respondent SG Cowen is solely liable for:	
Member Fees	= \$2,625.00
Forum Fees	= \$ 450.00
Total Fees	= \$3,075.00
Less payments	= \$2,625.00
Balance Due NASD Dispute Resolution	= \$ 450.00

3. Respondent Sands Brothers is solely liable for:	
Member Fees	= \$2,625.00
Total Fees	= \$2,625.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,625.00

4. Respondents Whale Securities and Garceran are jointly and severally liable for:	
Forum Fees	= \$1,800.00
Total Fees	= \$1,800.00
Less payments	= \$ 0.00

Balance Due NASD Dispute Resolution = \$1,800.00

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

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**ARBITRATION PANEL**

Daniel P. Lund, Esq.


- Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

**Concurring Arbitrators' Signatures**



Daniel P. Lund, Esq.  
Sole Public Arbitrator



Signature Date

October 30, 2006

Date of Service (For NASD Dispute Resolution use only)