

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Christopher and Thomas Vasilas

Claimants

and

Cowen and Co., Mike Ermilio and
Viceroy International Securities

Respondents

A W A R D
87-02234

SUMMARY OF THE CASE

Christopher Vasilas and Thomas Vasilas, ("Claimants") allege unauthorized trading against Mike Ermilio; Cowen and Co.; and Viceroy International Securities Corp. ("Respondents") in Step Saver Data Systems and Diversified Foods. Claimants allege that no margin agreement was ever signed.

Cowen and Co. ("Respondent Cowen & Co.") alleges that Claimant had no direct dealing with Respondent Cowen & Co. regarding their trading account. Respondent Cowen & Co. acted as "clearing broker" for Respondent Viceroy pursuant to a Clearing Agreement dated May 1986. Even though Respondent Cowen & Co. did not have direct responsibility under the Agreement for determining whether trades were authorized or unauthorized, Respondent Cowen & Co. alleges that Claimant ratified the Step Saver transactions, and failed to object to the transactions until eight months later. Therefore, Claimants are estopped from asserting any claim against Respondent Cowen & Co. regarding these transactions.

CROSS-CLAIM AGAINST ERMILIO AND VICEROY

Respondent Cowen & Co.'s cross-claims against Respondents Ermilio and Viceroy alleging that if Respondent Cowen & Co. is found liable based on unauthorized transactions and/or unauthorized use of margin, then Respondent Cowen & Co. requests full indemnification by cross-defendants Ermilio and Viceroy pursuant to the indemnification provisions of the Clearing Agreement and by third-party defendant, Robert J. Onesti, President of Viceroy and the individual charged with supervisory responsibility over both Claimants' account and the employees of Cross-respondent Viceroy.

RELIEF REQUESTED BY RESPONDENT COWEN & CO.

Respondent Cowen & Co. request that the claim be dismissed and that costs of the proceeding be assessed against Claimants. In the alternative, if Respondent Cowen & Co. is found liable, full indemnification is requested from cross-defendants Ermilio and/or Viceroy and/or third-party defendant Robert J. Onesti.

Mike Ermilio ("Respondent Ermilio") denies generally any acts of wrongdoing alleged by the Claimants and specifically denies having acted without the Claimants' consent and authority. Respondent Ermilio cross-claims against Respondent Viceroy and Respondent Cowen & Co. requesting indemnification from any damages which may be due to Claimant relating to acts or omissions committed by Respondent Viceroy and/or Respondent Cowen & Co.

ANSWER TO CROSS-CLAIM

Respondent Ermilio denies generally Respondent Cowen & Co.'s cross-claim and denies any responsibility to personally indemnify Respondent Cowen & Co., Respondent Ermilio alleges that Respondent Cowen & Co. dealt directly with Claimants' margin account and the handling of the transactions in their account.

RELIEF REQUESTED

Respondent Ermilio requests that the claim be dismissed against him personally and that he be indemnified by Respondents Viceroy and Cowen & Co.

Third Party Respondent Onesti denies generally any responsibility to personally indemnify Respondent Cowen & Co. regarding the handling of the Claimants' account.

AWARD

On August 17, 1989, the undersigned arbitrator considered the controversy between the parties as set forth in submissions to arbitration signed on October 21, 1987 by Claimants Christopher Vasilas and Thomas Vasilas, on March 31, 1988 by Respondent Mike Ermilio, on March 9, 1988 by Antonio G. Pinto on behalf of Respondent Cowen & Co. and on July 8, 1988 by Cross-Respondent Robert J. Onesti.

The arbitrator, having considered the pleadings and the evidence presented, has decided in full and final resolution of the issues submitted for determination as follows:

1. VASILAS v. COWEN & CO.

Cowen & Co. is liable to Christopher and Thomas Vasilas for damages in the amount of \$1,500.00.

2. VASILAS v. MIKE ERMILIO AND VICEROY INTERNATIONAL

Mike Ermilio and Viceroy International are jointly and severally liable to Christopher and Thomas Vasilas for damages in the amount of \$5,474.62.

3. CROSS-CLAIM AND THIRD PARTY CLAIM

The cross-claims of Cowen & Co. against Mike Ermilio, and Viceroy International Securities and the third party claim against Robert Onesti are denied.

4. The cross-claims of Mike Ermilio against Cowen & Co. and Viceroy International Securities are denied.

5. Each party shall bear its own cost of this proceeding.

6. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees the \$200.00 filing fee previously deposited with the NASD by the Claimant.

By the Panel

Dated: September 23, 1989

/S/ Herbert S. Kahn
Presiding Chairman

