

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between     )  
Cowen & Co., Inc.                      Claimant     )  
vs.   )  
Edward Leisure                      Respondent     )  
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Case # 90-01683  
Award

Heard before:

John L. Evans, Jr.            Public Arbitrator  
Dean P. Fite                Public Arbitrator  
Robert J. Bonini            Industry Arbitrator

1. PARTIES:

Claimant: Cowen & Co., Inc.  
Represented by: Its Associate General Counsel  
Daniel Donovan

Respondent and Counterclaimant: Edward Leisure  
Represented by: Michael H. Siegler,  
Attorney at Law

Respondent: Dean Whitlock [Dismissed as a party prior  
to adjudication of the claims]

2. CLAIM(S) FILED: The claim of Cowen & Co., Inc. was filed  
with the National Association of Securities Dealers, Inc. on June  
11, 1990.. The counterclaim of Edward Leisure was filed with his  
Answer on August 23, 1990. Dean Whitlock did not respond to  
service in the proceeding.

The Award was rendered on July 3, 1991.

3. ISSUES IN THE CLAIM: Cowen & Co, Inc. asserted that Mr.  
Leisure on October 16, 1989 entered a market order with Cowen &  
Co., Inc. through Dean Whitlock, a Registered Representative in  
the employ of Cowen & Co., Inc. to purchase 50 OEX October 290  
Puts, which resulted in the purchase of such Puts at \$12 per  
contract for a total cost of \$60,345.74, including commission;  
that the Puts had been liquidated at \$2 per contract and that Mr.  
Leisure had refused to pay the remaining debit balance of

\$50,535.25, which amount Claimant seeks to recover in the arbitration proceeding.

Alternatively, Cowen & Co., Inc. asserted that should the arbitration panel find that Mr. Leisure did not in fact enter the purchase order as asserted above, that it should be determined that in fact a market order was entered in Mr. Leisure's name and was executed at \$12 per contract and that Claimant should be entitled to relief in the same amount against Mr. Whitlock who entered the order with the representation that Mr. Leisure had authorized it in that form.

Mr. Leisure denied that he had entered a market order for the puts, asserted that he had authorized the entry of an order with a specified dollar limitation of \$7500. and denied that he owed any money to claimant.

The counterclaim of Mr. Leisure dealt with the application and return of funds which had been delivered to Claimant and held in escrow pending the resolution of this dispute, estimated in the counterclaim to range in amount between \$25,000 and \$45,000. He also seeks the payment of interest on the funds so held, and the costs of the proceeding including the return of or reimbursement for refundable and non-refundable fees paid to the National Association of Securities Dealers, Inc. and attorney's fees.

#### 4. MATTERS RESOLVED OTHER THAN BY ARBITRATORS AWARDS

a) It was brought to the attention of the panel that Respondent, Dean Whitlock, had filed a voluntary petition for bankruptcy in the United States Bankruptcy Court, Lexington, Kentucky, on November 23, 1990 (Case #90-015435) and that the automatic stay provisions of the Bankruptcy Code would preclude adjudication of this action against Respondent Whitlock. Accordingly the claim against Whitlock was withdrawn, without prejudice, and no findings were made with respect to the alternative pleadings of Claimant set forth in Count II, Paragraphs 9 and 10 of its Statement of Claim.

b) Pursuant to stipulation of the parties entered in the record, the amount held in escrow in Mr. Leisure's account #0101015 at Cowen & Co., Inc. was determined to be \$6,414.53 plus interest which had accrued thereon at the Cowen & Co., Inc. Money Market interest rate since December 7, 1989. Mr. Leisure's other account with Cowen & Co., Inc., Account #1101015 is to be freely accessible to him for withdrawal or as he shall direct.

5. THE HEARING

A hearing was held on May 1, 1991 at 1900 Fifth Third Center, 511 Walnut St., Cincinnati, Ohio. The record was left open, and the hearing subject to being reconvened until May 17, 1991 for the purpose of allowing Claimant to determine whether process could issue to compel the testimony of Mr. Whitlock, who while noticed did not appear at the hearing. A Subpoena was subsequently issued to Mr. Whitlock and the hearing reconvened at Suite 480, Fuller Square Building, 8100 Burlington Pike, Florence, Kentucky on June 25, 1991 at 10:00 AM. The Arbitrators rendered their decision on July 3, 1991.


6. ARBITRATORS AWARDS

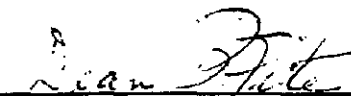
a) Cowen & Co., Inc. shall recover from Respondent Leisure the amount of principal and interest currently standing in the escrowed account Number 0101015 at Cowen & Co., Inc. being \$6,414.53 plus accrued interest. Cowen & Co., Inc.'s claim for further relief is denied and the Counterclaim of Respondent Leisure is denied.


b) Costs of this proceeding which are \$1,500.00 are to be assessed \$750.00 against Claimant and \$750.00 against Respondent Leisure. The deposits of each with the National Association of Securities Dealers may be applied toward these costs.

c) Each party shall bear its own legal fees.

July 3, 1991

  
John L. Evans, Jr., Chairperson  
Public Arbitrator

  
Dean P. Fite, Panelist  
Public Arbitrator

  
Robert J. Bonini, Panelist  
Industry Arbitrator