

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

John & Gloria Zaremba :

Claimants :

vs. :

Cowen & Company :

Thomas Bergen :

David J. Maloney :

Respondents :

CASE #91-02434
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 6, 1991, Claimants, John & Gloria Zaremba, who appeared Pro Se, alleged that in August 1983 they opened IRA accounts with Respondent, Thomas Bergen, an Account Executive with Respondent, Cowen & Company, at which time, Respondent, Thomas Bergen led them to believe he would invest their monies in long term secure investments, since they informed him that the money was for Claimants' retirement. Claimants further alleged that Respondent, Thomas Bergen recommended and invested their funds in shares of Delmed, Inc. stock by misrepresenting its safety. Claimants contended that Respondents, Thomas Bergen and Cowen & Company failed to properly monitor the status of their accounts and keep them informed of all developments relating to their investment. Claimants further contended that they are inexperienced investors and trusted Respondents, Cowen & Company and Thomas Bergen to select and monitor the best stock on their behalf, therefore, when they saw that the value of their investment was dropping they felt one of the brokers at Respondent, Cowen & Company would keep tabs on it. Claimants asserted that in 1984 when Respondent, Thomas Bergen resigned, Respondent, Cowen & Company failed to assign a new Account Executive to their accounts and their accounts were ignored. Claimants further asserted that in 1986 they noticed Respondent, David J. Maloney's name on one of their accounts, which later disappeared, with no further listing of anyone on the account, at which time, their accounts continued to decline in value. Claimants further alleged that Respondent, David J. Maloney's name appeared on one of their accounts, therefore, he was aware of the existence of the investment and never contacted Claimants. Claimants argued that due to Respondents, Cowen &

Company, Thomas Bergen and David J. Maloney's failure to perform their obligations and failure to properly monitor their accounts, they suffered substantial losses.

Respondents, Cowen & Company and David J. Maloney by and through their in-house counsel, Daniel J. Donovan, Esq., maintained that Claimants, John & Gloria Zaremba case is founded upon their August-September 1983 purchases of 495 shares of Delmed, Inc., therefore, the matters at issue are barred by the passage of time limitations as set forth under Section 15 of the NASD Code of Arbitration Procedure. Respondents, Cowen & Company and David J. Maloney further maintained that although the claims should be time-barred, there was no contract between the parties that required Respondents, Cowen & Company and David J. Maloney to monitor the status of Claimants investments and to keep them informed of all developments related to Delmed, Inc. nor were they required by any statute, regulation or by common law to do so. Respondents, Cowen & Company and David J. Maloney contended that at the time of the Delmed, Inc. purchase, Claimants account executive was Respondent, Thomas Bergen, thereafter, some three years after this purchase, their accounts were reassigned to Respondent, David J. Maloney. Respondents, Cowen & Company and David J. Maloney asserted that they did not agree, in exchange of brokerage commissions, to provide continuing investment advice with respect to Claimants' accounts and Claimants have failed to state a claim upon which relief can be granted, therefore, the claim should be dismissed. Respondents, Cowen & Company and David J. Maloney further asserted that by holding the subject securities in excess of nine years from the date of purchase, Claimants have clearly ratified the actions of Respondents, Cowen & Company and David J. Maloney.

Respondent, Thomas Bergen maintained that in August, 1983, he invested Claimants' money and the other statements in the Statement of Claim do not apply to him.

RELIEF REQUESTED

Claimants, John & Gloria Zaremba requested \$10,000.00 in actual damages.

Respondents, Cowen & Company and David J. Maloney requested the claim be dismissed and costs be assessed against Claimants.

Respondent, Thomas J. Bergen requested the claim be denied.

AWARD

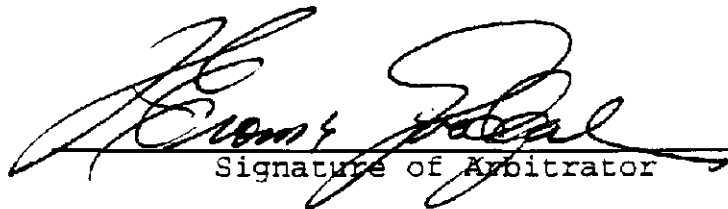
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jerome Goodgal, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on July 30, 1991, by the Respondent, Cowen & Company on September 24, 1991, by the Respondent, David J. Maloney on November 26, 1991 and by Respondent, Thomas Bergen on September 17, 1991.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimants, John & Gloria Zaremba against Respondents, Cowen & Company, David J. Maloney and Thomas Bergen are dismissed.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants, John & Gloria Zaremba shall be retained by the NASD, Inc. Respondents, Cowen & Company, David J. Maloney and Thomas Bergen are jointly and severally liable and shall pay to the Claimants the sum of \$150.00 as reimbursement.

AFFIRMATION

I, **JEROME GOODGAL**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Signature of Arbitrator

DATE OF DECISION: June 22, 1992

STATE OF: Illinois

SS:

COUNTY OF: DeKalb

On this 15 day of June 1992, before me personally appeared JEROME GOODGAL to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

John J. [Signature]

112