

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Arcadio Casillas

91-02967

Name of Respondent(s)

Cowen & Company
Whale Securities, Co.

REPRESENTATION

For Claimant Arcadio Casillas: Michael G. Shannon, Esq. of the law firm of Carro, Spanbock, Kastor & Cuiffo.

For Respondent Whale Securities Co.: David Richan, Esq. of the law firm of Tenzer, Greenblatt, Fallon & Kaplan.

For Respondent Cowen & Company, Inc.: Daniel J. Donovan, Esq.

CASE INFORMATION

Statement of Claim filed: September 24, 1991.

Claimant's Submission Agreement signed on: September 20, 1991.

Statement of Answer and Crossclaim filed by Respondent Cowen & Company

Respondent Cowen & Company's Submission Agreement signed on: February 11, 1992.

Statement of Answer filed by Respondent Whale Securities Co. on: Februaray 14, 1992.

Respondent Whale Securities Co.'s Submission Agreement signed on: March 4, 1992

Respondent Whale Securities Company Answer to Cross-Claims of Cowen & Company, Inc. filed on: November 16, 1992.

HEARING INFORMATION

Pre-Hearing Conference: June 21, 1993

Hearing Dates/Sessions: June 28, 1993 / Two Sessions
 November 16, 1993 / One Session
 November 23, 1993 / Two Sessions

Hearing Location: NASD offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that on or about January 1989 he agreed with Cowen & Company ("Cowen") to make trades for his account through Cowen which effected trades on behalf of the account by arrangement with Whale Securities Company ("Whale") and at no time did he execute a customer agreement or a margin agreement with either Cowen or Whale and he did not give either Cowen or Whale discretion to make any trades on his behalf. Claimant further alleged Respondents engaged in a series of unauthorized trades in his account, purportedly on a margin basis and made unauthorized charges against the account including charges for purported margin interest and failed to make credits or payments to the Claimant or his account that were due him.

Respondent Cowen & Company maintained pursuant to the Clearing Agreement entered into with Whale Securities Co. Cowen & Company performed certain back office functions for Whale Securities Co., extended credit to Whale Securities Co. customers and had no direct contact with the Claimant except to provide him with trade confirmations, monthly account statements, dispatch margin calls when necessary and did not recommend trades to Whale customers. Respondent Cowen & Company denied that it failed to follow any instructions with respect to the purchase or sale of any securities in Claimant's account and denied that it contributed in any way to any losses in the account. Respondent Cowen asserted a crossclaim against Respondent Whale Securities Co. alleging that pursuant to the terms of the Clearing Agreement Cowen & Company is contractually entitled to be indemnified by Whale Securities Co., as a matter of law, for any money it is required to pay to Claimants together with the costs of defending the action including attorneys' fees.

In response to the crossclaim Respondent Whale Securities Co. maintained that if the arbitration panel determines that: (a) Cowen has liability to the Claimants; (b) Whale has breached its warranties to Cowen under the April 25, 1985 Clearing Agreement; (c) Cowen did not breach the terms of the Clearing Agreement; and (d) Cowen did not engage in any negligent, reckless, willful or intentional acts or violations of applicable law, then, Whale would be obligated to indemnify Cowen against Cowen's losses, costs and expenses in connection with this action.

Respondent Whale Securities Co. in response to the Statement of Claim maintained Whale Securities Co. was entitled to receive a commission or charge a markup on the transactions complained of and further maintained it acted properly at all times with regard to the handling of Claimant's account and all trades in the account were authorized and the margin account was authorized by the Claimant.

RELIEF REQUESTED

Claimant requested damages of \$82,292.27 plus interest at the rate of 9% from October 1, 1991 and reimbursement of all his costs, administrative filing fees and his reasonable attorneys' fees.

Respondent Cowen & Company requested dismissal of all claims against them and that costs of the proceeding including reasonable attorneys' fees be assessed against Claimants and that pursuant to the Clearing Agreement, an award be entered against Whale in favor of Cowen & Company for the costs of the proceeding including attorneys' fees and in the event there is a finding of liability against Cowen & Company in favor of Claimants that an award be entered against Whale Securities Co. in favor of Cowen & Company for the full amount of any damages awarded to Claimant together with costs including attorneys' fees.

Respondent Whale Securities Co. requested that the Statement of Claim be dismissed in its entirety and that it be awarded its costs, including reasonable attorneys' fees, incurred in defending the Statement of Claim.

OTHER ISSUES

Prior to the commencement of the first hearing session the arbitration panel was informed that the Claimant was withdrawing with prejudice its claim against Respondent Cowen & Company. This withdrawal rendered moot the cross-claim of Respondent Cowen & Company against Respondent Whale Securities Co.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Respondent Whale Securities Co. be and hereby is liable and shall pay to the Claimant the sum of \$28,500.00 interest specifically excluded.
2. The Claimant has full right, title and interest to account number 25-33476-3.
3. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

5 sessions (\$500.00) plus 1 pre-hearing conference (\$300.00) = \$2,800.00
less Claimant's hearing session deposit (\$500.00) less Respondent Cowen's
hearing session deposit (\$500.00) = net \$1,800.00 due.

Forum Fees Assessed Against:

The Claimant be and hereby is liable and shall pay to the NASD the sum of \$650.00 representing the balance of the forum fees and the Respondent Whale Securities Co. be and hereby is liable and shall pay to the NASD the sum of \$1,150.00 representing the balance of the forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

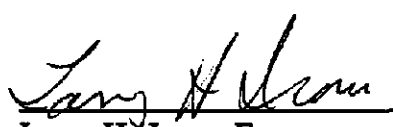
ARBITRATORS' SIGNATURE



Harvey Barrison, Esq.
Public Arbitrator



Pamela H. Roderick
Public Arbitrator



Larry H. Irom, Esq.
Industry Arbitrator

Date of Decision: February 10, 1994

Award #91-02967

STATE OF: *New York*

SS:

COUNTY OF: *New York*

On this *17th* day of *January*, 1994, before me personally appeared **Harvey Barrison, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Jan H. Duffalo

JAN H. DUFFALO
Notary Public, State of New York
No. 31-4982580
Qualified in New York County *95*
Commission Expires June 3, 19*95*

STATE OF: *NY*

SS:

COUNTY OF: *Kings*

On this *31* day of *Jan*, 1994, before me personally appeared **Pamela H. Roderick** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Raymond Mardiney

RAYMOND MARDINEY
Notary Public, State of New York
No. 24-25800 Qual. in Kings Co.
Commission Expires March 30, 19*95*

STATE OF:

SS:

COUNTY OF:

On this *8* day of *February*, 1994, before me personally appeared **Larry H. Irom, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

Linda R. Alpert

LINDA R. ALPERT
Notary Public, State of New York
No. 4985855
Qualified in Westchester County
Commission Expires April 30, 19*94*