

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Bernice Lirosi

vs.

Case #
92-02871

Name of Respondents

Cowen & Company
Brookehill Equities, Inc.
Robert DeRose

REPRESENTATION

For Claimant, Bernice Lirosi ("Claimant"), Dan Druz, Esq., located in Point Pleasant, New Jersey.

For Respondent, Cowen & Company ("Cowen"), Daniel J. Donovan, Esq., in-house counsel, located in New York, New York.

For Respondent, Brookehill Equities, Inc. ("Brookehill"), Richard Blumberg, Esq. from the law firm of McLaughlin & Stern, Alkalay, Handler, Robbins & Herman, located in New York, New York.

For Respondent Robert DeRose, ("DeRose"), Arthur M. Schwartzstein, Esq., located in Washington, D.C.

CASE INFORMATION

Statement of Claim was filed on August 25, 1992.

Claimant's Submission Agreement was signed on August 18, 1992.

Amended Statement of Claim was filed by Claimant on November 11, 1993.

Statement of Answer and Crossclaim was filed by Respondent Cowen on November 12, 1992.

Cowen's Submission Agreement was signed on October 28, 1992.

Cowen's Amended Statement of Answer withdrawing Crossclaim was filed on December 8, 1992.

Statement of Answer and Crossclaim was filed by Respondent Brookehill on November 13, 1992.

Respondent Brookehill's Submission Agreement was signed on November 9, 1992.

Statement of Answer of Respondent DeRose was filed on November 23, 1992.

DeRose's Submission Agreement was signed on November 18, 1992.

HEARING INFORMATION

Pre-Hearing Conferences: July 15, 1993 - 2 sessions
November 3, 1993 - 1 session

Hearing Dates/Sessions: November 16, 1993 - 2 sessions
November 17, 1993 - 2 sessions
January 19, 1994 - 2 sessions
January 20, 1994 - 2 sessions
February 1, 1994 - 2 sessions
February 2, 1994 - 2 sessions
February 10, 1994 - 2 sessions
March 3, 1994 - 2 sessions
March 22, 1994 - 2 sessions
April 7, 1994 - 2 sessions
May 11, 1994 - 2 sessions
September 21, 1994 - 2 sessions

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

CASE SUMMARY

Claimant alleges that the Respondents engaged in fraudulent and deceptive practices with respect to the investment account which Claimant maintained with the Respondents and that these activities caused Claimant to sustain substantial losses. Claimant alleges that the Respondents' practices included directing and affecting unsuitable trades, misrepresenting or failing to disclose material facts to Claimant and executing unauthorized transactions. Claimant asserts that these acts were in breach of contract, breach of fiduciary duty, in violation of federal and state securities laws and NASD and New York Stock Exchange (NYSE) rules and regulations.

Claimant also maintains that the Respondents are liable for the losses she sustained as a result of the wrongful conduct of Brookehill's account representative, DeRose. Claimant further maintains that Brookehill and Cowen are liable for activities with her account.

Respondent Brookehill denies all allegations of wrongdoing and asserted three affirmative

defenses. Brookehill argues that with respect to Claimant's allegations of violations of the rules and regulations of NYSE and NASD concerning unauthorized, unsuitable and excessive transactions, there is no private right of action available to Claimant. Brookehill also argues that to the extent Claimant seeks to make a claim of negligence the claim is barred because it was not brought within the three-year time period. Brookehill alleges that Claimant's claim dates back to June, 1984.

Brookehill also alleges that the claims of misrepresentations and omission of material facts are time barred. As its third affirmative defense, Brookehill alleged that all claims are barred by reason of laches, estoppel and ratification.

Brookehill asserts a Crossclaim for contribution or indemnification against Respondent DeRose if there is a finding of liability on the part of Brookehill.

Respondent Cowen denies all allegations of wrongdoing and asserts several affirmative defenses such as 1) the claims are barred by the statute of limitations, 2) the claims are barred by the doctrines of ratification, laches and estoppel 3) that there is no private right of action for alleged violations of the rules and regulations of self-regulatory organizations, and 4) that Claimant failed to state a claim entitling her to relief against Cowen.

Finally, Respondent DeRose joined in the answer of Brookehill and denies liability to Claimant as set forth in the Crossclaim.

RELIEF REQUESTED

Claimant requests actual damages in the amount of \$175,000, costs, expenses and disbursements, reasonable attorney's fees and such other relief as the panel deems just and proper.

Respondent Brookehill requests an award in its favor together with costs and attorney's fees. As to the third-party claim Respondent Brookehill requests contribution or indemnification from DeRose.

Respondent Cowen requests dismissal of all claims against them, and that costs and reasonable attorney's fees be assessed against Claimant, an award against Brookehill for the costs of this proceeding including attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and have agreed to receive conformed copies of the Award while the original remain on file with the NASD.

Prior to the opening of the hearing for presentation of evidence, Claimant withdrew his claims with prejudice against Cowen. During the hearing, the parties raised several motions which the panel decided as follows:

1. The Motion to Dismiss the Statement of Claim in its entirety is denied.
2. The Motion to Dismiss the following claims is granted:
 - a) First claim contained in a, c, d & e;
 - b) Second claim;
 - c) Fourth claim; and the
 - d) Sixth claim set forth in Claimant's letter dated November 8, 1993.
3. Based upon the above rulings, the Panel heard evidence on the following claims:
 - a) First claim - b only
 - b) Third claim; and the
 - c) Fifth claim.

AWARD

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

1. During the course of the hearing and upon motion made by Respondents, the panel ruled that any event that occurred prior to August 21, 1986 would not serve as a basis for a claim in this arbitration.
2. Further, during the course of the hearing and upon motion made by Respondents, the Panel ruled to exclude certain testimony and exhibits offered by Claimant's expert witness as the panel determined that he was unqualified to offer such testimony. The panel's assessment of forum fees as set forth below is in part based on this ruling.
3. Respondents Brookehill and DeRose are jointly and severally liable and shall pay Claimant **TWENTY FIVE THOUSAND EIGHT HUNDRED AND SEVENTY DOLLARS AND ZERO CENTS (\$25,870.00)**, inclusive of interest.
4. Claimant's and Respondents' requests for costs and attorney's fees are denied.
5. All other claims and Crossclaims for relief are denied.

FORUM FEES

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

Non-refundable Filing Fee: \$200.00

Non-refundable Crossclaim Filing Fee: \$500.00

Pre-hearing Conferences: \$900.00 (\$300.00 x 3 sessions)

Hearing Session Deposit: \$18,000.00 (\$750 x 24 hearing sessions)

Total Fees: \$19,600.00


1. Claimant is assessed a \$200.00 non-refundable filing fee. Claimant is assessed \$10,950.00 in forum fees.
2. Claimant is assessed \$460.00 for cost of duplication of tapes. Claimant previously paid \$270.00 and owes a balance of \$190.00.
3. Respondent Brookehill is assessed a \$500.00 non-refundable Crossclaim filing fee.
4. Respondents Brookehill and DeRose, are jointly and severally assessed \$7,950.00 in forum fees.
5. Brookehill previously paid \$1,250.00 and owes a balance of \$7,200.00 jointly and severally with DeRose.
6. Brookehill is further assessed \$465.00 for cost of duplication of tapes. Brookehill previously paid \$90.00 and owes a balance of \$375.00

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

ARBITRATION PANEL

Joseph J. Arata, Esq.	-	Public Chairperson
Ralph A. Gant	-	Public Panelist
James R. Dressel	-	Industry Panelist

Concurring Arbitrator's Signature



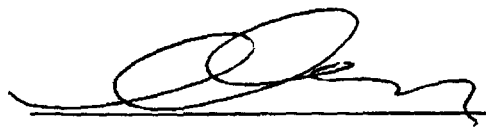
Joseph J. Arata, Esq.

Date of Decision: December 29, 1994

STATE OF
COUNTY OF

S.S.:

On this 14th day of December, 1994, before me personally appeared Joseph J. Arata known to me to be the individual describe in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

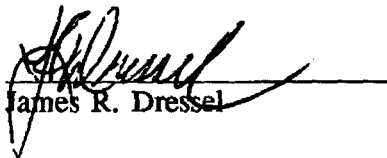


VALERIE I. BAILEY
NOTARY PUBLIC, State of New York
No. 24-4940303
Qualified in Kings County
18, 199 6

ARBITRATION PANEL

Joseph J. Arata, Esq.	-	Public Chairperson
Ralph A. Gant	-	Public Panelist
James R. Dressel	-	Industry Panelist

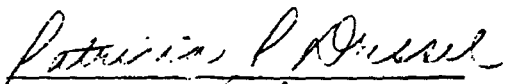
Concurring Arbitrator's Signature


James R. Dressel

Date of Decision: December 29, 1994

STATE OF Connecticut S.S.: Westport
COUNTY OF Fairfield

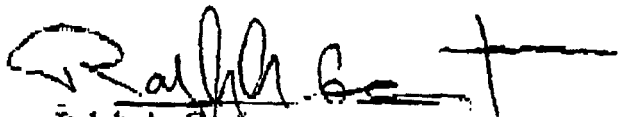
On this 16 day of December, 1994, before me personally appeared James R. Dressel known to me to be the individual describe in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.


Notary Public
Commission expires 7/31/98

ARBITRATION PANEL

Joseph I. Arata, Esq.	-	Public Chairperson
Ralph A. Gant	-	Public Panelist
James R. Dressel	-	Industry Panelist

Concurring Arbitrator's Signature


Ralph A. Gant

Date of Decision: December 29, 1994

STATE OF
COUNTY OF

S.S.T.

On this 28th day of December, 1994, before me personally appeared Ralph A. Gant known to me to be the individual describe in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



VERONICA L. GILLEY
Notary Public, State of New York
No. 24-4940303
Qualified in Kings County
Commission Expires July 18, 1996