

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

INDUSTRY

In the Matter of the Arbitration Between

Name of Claimant(s)

Cowen & Company

92-04001

Name of Respondent(s)

Thomas M. Dean

REPRESENTATION

For Claimant: Mathew Farley, Esq. of Shanley & Fisher.

For Respondent: David Touger, Esq. of Peluso & Touger.

CASE INFORMATION

Statement of Claim filed: November 23, 1992.

Claimant's Submission Agreement signed on: November 23, 1992.

Statement of Answer filed by Respondent Thomas Dean on: July 9, 1993.

Respondent Thomas Dean's Submission Agreement signed on: August 10, 1993.

HEARING INFORMATION

Pre-Hearing Conference: August 17, 1993 / One Session (pre-hearing  
conference)

Hearing Dates/Sessions: August 10, 1993 / One Session  
September 13, 1993 / Two Sessions  
September 14, 1993 / Two Sessions  
October 18, 1993 / Two Sessions  
November 2, 1993 / One Session

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

### CASE SUMMARY

Claimant, Cowen & Company (the "Claimant"), alleged that between November, 1989 through July, 1990, Thomas M. Dean (the "Respondent") an employee of the Claimant made numerous unauthorized trades and misappropriated money from the accounts of four clients using unauthorized wire transfers. In addition, Claimant alleged that Respondent made unauthorized trades in four other clients' accounts.

Claimant further alleged that it entered into individual settlement agreements with Respondent's clients aggregating \$156,570.58 in connection with an effort to reimburse its clients for harm done by Respondent and that Respondent has not made any effort to reimburse the Claimant for any of these losses.

Respondent, Thomas M. Dean (the "Respondent"), alleged that all settlements made by the Claimant occurred after the Respondent's resignation from the Claimant's employ. The Respondent further alleged that he was prevented from giving a full explanation to the account holders and was barred from participating in the settlements between Claimant and the account holders and had he been involved in the decisions, various mitigating factors would have been introduced resulting in the altering or dropping of the client's demands.

Respondent further alleged that various transactions referred to by Claimant occurred after the Respondent's termination and were executed under the supervision and approval of supervising personnel employed by the Claimant. Respondent further maintained the Claimant deliberately concealed the whereabouts and termination of the Respondent from the holders of all of the subject accounts in an effort to curry further business from the accounts.

Respondent further alleged that Claimant's known practice included trading in account holders' accounts without notification to the account holder and thereafter the account holders would be notified of the transactions and given a certain period of time in which to reject the transaction.

Respondent further alleged that Claimant approved, authorized, and/or ratified the acts and transactions of Respondent, that Claimant is precluded from recovery, that Claimant fails to state sufficient facts to constitute a cause of action.

Lastly, Respondent alleged that Claimant withheld Respondent's last month's payments including a substantial bonus due to him pursuant to his contract of employment with the Claimant and this amount has neither been paid to the

Respondent nor has it been credited against the reimbursements made by the Claimant in the amount of \$28,000.00.

### **RELIEF REQUESTED**

Claimant requested: an award in the aggregate amount of \$156,570.58 plus interest at the highest statutory rate and a dismissal of Respondent's claim against it.

Respondent requested: compensation in the amount of \$28,000.00; a denial of Claimant's statement of claim, and that an award of reasonable costs including attorneys fees and forum fees be assessed against Claimant.

### **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:

Award on the Claimant's Claim in favor of the Claimant in the amount of \$117,977.00.

Award on Respondent's counterclaim in favor of the Respondent in the amount of \$9,324.00.

Simple interest payable by the Respondent to the Claimant at 4% per annum to be calculated on \$108,653.00 [the net award due Claimant (\$117,977 - \$9,324.00 = 108,653.00)] from October 1, 1990 to the date that Respondent makes payment to the Claimant.

Each party shall bear their respective costs and attorneys fees.

### **FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

8 sessions at \$750.00 per session = \$6,000.00 plus pre-hearing conference in the amount of \$300.00 = \$6,300.00 total forum fees due.

Forum fees Assessed Against:

Claimant in the amount of half of the total due ( $1/2 \times \$6,300.00$ ) = \$3,150.00  
less Claimant's hearing session deposit in the amount of \$750.00 = net balance  
due in the amount of \$ 2,400.00.

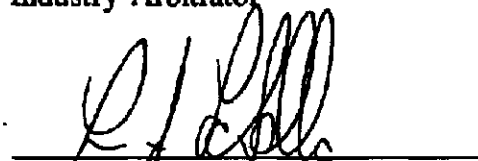
Respondent in the amount of half of the total forum fees due ( $1/2 \times \$6,300.00$ )  
= \$3,150.00 less Respondent's hearing session deposit in the amount of \$0.00  
= net balance due in the amount of \$3,150.00.

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

ARBITRATORS' SIGNATURE



Richard S. Peskin, Esq.  
Industry Arbitrator



Francis J. LaSalla  
Industry Arbitrator



Anthony J. Del Re, Jr.  
Industry Arbitrator

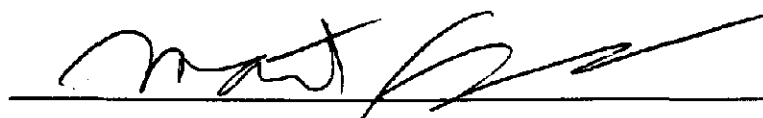
Date of Decision: December 28, 1993

STATE OF: *NY*

SS:

COUNTY OF: *NY*

On this *6* day of *December*, 1993, before me personally appeared **Richard S. Peskin, Esq.** know and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



MARTIN FISHMAN  
NOTARY PUBLIC, State of New York  
No. 1233960  
Qualified in Nassau County  
Commission Expires March 30, 1995

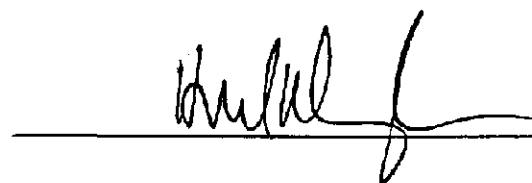
*8/31/95*

STATE OF:

SS:

COUNTY OF:

On this *17* day of *December*, 1993, before me personally appeared **Francis J. LaSalla** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



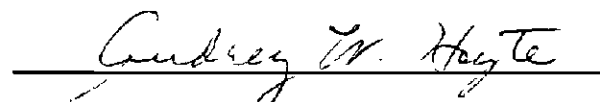
HOWARD C. MONAGHAN  
Notary Public, State of New York  
No. 31-4954575  
Qualified in New York County  
Commission Expires August 14, 1995

STATE OF: *New York*

SS:

COUNTY OF: *New York*

On this *22<sup>nd</sup>* day of *December*, 1993, before me personally appeared **Anthony J. Del Re, Jr.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



AUDREY W. HOYTE  
Notary Public, State of New York  
No. 24-4921844  
Qualified in Kings County  
Commission Expires April 4, 1994