

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Donna Marino

vs.

Case #
92-04321

Name of Respondents

Cowen & Company
Donald G. Zifchak

REPRESENTATION

For Claimant, Donna Marino ("Claimant"), Christopher Marley, Esq., located in Troy Port, New York. Mr. Marley withdrew as Claimant's counsel by letter dated January 5, 1994.

For Respondents, Cowen & Company and Donald G. Zifchak ("Respondents"), Beth Dorfman, Esq., in-house counsel at Cowen & Company, located in New York, New York.

CASE INFORMATION

Statement of Claim was filed on December 21, 1992.

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

Joint Statement of Answer and Counterclaim was filed by Respondents on February 26, 1993.

Cowen & Company's Submission Agreement was signed on February 23, 1993.

Donald Zifchak's Submission Agreement was signed on February 26, 1993.

Claimant's Answer to the Counterclaim was filed on March 30, 1993.

HEARING INFORMATION

Pre-Hearing Conference: September 8, 1993 - 1 session

Hearing Date/Sessions: September 29, 1993 - 2 sessions

Hearing Location: New York, New York.

CASE SUMMARY

Claimant commenced this arbitration proceeding to recover damages as a result of numerous unsuitable and/or unauthorized trades in her account by Respondents. Respondents denied liability for Claimant's losses and filed a counterclaim for \$37,000 to cover the debit balance in Claimant's account plus interest.

At the request of Claimant, a pre-hearing conference was conducted on September 8, 1993, and hearings were conducted on September 29, 1993. Additional hearings were scheduled for November 8, 1993, but were postponed at the request of Claimant's counsel. Subsequent to Claimant's counsel withdrawal, the hearing was rescheduled for May 20, 1994. This date was then postponed at Respondents' request because Respondents were unable to locate Claimant.

The panel has considered the issue of assessment of a postponement fee in light of the postponement of the May 20, 1994 hearing and has decided that such a fee should not be assessed against any of the parties.

Further, the panel has unanimously decided upon its own initiative, pursuant to Section 16 of the *Code of Arbitration Procedure*, to dismiss this arbitration without prejudice either to the Claimant filing a new arbitration or to Respondent, Cowen & Company, asserting the matters embraced by its counterclaim. The record in this matter shows that over the last twelve months, the Chairman and the panel have dealt at great length with discovery, procedural and scheduling matters. The panel has been available to commence hearings on the merits, yet no such hearing has been possible despite the efforts of the NASD staff.

The NASD has been advised by Claimant's counsel that he no longer represents her and certified mail directed to Claimant by the NASD has been returned undelivered. Also, attempts by the NASD to reach Claimant by telephone have not been successful and we understand that Claimant has not contacted the NASD to determine the status of this matter and enable rescheduling to occur.

The NASD shall retain all fees paid by the parties in satisfaction of all fees in this matter. Claimant paid \$520.00 and Respondents paid \$1,100.00

ARBITRATION PANEL

Gerald T. DiManno, Esq.	-	Public Chairman
Jay B. Baron	-	Public Panelist
James J. Noone	-	Industry Panelist

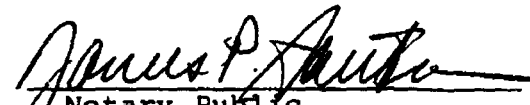
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Concurring Arbitrator's Signature


Gerald T. DiManno, Esq.

Date of Decision: August 10, 1994

Sworn to before me this
3rd day of August, 1994.

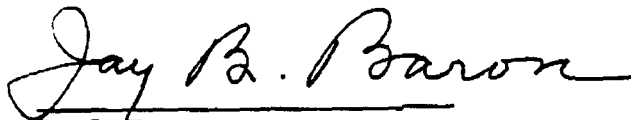

Notary Public

JAMES P. SALTER
NOTARY PUBLIC, State of New York
No. 02244320640
Certified in Notary Public Security
Certificate Filed in New York County
Commission Expires January 25, 1996




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Concurring Arbitrator's Signature

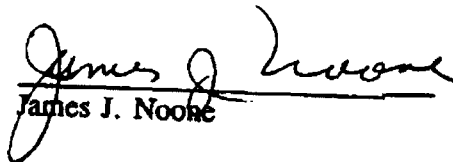

Jay B. Baron

Date of Decision: August 10, 1994

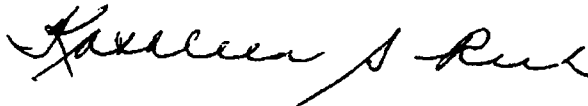

Comm Valeris Bailey
expires 7/18/96

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Concurring Arbitrator's Signature


James J. Noone

Date of Decision: August 10, 1994



KATHLEEN S. RUJ
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES
JAN. 18 1998