

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Names of Claimants

Wilmer and Helen Mirtsching

95-01172

Name of Respondent(s)

Cowen & Company  
Thomas James Associates, Inc.  
Bob Wood  
Paul Gray  
Jim Roney and  
Jeff Friedensohn

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**REPRESENTATION**

Helen and Wilmer Mirtsching ("Claimants") were represented by William S. Shepherd, Esq. of William S. Shepherd & Associates located in Houston, TX.

Bob Wood and Paul Gray ("Respondents") represented themselves, individually and without counsel, and did not appear for the hearing.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 7, 1995.

Claimants' Submission Agreements were signed on January 11, 1995.

The Statement of Answer of Respondent, Bob Wood was filed on or about August 14, 1995.

Respondent, Bob Wood's Submission Agreement was signed on August 16, 1995.

The Statement of Answer of Respondent, Paul Gray was filed on or about May 8, 1995.

Respondent, Paul Gray's Submission Agreement was signed on May 8, 1995.

### **HEARING INFORMATION**

A pre-hearing conference with one arbitrator was held by telephone conference call on February 16, 1996 for one (1) session.

The hearing was held before three arbitrators in Houston, TX on February 20, 1996 for one (1) session.

### **CASE SUMMARY**

In the Statement of Claim, Wilmer and Helen Mirtsching ("Mirtsching") alleged that in February, 1994 they transferred approximately \$20,000.00 in assets to Cowen & Co., Inc. ("Cowen") and Thomas James & Co., Inc. ("Thomas James") based on the representations of conservatism made by Bob Wood ("Wood"). According to the Claimants, the Respondents thereafter began high-pressure, boiler room tactics such as misleading statements and misrepresentations to convince Mirtsching to purchase 15,000 Diagnostic Health Services, Inc. shares and warrants. Mirtsching contended that Wood convinced them to purchase shares of Xerographics by making false statements such as that the company manufactured components for computer printers and had contracts with printer manufacturing companies. Mirtsching further contended that Paul Gray ("Gray") who became his broker after Wood left Thomas James, continued similar tactics employed by Wood including selling stock for more than 10% higher than the highest price of shares on that date. According to the Claimants, Gray stated that the purchase was a mistake and would be canceled yet the shares were sold for a loss. Upon complaining, the Claimants learned that Gray had left Thomas James and were allegedly told by the office manager, Jim Roney ("Roney"), that he would cancel the unauthorized orders, review the transactions and would handle the Claimants' account. However, Jeff Freidensohn, a broker, allegedly soon began placing orders in the account without authorization. The Claimants made other specific allegations against the Respondents including, but not limited to, breach of contract, breach of fiduciary duty, churning, excessive trading, failure to supervise, violations of the Texas Deceptive Trade Practices Act, violations of the Federal Securities Act, violations of the Federal RICO Statute, violations of the Texas Securities Statutes and violations of Section 27.01 of the Texas Business and Commerce Code.

In his Statement of Answer, Bob Wood denied all the allegations contained in the Statement of Claim. Wood specifically claimed that from the time the account was opened on February 1, 1994 until he left the firm on May 4, 1994, all purchases were authorized by the Claimants.

In the Answer submitted, Paul Gray denied all allegations of wrongdoing asserted by Mirtsching and alleged that Mirtsching was an astute investor who knew he was speculating and who authorized all transactions.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested an award in an amount between \$30,000.00 and \$100,000.00 plus treble damages, punitive damages, costs, interest and attorneys' fees.

In their respective Answers, Bob Wood and Paul Gray requested that the claims asserted by Claimants be dismissed in their entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties present at the hearing agreed that the Award in this matter may be executed in counterpart copies. The parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.

Respondents, Bob Wood and Paul Gray did not appear at the hearing yet, as stated previously, did file Submission Agreements and Statements of Answer. The arbitrators determined that Respondent, Bob Wood was served with the Statement of Claim, notice of the arbitrators and notice of the hearing in accordance with Sections 21 and 25 of the Code of Arbitration Procedure (the "Code"). The arbitrators also determined that Respondent, Paul Gray was served with the Statement of Claim pursuant to Section of the Code.

By letter dated November 29, 1995, the Claimant notified the NASD that they dismissed all allegations against Respondent, Cowen & Company, Inc. with prejudice. Prior to the start of the hearing on February 20, 1996, Claimants orally notified the NASD and the arbitrators that they settled their claims against Respondent, Thomas James Associates, Inc. and dismissed their claims with prejudice against Respondents, Jeff Friedensohn and Jim Roney. In addition, Claimants informed the arbitrators that they intended to proceed with their remaining claims against Respondents, Bob Wood and Paul Gray.

Claimants submitted a motion to amend the Statement of Claim on or about February 6, 1996. At the start of the hearing on February 20, 1996, Claimants orally withdrew their motion to amend.

### **AWARD**

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

1. The Statement of Claim is hereby dismissed and denied in its entirety;
2. All requests for relief not specifically granted herein are hereby denied in their entirety; and
3. The parties shall bear their own costs of arbitration including attorneys' fees except for those costs specifically enumerated herein.

**FORUM FEES**

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

one (1) hearing session X \$400.00 plus one (1) pre-hearing session  
X \$300.00 = \$700.00 in total forum fees

The National Association of Securities Dealers, Inc. ("NASD") shall retain the claim filing fee in the amount of \$120.00 and the hearing session deposit in the amount of \$400.00 previously submitted by the Claimants, Wilmer and Helen Mirtsching. Claimants, Wilmer and Helen Mirtsching are hereby liable for and shall pay to the NASD the sum of \$300.00 in additional forum fees. The NASD shall also retain the member surcharge in the amount of \$200.00 previously submitted by Respondent, Thomas James & Associates, Inc. pursuant to Section 45 of the Code. Respondent, Cowen & Co., Inc is liable for and shall pay to the NASD the sum of \$200.00 for the member surcharge in accordance with Section 45 of the Code.

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

Concurring Arbitrators' Signatures

Name

Dated

David G. Beerbower, Esq.  
David G. Beerbower, Esq.

March 8, 1996

Theodore S. Davis  
Theodore S. Davis

March 12, 1996

James M. Alexander  
James M. Alexander

March 8, 1996

Date of Decision: March 19, 1996