

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Marjorie Rosenthal

95-03736

Name of Respondents

Cowen & Company
Michael Tobin, Jr.
Allan Iselin

REPRESENTATION

For Claimant, Marjorie Rosenthal, appeared Richard B. Cohen, Esq., of the law firm Akabas & Cohen located in New York, New York.

For Respondents, Cowen & Company ("Cowen"), Michael Tobin, Jr. ("Mr. Tobin") and Allan Iselin ("Mr. Iselin"), appeared Peter Byer, Esq., of the firm Cowen & Company located in New York, New York.

CASE INFORMATION

Statement of Claim was filed on: August 1, 1995

Claimant's Submission Agreement signed on: July 30, 1995

Joint Statement of Answer filed by Respondents, Cowen & Company, Michael Tobin, Jr., and Allen Iselin on: October 20, 1995.

Respondent Cowen & Company's Submission Agreement was signed on: October 18, 1995.

Respondent, Allan Iselin's Submission Agreement signed on: August 18, 1995.

Respondent, Michael Tobin, Jr., did not execute a Submission Agreement as required by Section 25(b) of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Hearing Dates/Sessions:	May 30, 1996	-	2 Sessions
	June 26, 1996	-	2 Sessions

The hearings were held at the City Mid-Day Club, 140 Broadway, New York City, New York.

CASE SUMMARY

Claimant alleged that in or about January 1994, she purchased a \$500,000.00 limited partnership interest in the Cowen Enterprise Fund (USA), L.P. (the "Fund"), a Delaware limited partnership, managed by Cowen Asset Management, a division of Respondent, Cowen & Company ("Cowen"), the general partner. Claimant alleged that Cowen represented in the Fund's sales brochure that its investment objectives were "[t]o preserve our clients' capital while addressing their particular portfolio needs." Claimant further alleged that the Fund's sales brochure represented the Beta factor for the investment was 1.1, indicating the safety and non-volatility of the Fund. Claimant alleged that based on Cowen's representations about the safety of the investment, she invested in the Fund.

Claimant alleged that she received monthly statements during the course of 1994 which represented the value of her investment was at or slightly above her initial investment of \$500,000.00. Claimant further alleged Respondents, Michael Tobin, Jr. ("Mr. Tobin") and Allan Iselin ("Mr. Iselin"), representatives of Cowen, represented to Claimant and her financial advisor, Theodore Rosen ("Mr. Rosen"), that if she redeemed her partnership interest in the Fund effective December 1994, she would receive a distribution of 105% on her \$500,000.00 investment. Claimant alleged that relying on these representations and those on her monthly statements she redeemed her interest in the Fund as of year end 1994. However, Claimant alleged that contrary to Mr. Iselin's and Mr. Tobin's representation, she did not receive 105% on her \$500,000.00 investment, but rather lost \$51,000.00 of her initial investment.

Claimant alleged that contrary to the representations in the Fund's prospectus that its objective was preservation of capital, the Fund invested in highly speculative long and short positions in small capitalized stocks. Claimant further alleged that her monthly statement repeatedly misrepresented that her account was valued at or near \$500,000.00 while the actual underlying value was substantially less than that amount.

Claimant further alleged that in December 1994, the actual fund value was dropping precipitously, and, in fact, lost over 10% of its value in one month. Claimant also alleged that Respondents failed to inform her that because the stock market had risen, and the Fund had been invested in highly speculative short positions, it would be forced to cover its short position which would substantially decrease the value of the Fund, and, therefore, the value of her investment.

Respondents maintained that prior to making her investment, Claimant and Mr. Rosen were provided with a four-page brochure which described the Fund in addition to a Private Placement Memorandum (the "Memorandum"). Respondents maintained that the Memorandum described the Fund in great detail, including the objectives and risks involved in the investment. Further, Respondents maintained that prior to accepting Claimant's and Mr. Rosen's decision to invest, Claimant had to complete and sign a Subscription Agreement, which states that Claimant was aware on the investment's risks, lack of liquidity and substantial restriction of transferability of interest involved with the Fund. Respondents maintained that by signing the Subscription Agreement, Claimant represented to Cowen that she was well aware of the intended investment activity and objectives of the Fund and the risks involved in an investment of this nature.

Respondents maintained that no misrepresentations were made with regard to Claimant's monthly account statements and contended that the Fund was only valued on a quarterly basis. Respondents maintained that the decline in value of Claimant's shares from September 30, 1994 to December 31, 1994, would not be reflected on the monthly account statements until Claimant received her December 1994 year-end statement. In addition, Respondents also maintained that they never made a guarantee as to the dollar amount Claimant would receive should she decide to redeem her shares of the Fund.

RELIEF REQUESTED

Claimant requested damages in an amount to be determined at trial, but in any event no less than \$100,000.00; punitive damages; prejudgment interest; costs, disbursements and attorneys' fees.

Respondents requested the Statement of Claim be dismissed in its entirety, and the costs of the defending against this claim.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

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. Respondent Cowen & Company is liable and shall pay to the Claimant, Marjorie Rosenthal, the sum of \$5,000.00,
2. Respondent, Cowen & Company shall pay to the Claimant the sum of \$750.00, representing reimbursement for the hearing session deposit paid by Claimant;
3. Claimant's request for punitive damages is denied;
4. Claimant's request for prejudgment interest is denied;
5. All claims against Respondents, Michael Tobin, Jr. and Allan Iselin are dismissed in their entirety;
6. All parties are to bear their respective costs, including attorneys' fees; and,
7. All other relief requests are denied.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the arbitrators have assessed the following Forum Fees:

Total Forum Fees: \$3,000.00 (4 Sessions X \$750)

Respondent, Cowen & Company, is assessed the sum of \$3,000.00 representing the total forum fees assessed, less \$750.00 paid to Claimant, leaving \$2,225.00 due. Respondent, Cowen & Company, is liable and shall pay to the NASD the sum of \$2,225.00.

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

ARBITRATORS' SIGNATURES

Diane Getzler, Esq.
Diane Getzler, Esq.

Rena E. Grossfield

Robert A. Vaccaro

Date of Decision: October 23, 1996

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