

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Walter A. and Olga E. Schmidt Family Trust

96-01417

Name of Respondent

Cowen & Company
Lam Wagner Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 1, 1996 Claimants Walter A. and Olga E. Schmidt of the Schmidt Family Trust ("Claimants"), through their representative, Stephanie Malkewicz, V.P., of Foresters Equity Services, Inc., located in San Diego, CA, alleged that Respondent Cowen & Co. ("Respondent") was the clearing house for their account at Lam Wagner, Inc. Claimants further alleged that Mr. Schmidt gave a common stock certificate for 2000 shares of Allied Signal to John M. Cione ("Cione") making it clear that he was uncertain as to its negotiability as he had had a stroke which affected his memory. Claimant also alleged that Cione forwarded the certificate to Brandon Dobell ("Dobell"), his operation manager, and notified him of the negotiability issue. Claimants also contended that they assisted in clearing the certificate by providing a letter of authorizing its sale, however, they were relying on the Respondent to ascertain the actual negotiability status of the certificate. Claimants further contended that on August 18, 1993, Dobell informed them that the certificate was negotiable so the shares were sold on August 23, 1993; 1800 shares at \$72.50 and 200 shares at \$72.375. Claimants alleged that they deposited the \$142,966.16 in their account and paid \$2,008.84 for commissions which was in excess of the full commission charged on the Cowen commission schedule. Claimants further alleged that on September 2, 1993 the Respondent wired \$319,616.12 to the Claimants' checking account. Claimants asserted that on September 3, 1993 they were contacted by the President of Lam Wagner who informed them that the 2000 shares of ALD was not good delivery, that a stop had been placed their checking account and that they had to return the proceeds. Claimants further asserted that in good faith they immediately wired back the amount requested by the President in c/o the Respondent but the hold was not removed from their checking account until September 15, 1993 causing their bank to unnecessarily return a check for "insufficient funds" in the amount of \$147,770.00. Claimants contended that on September 8, 1993 the 2000 shares of ALD were bought by the Respondent: 1,000 shares at \$73.25 and 1,000 shares at \$73.375. Claimants further contended that due to the wrongdoing of the Respondent, they suffered damages for which the Respondent should be held liable.

The Claimant removed Lam Wagner Inc. as a Respondent in this matter prior to submitting the case to the arbitrator.

Respondent Cowen & Co. ("Respondent"), through its representative and in-house counsel, Peter Byer, Esq., maintained that it acted appropriately when this transaction took place. Respondent further maintained that the stock certificate was originally received at Cowen and then delivered back to Lam Wagner because of the placement of a "stop" on the certificate until a release was signed by the Claimants. Respondent contended that once they had the release they transferred it to the Bank of New York who accepted it. Respondent further contended that a day after the Bank of New York allowed the sale to go through, on September 3, 1993, Respondent was notified by the Bank of New York that the certificate was confiscated due to the fact that it had been replaced and a stop was placed on it more than seven years ago, because the Claimants reported it lost. Respondent maintained that in August they were never notified that the certificate was replaced and not negotiable rather, they were told that the certificate only required a release letter from the Claimants prior to the completion of the transaction. Respondents further maintained that the Bank of New York failed to give timely notice to the Respondent that the certificate was defective. Respondent contended that it committed no wrongdoing and requested that the claims against it be dismissed.

RELIEF REQUESTED

Claimants Walter A. and Olga E. Schmidt as trustees of the Schmidt Family Trust, requested \$9,949.68 in actual damages.

Respondent Cowen & Company, requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Amy Seltzer, Ph.D, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Walter A. and Olga E. Schmidt, trustees of the Schmidt Family Trust on April 29, 1996 and by the Respondent Cowen & Company on July 2, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Respondent Cowen & Company is liable and shall pay to the Claimant Walter A. and Olga E. Schmidt Family Trust \$4,946.80 in actual damages.
2. The parties shall bear their respective costs.

3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. The Respondent Cowen & Company shall pay to the Claimant Walter A. and Olga E. Schmidt \$75.00 as reimbursement of one-half of the filing fee.
4. All other relief requests are denied.

AFFIRMATION

I, **AMY SELTZER, Ph.D.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: September 6, 1996