

N.A.S.D. AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

William A. Rutherford

96-05221

Name of Respondents

Cowen & Company
David Green
Michael McCarty

REPRESENTATION

For Claimant William A. Rutherford ("Claimant"): Donald J. Crawford, Esq. of The Adams Law Center, Rockville, MD

For Respondents Cowen and Company ("Cowen"), David Green ("Green") and Michael McCarty ("McCarty"): Peter Byer, Esq. of Cowen & Company, New York, NY

CASE INFORMATION

Statement of Claim filed: November 22, 1996

Claimant's Submission Agreement signed on November 15, 1996

Joint Statement of Answer filed by Respondents Cowen, Green and McCarty (collectively "Respondents") on: January 31, 1997

Respondent Cowen's Submission Agreement executed on: December 18, 1996

Respondent Green's Submission Agreement signed on: March 4, 1997

Respondent McCarty's Submission Agreement signed on: March 5, 1997

HEARING INFORMATION

Pre-Hearing Conference: February 3, 1998/one session

Hearing Dates/Sessions: February 11, 1998/two sessions
February 12, 1998/two sessions

Hearing Location: NASD Headquarters
Washington, D.C.

CASE SUMMARY

Claimant alleged that he opened accounts with Respondent, Cowen, after being solicited by telephone. Claimant further alleged that he informed Respondents at various times that his investment objectives were capital appreciation and long-term growth for retirement. Claimant asserted that contrary to his instructions, his accounts experienced excessive trading as well as unauthorized transactions by Respondents. Claimant alleged that Respondents' actions constituted churning, fraud and breach of fiduciary duty.

Respondents contended that all transactions in the Claimant's accounts were authorized, either by virtue of discretionary trading authorization or by express authorization of the Claimant. Respondents denied Claimant's allegations of churning. Respondents contended that trading in Claimant's accounts was not excessive, was consistent with the Claimant's expressed desires, and was similar to trading conducted by the Claimant in accounts with other brokerage firms. Respondents maintained that Claimant controlled his own Cowen accounts, and that Respondents did not engage in any fraudulent or improper activity.

RELIEF REQUESTED

Claimant requested \$148,066.73 in compensatory damages, plus interest, punitive damages and attorney's fees.

Respondents requested that the Statement of Claim be dismissed and that costs be assessed to Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive conformed copies of the Award while the original remains 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. That the claims of Claimant William A. Rutherford are denied in their entirety. Claimant's evidence did not support the allegations made against Respondents; and
2. That Claimant's requests for punitive damages, attorney's fees, costs and other disbursements are also denied; and
3. That Respondents' request for reimbursement of costs is also denied; and
4. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 Prehearing Session x \$300.00 = \$ 300.00

4 sessions X \$750.00 = \$3,000.00

Total Forum Fees \$3,300.00

Forum Fees are assessed against Claimant. Claimant shall receive credit for the \$750.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$2,550.00.

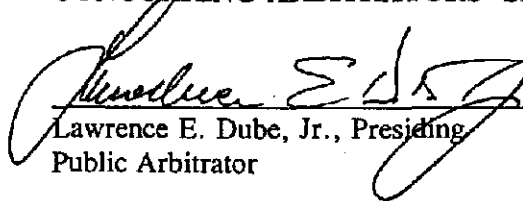
Pursuant to Rule 10333 of the Code of Arbitration Procedure, Respondent Cowen is assessed a member surcharge of \$350.00.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

DATE

2/23/98

CONCURRING ARBITRATORS' SIGNATURES



Lawrence E. Dube, Jr., Presiding
Public Arbitrator

G. Rick O'Shea
Public Arbitrator

Steven R. Bralove
Industry Arbitrator

Date Award Served by NASD Regulation:

February 27, 1998

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