

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Christian Mayaud, M.D., (Claimant) vs. Cowen & Company, Ronald Glickman, and Ondine McBurney, (Respondents)

Case Number: 99-00612

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Christian Mayaud, M.D., hereinafter referred to as "Claimant": Alan Rafterman, Esq., and Jennifer M. Newcomb, Esq., Graubard, Mollen & Miller, New York, NY.

Respondents, Cowen & Company ("Cowen") and Ronald Glickman ("Glickman"): Peter Byer, Esq., Assistant General Counsel, Societe Generale, New York, NY.

Respondent, Ondine McBurney ("McBurney"): Mark P. Zimmet, Esq., a sole practitioner, New York, NY. Previously represented by: Peter Byer, Esq., Assistant General Counsel, Societe Generale, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: February 10, 1999.

Amended Statement of Claim filed on or about: May 19, 1999.

Reply to Counterclaim filed on or about: June 24, 1999.

Claimant signed the Uniform Submission Agreement: February 10, 1999.

Statement of Answer and Counterclaim filed by Respondents on or about: June 8, 1999.

Cowen did not sign a Uniform Submission Agreement.

Glickman signed the Uniform Submission Agreement: June 14, 1999.

McBurney did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: failure to comply with Claimant's instructions to employ the strategy of "shorting against the box"; breach of contract; and breach of fiduciary duty. Claimant's claim involved the stock of Advanced Health Corp.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the trades in question were properly entered by Glickman; the strategy of "shorting against the box" was not directed by Claimant until after the trades in question were executed; McBurney never took an order or discussed any orders that Claimant entered in his account; and McBurney did not participate in any discussions regarding the strategy in question.

In their Counterclaim, Respondents asserted the following causes of action: the Statement of Claim contains factual inaccuracies and outright misrepresentations regarding the transactions which occurred in Claimant's account; Claimant has filed a frivolous and unsubstantiated claim; and Respondents have been financially harmed by the filing of this claim in that the time spent defending the claim results in lost revenue to them.

Unless specifically admitted in his Reply, Claimant denied the allegations made in the Counterclaim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$350,000.00, together with interest, costs, and such other and further relief as to the Panel appears just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety and that costs be awarded in their favor.

In their Counterclaim, Respondents requested that they be reimbursed for the expenses and lost revenue incurred in defending this claim.

In his Reply, Claimant requested that the Panel dismiss the Counterclaim and grant him such other and further relief as to the Panel seems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Cowen and McBurney did not file with NASD Dispute Resolution, Inc. properly executed submissions prior to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and orally, through their respective counsel, both acknowledged submission at the beginning of the hearings, and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Cowen and Glickman be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$401,544.43 as compensatory damages.
2. All claims against McBurney are hereby dismissed in their entirety.
3. Respondents' Counterclaim is hereby denied in its entirety.
4. Each party shall bear their own attorneys' fees, costs, and expenses.
5. All other requests for relief are hereby denied.

FEEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 200.00
Counterclaim filing fee	= \$ 500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Cowen & Company is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

May 1 & 2, 2000, adjournment by Claimant	= WAIVED
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June 12, 13 & 20, 2000, adjournment by McBurney = WAIVED

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$300.00 = \$ 300.00
Pre-hearing conference: March 3, 2000 1 session

Three (3) Pre-hearing sessions with Panel x \$750.00 = \$2,250.00
Pre-hearing conferences: February 4, 2000 1 session
May 1, 2000 1 session
June 5, 2000 1 session

Five (5) Hearing sessions x \$750.00 = \$3,750.00
Hearing Dates: March 7, 2001 2 sessions
March 8, 2001 3 sessions

Total Forum Fees = \$6,300.00

1. The Panel has assessed \$3,150.00 of the forum fees against Claimant.
2. The Panel has assessed \$1,050.00 of the forum fees against Cowen.
3. The Panel has assessed \$1,050.00 of the forum fees against Glickman.
4. The Panel has assessed \$1,050.00 of the forum fees against McBurney.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 200.00
Forum Fees	= \$3,150.00
Total Fees	= \$3,350.00
Less payments	= \$1,700.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,650.00

2. Cowen be and hereby is solely liable for:

Member Fees	= \$4,600.00
Forum Fees	= \$1,050.00
Total Fees	= \$5,650.00
Less payments	= \$5,650.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

3. Glickman be and hereby is solely liable for:

<u>Forum Fees</u>	= \$1,050.00
<u>Total Fees</u>	= \$1,050.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,050.00

4. McBurney be and hereby is solely liable for:

<u>Forum Fees</u>	= \$1,050.00
<u>Total Fees</u>	= \$1,050.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,050.00

5. Respondents be and hereby are jointly and severally liable for:

<u>Counterclaim Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 50.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 450.00

All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

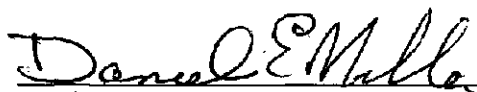
Richard A. Dice, Esq.	-	Public Arbitrator, Presiding Chair
Daniel E. Miller, Esq.	-	Public Arbitrator
David Levy, Esq.	-	Industry Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Richard A. Dice, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Daniel E. Miller, Esq.
Public Arbitrator

Signature Date

David Levy, Esq.
Industry Arbitrator

Signature Date

May 22, 2001
Date of Service (For NASD office use only)

ARBITRATION PANEL

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