

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Thomas Dimitry, (Claimant) vs. H.J. Meyers & Co., Inc., Gary Waye, and S.G. Cowen Securities Corporation, (Respondents)

Case Number: 99-02172

Hearing Site: Buffalo, New York

REPRESENTATION OF PARTIES

Claimant, Thomas Dimitry, hereinafter referred to as "Claimant": Russell J. Guglielmino, Esq., Law Offices of Russell J. Guglielmino, Rochester, NY.

Respondent, H.J. Meyers & Co., Inc. ("Meyers"), did not make an appearance in this matter.

Respondent, Gary Waye ("Waye"), did not appear at the hearing in this matter. Previously represented by: M. David Sayid, Esq., Sayid and Associates LLP, New York, NY.

Respondent, S.G. Cowen Securities Corporation ("Cowen"), did not appear at the hearing in this matter. Previously represented by: Andrew W. Sidman, Esq., Butler, Fitzgerald & Potter, New York, NY and Peter Byer, Esq., Assistant General Counsel, S.G. Cowen Securities Corporation, New York, NY, respectively.

CASE INFORMATION

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

Claimant signed the Uniform Submission Agreement: April 29, 1999.

Meyers did not file a Statement of Answer or sign a Uniform Submission Agreement.

Statement of Answer filed by Waye on or about: July 6, 1999.

Waye signed the Uniform Submission Agreement: June 8, 2000.

Statement of Answer filed by Cowen on or about: September 13, 1999.

Cowen signed the Uniform Submission Agreement: January 10, 2000.

CASE SUMMARY

Claimant asserted the following causes of action: excessive trading; unauthorized trading; violations of federal and state securities laws; breach of fiduciary duty; and failure to properly perform compliance functions. Claimant's claim involved unspecified financial products.

Unless specifically admitted in his Answer, Waye denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant assumed the risk of his transactions, and authorized the purchase and sale of all said transactions maintained with Respondents; Claimant had or should have had full knowledge of all material facts concerning his securities accounts maintained with Respondents; the Statement of Claim fails to state a cause of action upon which relief can be granted; Claimant waived any and all claims for relief they may otherwise have had against Respondents; Claimant is estopped from asserting the purported claims set forth in the Statement of Claim; Claimant ratified and approved each and every transaction on which Claimant's claims purport to be based; Claimant's claims are barred by Claimant's contributory fault, comparative fault, recklessness, and failure to exercise due diligence; Claimant cannot reasonably have relied upon any alleged representations set forth in the Statement of Claim; Claimant has failed to mitigate his damages; Claimant had full knowledge of and assumed the risks of each of the investments on which his Statement of Claim is based; and any and all relief sought by Claimant is barred by the doctrine of unclean hands.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in the amount of \$105,000.00, representing the difference between the performance of Claimant's account and the reasonable performance that could have been expected if the account were properly managed;
2. Disgorgement of all commissions earned by the Respondents, estimated at \$30,000.00; and
3. Punitive damages in the amount of \$90,000.00.

Waye requested that the Statement of Claim be denied in its entirety, that he be awarded his costs, fees, expenses, and reasonable attorneys' fees in the approximate amount of \$15,000.00, and that the Panel grant him such other and further relief as justice and equity require.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Waye has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Waye present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Claimant made a motion to forego the hearing and to issue an Award in favor of Claimant and against Respondent Waye. The Panel denied said motion.

Respondent Meyers was declared to be an involuntary Chapter 7 Debtor by reason of a Petition filed with the United States Bankruptcy Court, Western District of New York on April 12, 1999. Accordingly, all claims against Meyers were stayed.

By letter dated May 20, 2002, Claimant advised NASD Dispute Resolution, Inc. that he had entered into a settlement agreement with Respondent Cowen.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Waye be and hereby is solely liable for and shall pay to Claimant the sum of \$46,664.66 as compensatory damages, plus simple interest at the rate of 9% accruing from the date that this Award is issued until date of payment in full.
2. Claimant's request for punitive damages is hereby denied.
3. All other requests for relief are hereby denied.

FEES

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	= \$ 300.00
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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, S.G. Cowen Securities Corporation 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:

Aug. 22, 23 & 24, 2000, adjournment by Claimant	= WAIVED
June 12 & 13, 2001, adjournment by Waye	= 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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conferences: May 22, 2000	1 session
May 30, 2000	1 session

Two (2) Hearing sessions x \$1,125.00	= \$2,250.00
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Hearing Date: May 21, 2002	2 sessions
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Total Forum Fees	= \$4,500.00
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1. The Panel has assessed \$2,250.00 of the forum fees against Claimant.
2. The Panel has assessed \$2,250.00 of the forum fees against Waye.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$2,250.00</u>
Total Fees	= \$2,550.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,125.00

2. Cowen be and hereby is solely liable for:

<u>Member Fees</u>	<u>= \$4,600.00</u>
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

3. Wayne be and hereby is solely liable for:

<u>Forum Fees</u>	<u>= \$2,250.00</u>
Total Fees	= \$2,250.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,250.00

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

ARBITRATION PANEL

Cheryl C. Nichols, Esq.	-	Public Arbitrator, Presiding Chair
Alun Hywel Jones	-	Public Arbitrator
Maryann Donahue-Yadon	-	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.



Cheryl C. Nichols, Esq.
Public Arbitrator, Presiding Chair

7/22/02
Signature Date

Alun Hywel Jones
Public Arbitrator

Signature Date

Maryann Donahue-Yadon
Industry Arbitrator

Signature Date

July 24, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL

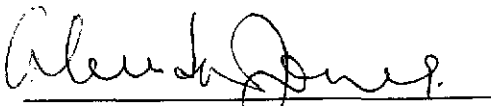
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Alun Hywel Jones	-	Public Arbitrator
Maryann Donahue-Yadon	-	Industry Arbitrator

Concurring Arbitrators' Signatures

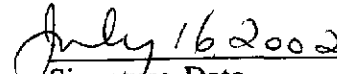
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Cheryl C. Nichols, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Alun Hywel Jones
Public Arbitrator



Signature Date

Maryann Donahue-Yadon
Industry Arbitrator

Signature Date

July 24, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL

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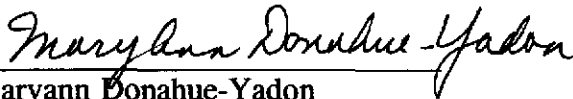
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Cheryl C. Nichols, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Alun Hywel Jones
Public Arbitrator

Signature Date


Maryann Donahue-Yadon
Industry Arbitrator

7/19/02
Signature Date

July 24, 2002
Date of Service (For NASD office use only)