

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Roger W. Kroschel

Case No. 99-02918

Name of Respondents

H.J. Meyers & Company, Inc.,  
SG Cowen Securities Corp.,  
Brett Briggs,  
Gary Liddicoat, and  
Joseph L. Heaton.

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**REPRESENTATION OF PARTIES**

Claimant, Roger W. Kroschel, hereinafter referred to as ("Kroschel") was represented by John A. Schmidt, Esq. of The Law Offices of John A. Schmidt, P.C., located in Houston, Texas.

Respondent, H.J. Meyer's & Company, Inc., ("HJM") was represented by Lucien A. Morin II of McConville, Considine, Cooman & Morin, P.C., Chapter 7 Trustee for H.J. Meyer's & Co., Inc., located in Rochester, New York.

Respondent, SG Cowen Securities Corporation ("SG Cowen") was represented by Peter Byer, Esq. of SG Cowen Securities Corporation, located in New York, New York.

Respondent, Brett S. Briggs ("Briggs") was of InterFirst Capital Corporation, located in Los Angeles, California, represented himself.

Respondent, Gary C. Liddicoat ("Liddicoat") of Affiliated Attorney's, located in Mechanicsville, Virginia, represented himself.

Respondent, Joseph L. Heaton ("Heaton") was represented by Cynthia M. Schleindl, Esq., of Miller, Milove, & Kob, located in San Diego, California.

### **CASE INFORMATION**

Statement of Claim filed on or about: June 25, 1999.

Claimant signed the Uniform Submission Agreement: June 24, 1999.

Statement of Answer filed by Respondent SG Cowen on or about: December 27, 1999.

Respondent, SG Cowen, signed the Uniform Submission Agreement: January 6, 2000.

Statement of Answer filed by Respondent, Briggs, on or about: September 29, 1999.

Respondent, Mr. Briggs, signed the Uniform Submission Agreement: September 20 1999.

Statement of Answer filed by Respondent, Liddicoat, on or about: October 7, 1999.

Respondent, Mr. Liddicoat, signed the Uniform Submission Agreement: September 14, 1999.

Statement of Answer filed by Respondent, Heaton, on or about: August 31, 2000.

Respondent, Heaton, signed the Uniform Submission Agreement: September 23, 1999.

### **CASE SUMMARY**

Claimant, Kroschel, ("Claimant") asserted the following causes of action: negligence and unauthorized trading. The causes of action related to irregularities on his account including improper charges of commissions and fees resulting from the actions of Respondent H.J. Meyers & Co., Inc. ("HJM") and/or Respondent Cowen & Co. ("Cowen").

Claimant further asserted that upon seeking redress for irregularities in his account, Respondents Briggs, Liddicoat, and Heaton, made intentional and malicious misrepresentations meant to frustrate Claimant's lawsuit.

In his First Amended Original Statement of Claim, Claimant alleged that certain irregularities occurred in his account as a result of the actions of Respondent, H.J.M. and/or Respondent, Cowen. The irregularities included: [a] an improper charge of commissions and fees totaling six hundred thirty-one and 52/100 dollars (\$631.52) when HJM negligently entered Claimant's order to sell certain puts as a purchase and refused to "bust" that trade, instead selling improperly purchased

puts on the same date at the same price, charging a full commission on both such transactions; [b] selling out Claimant's entire position in Applied Magnetics Corporation ("Applied Magnetics") pursuant to purported "house call" for margin purposes without giving Claimant any prior notice of such liquidation, and without regard to the amount of such purported margin call being met without the necessity for the liquidation of all that stock; and [c] the unauthorized sale of Claimant's thirty (30) "call" contracts relative to Applied Magnetics. Claimant also alleged that there was no indication that Claimant's account had fallen below the minimum maintenance requirements when his account was sold out without his prior knowledge or consent. Thus, the issuance of the purported "house call" and subsequent liquidation of Claimant's account by Cowen was improper and, at a minimum negligent.

Unless specifically admitted in its Answer, each Respondent denied the allegations made in the Statement of Claim and asserted the following affirmative defenses:

1. **H.J. Meyers & Company, Inc.** asserted that they are not a party to this matter because they are in liquidation under Chapter 7 of the United States Bankruptcy Code
2. **SG Cowen** asserted that it did not exercise supervision over any H.J.M. employees and that it was not party to any of the alleged unauthorized transactions;
3. **Liddicoat** asserted that Claimant failed to state a claim upon which relief may be granted and failed to plead sufficient facts for consequential damages;
4. **Heaton** asserted that he had no duty to supervise the transactions in issue; that Claimant did not plead sufficient facts to establish a claim for fraud or punitive damages; and that Claimant failed to mitigate lost profits;
5. **Briggs** asserted that the Statement of Claim failed to state claims upon which relief may be granted; Claimant waived all claims for relief; Claimant ratified and approved each and every transaction on which the Claimant's claims purport to be based; the claims are barred by Claimant's contributory fault, comparative fault, recklessness and failure to exercise due diligence; Claimant assumed the risk on investment; all relief sought by Claimant is barred by the doctrine of unclean hands; Respondent acted in good faith and did not induce any act constituting a violation of securities laws; and at all times Respondent exercised due diligence and reasonable care.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$ 37,787.77
Interest	\$ Unspecified
Attorney Fees	\$ Unspecified
Other Costs	\$ Unspecified

and any other relief the Panel deemed just and equitable.

Respondent requested that the Statement of Claim be dismissed in its entirety and that they be awarded its attorneys' fees, cost, forum fees and any other relief the Panel deemed proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

- 1) Respondents Mr. Liddicoat, Cowen & Co.'s, and Mr. Heaton all filed Motions to Dismiss which the Panel denied; and
- 2) Claimant filed a Motion for Leave to File First Amended Original Statement of Claim which the Panel granted;
- 3) Cowen settled with claimant at the time of the hearing;
- 4.) Respondent H.J.M filed Chapter 7 Bankruptcy prior to the filing of this claim.

### **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. Respondent H.J. Meyers & Co. is dismissed *without prejudice* due to bankruptcy stay;
2. Per settlement agreement with claimant, claims against Respondent SG Cowen Securities are dismissed;
3. The claims against Respondents, Briggs, Liddicoat and Heaton are dismissed with prejudice;

4. Any remaining NASD fees shall be borne by the parties incurring the cost, except for those specifically enumerated in this award; and
5. Any relief not specifically awarded is 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	= \$175
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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 firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are H.J. Meyers & Co. and SG Cowen Securities Corp. Respondents in this action.

Member surcharge	= \$ 800
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$1000

#### **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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing session(s) with Panel x \$600	= \$1200
Pre-hearing conference(s):	
April 28, 2000	
June 12, 2000	

Five (5) Hearing sessions x \$600	= \$3000
Hearing Date(s):	
Date	2 sessions
Date	3 session

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Total Forum Fees	= \$4200
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1. The Panel has assessed \$3600 of the forum fees to Respondent, Cowan
2. The Panel has assessed \$600 of the forum fees to Claimant.

NASD Dispute Resolution, Inc.  
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2. The Panel has assessed \$600 of the forum fees to Claimant.

**Fee Summary**

1. Claimant, Roger W. Kroschel, be and hereby is solely liable for:

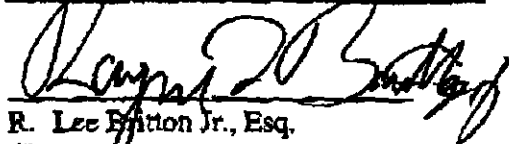
Initial Filing Fee	= \$ 175
Forum Fees	= \$ 600
Administrative Costs	= \$ 60
Total Fees	= \$ 835
Less payments	= \$ 1060
Balance Refunded by NASD	= \$ 225

2. Respondent, Cowen & Company, be and hereby is solely liable for:

Member Fees	= \$ 1,600
Forum Fees	= \$ 3,600
Total Fees	= \$ 5,200
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,200

All balances are due to NASD Dispute Resolution, Inc.

**Concurring Arbitrator's Signature(s)**

  
R. Lee Britton Jr., Esq.  
Chairperson

02-28-01

Signature Date

\_\_\_\_\_  
Michael E. McGown, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Charles V. Dwyer, Jr.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

NASD Dispute Resolution, Inc.  
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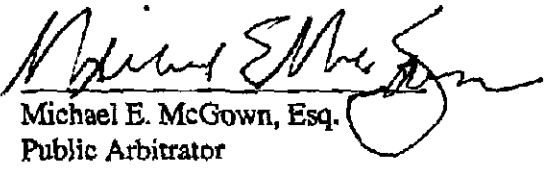
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 R. Lee Britton Jr., Esq.  
 Chairperson

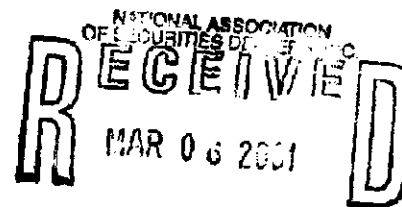
\_\_\_\_\_  
 Signature Date

  
 Michael E. McGown, Esq.  
 Public Arbitrator

28 February 2001  
 Signature Date

\_\_\_\_\_  
 Charles V. Dwyer, Jr.  
 Public Arbitrator

\_\_\_\_\_  
 Signature Date



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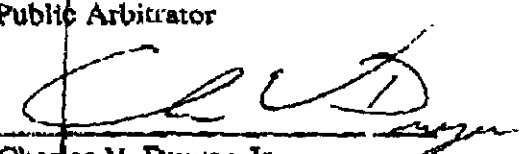
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\_\_\_\_\_  
R. Lee Britton Jr., Esq.  
Chairperson

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Signature Date

\_\_\_\_\_  
Michael E. McGown, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Charles V. Dwyer, Jr.  
Public Arbitrator

3/5/01  
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Signature Date