

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Scarlett M. Mendoza (Claimant) v. SG Cowen Securities Corporation and SG Cowen Asset Management, Inc. (Respondents)

Case Number: 02-00965

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Scarlett M. Mendoza ("Mendoza), hereinafter referred to as "Claimant":
Steven J. Hyman, Esq., McLaughlin & Stern, LLP, New York, NY.

Respondents, SG Cowen Securities Corporation ("SG Cowen") and SG Cowen Asset Management, Inc. ("SGCAM"), hereinafter collectively referred to as "Respondents":
Lynn E. Judell, Esq., Andrews & Kurth, LLP, previously of Rosenthal Judell & Uchima, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: February 19, 2002.

Claimant signed the Uniform Submission Agreement: February 14, 2002.

Joint Statement of Answer filed by Respondents on or about: June 4, 2002.

Respondent SG Cowen signed the Uniform Submission Agreement: June 3, 2002.

Respondent SGCAM signed the Uniform Submission Agreement: June 3, 2002.

CASE SUMMARY

Claimant alleged in her Statement of Claim that she held the title of Vice President and was employed by Respondents until her termination in November 2001. She alleged breach of contract and breach of the covenant of good faith and fair dealing, in that Claimant alleged: (1) Respondents failed to pay her separation pay, notwithstanding an agreement to do so; (2) Respondents wrongfully terminated her employment in breach of a separation agreement and caused her lost wages for November and December 2001; and (3) Respondents failed to pay Claimant commission incentive payments that were earned during her employment.

Respondents alleged in their answer that Claimant was hired in January 2001 as head of client servicing for SGCAM. Respondents alleged in July 2001, in connection with SGCAM's acquisition of Trust Company of the West, another asset management company, numerous positions at SGCAM were eliminated, including Claimant's

position. In July 2001, Claimant was alleged to have received a separation memo from SGCAM outlining the terms of the separation package. The memo allegedly provided that Claimant's last day of work was December 31, 2001, and stated:

“While your employment with SGCAM will be coming to a close, your participation is key to ensuring a smooth and successful transfer of client relations and assets. Although SG does not maintain a formal severance plan, in recognition of this cooperation, we have assembled an enhanced separation package designed to bridge you to new and successful employment outside of SG. Upon departing you will receive a separation payment of \$120,000. All such payments will be made less applicable payroll deductions.

The separation package will be paid to you only if: (1) you perform your duties and responsibilities in a satisfactory manner up to your date of termination, (2) you submit a fully executed separation letter agreement and general release to SGCAM, and (3) you do not transfer to another position within the organization.”
(footnote omitted)

Respondents alleged that Claimant was terminated in November 2001 for poor performance. Respondents submit that the evidence of Claimant's alleged poor performance was compelling and that it did not breach the separation memo by refusing to make a separation payment to her.

RELIEF REQUESTED

Claimant requested an award in her favor of damages in the amount of not less than \$200,000.00; reasonable attorneys and expert fees; the costs of this arbitration, including forum fees; and such other and further relief as the arbitrators deem appropriate.

Respondents requested that the Panel dismiss Mendoza's Statement of Claim with prejudice, in its entirety; assess the costs and disbursements of this proceeding, including reasonable attorneys' fees, against Mendoza; and, award Respondents such other and further relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents filed a Motion to Preclude Peter Strauss from Testifying on Behalf of Claimant. The Panel denied said Motion.

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. Respondents are jointly and severally liable and shall pay to Claimant compensatory damages in the amount of \$78,000.00.
2. Respondents are jointly and severally liable and shall pay to Claimant interest at the rate of 9% per annum from November 9, 2001 to the date of this Award.
3. Claimant's claim for unpaid commission incentive payments is denied, as insufficiently proved.
4. The parties' opposing claims for attorney's fees are denied, as insufficiently proved.
5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution 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. Accordingly, SG Cowen Securities Corporation is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 29 and 30, 2003, adjournment by Respondents	= \$1,125.00
April 22 and 23, 2003, adjournment by Respondents	= Waived

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 @ \$1,125.00		= \$ 2,250.00
Pre-hearing conferences:	October 22, 2002	1 session
	May 28, 2003	1 session
Twelve (12) Hearing sessions @ \$1,125.00		= \$13,500.00
Hearing Date(s):	March 4, 2003	2 sessions
	March 5, 2003	2 sessions
	July 22, 2003	2 sessions
	July 23, 2003	2 sessions
	August 19, 2003	2 sessions
	September 4, 2003	2 sessions
Total Forum Fees		= \$15,750.00

1. The Panel has assessed \$7,875.00 of the forum fees against Claimant.
2. The Panel has assessed \$7,875.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant is solely liable for:		
Initial Filing Fee		= \$ 300.00
<u>Forum Fees</u>		<u>= \$ 7,875.00</u>
Total Fees		= \$ 8,175.00
<u>Less payments</u>		<u>= \$ 2,125.00</u>
Balance Due NASD Dispute Resolution		= \$ 6,050.00
2. Respondent SG Cowen is solely liable for:		
<u>Member Fees</u>		<u>= \$ 5,200.00</u>
Total Fees		= \$ 5,200.00
<u>Less payments</u>		<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution		= \$.00
3. Respondents SG Cowen and SGCAM are jointly and severally liable for:		
Adjournment Fee		= \$ 1,125.00
<u>Forum Fees</u>		<u>= \$ 7,875.00</u>
Total Fees		= \$ 9,000.00
<u>Less payments</u>		<u>= \$.00</u>
Balance Due NASD Dispute Resolution		= \$ 9,000.00

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All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

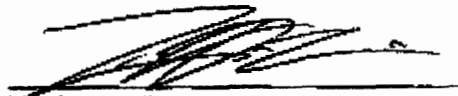
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ARBITRATION PANEL

Louis H. Miron, Esq.	-	Non-Public Arbitrator, Presiding Chair
Richard P. Ryder, Esq.	-	Non-Public Arbitrator
John W. Engelskirger	-	Non-Public 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 is which is my award.



 Louis H. Miron, Esq.
 Non-Public Arbitrator, Presiding Chairperson

10-2-03

 Signature Date

 Richard P. Ryder, Esq.
 Non-Public Arbitrator

 Signature Date

 John W. Engelskirger
 Non-Public Arbitrator

 Signature Date

October 2, 2003

Date of Service (For NASD Dispute Resolution use only)

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