

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

Case Number: 08-04521

Respondent

Hearing Site: San Francisco, California

Cowen & Company, LLC

Counter-Claimant

Cowen & Company, LLC

Counter-Respondent

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Nature of the Dispute: Associated Person vs. Member  
Member vs. Associated Person

**REPRESENTATION OF PARTIES**

Claimant, [REDACTED], hereinafter referred to as "Claimant": Cary S. Lapidus, Esq.,  
Law Offices of Cary S. Lapidus, San Francisco, California.

Respondent, Cowen & Company, LLC, hereinafter referred to as "Respondent": Lloyd  
S. Clareman, Esq., Lloyd S. Clareman, A Professional Corporation, Attorney at Law,  
New York, New York.

**CASE INFORMATION**

Statement of Claim filed: December 01, 2008

Claimant signed the Submission Agreement on or about: September 20, 2008

Statement of Answer filed by Respondent: January 30, 2009

Counterclaim filed by Respondent: January 30, 2009

Respondent signed the Submission Agreement on or about: January 23, 2009

Statement of Answer to Counterclaim filed by Claimant: February 17, 2009

### **CASE SUMMARY**

In her Statement of Claim, Claimant asserted the following causes of action: 1) breach of contract, 2) breach of the implied covenant of good faith and fair dealing; and 3) violation of California Labor Code Section 201. Claimant's claim involved Respondents depriving Claimant of her bonus payments in bad faith and waiting time penalties.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim.

In its Counterclaim, Respondent alleged that Claimant violated New York State's "faithless agent rule."

Unless specifically admitted in her Answer to the Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In her Statement of Claim, Claimant requested:

1. Damages for her unpaid bonus payment in the amount of \$191,694.00;
2. Waiting time penalties in the amount of \$10,000.00;
3. Prejudgment interest at the legal rate of 10% per annum;
4. Attorney's fees;
5. Costs of this proceeding; and
6. Such other relief as the Arbitrators deem just and proper.

In its Answer and Counterclaim, Respondent requested:

1. Dismissal of Claimant's claims in all respects;
2. Compensatory damages in the sum of \$82,692.00 plus prejudgment and post-judgment interest on its counterclaim; and
3. An assessment of all hearing costs and fees against Claimant.

In her Answer to Respondent's Counterclaim, Claimant requested that the Panel dismiss the Counterclaim as meritless and award Claimant attorney's fees, costs, disbursements, and forum fees due to the bad faith and frivolous nature of the Counterclaim.

At the close of the hearing, Claimant and Counter-Claimant reiterated the damages stated above without change.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

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. The Panel decides that California law applies to this case despite the choice of law provision – designating New York law - contained in the employment agreement at issue in this matter. Claimant worked and lived in California for the entire time of her employment with Respondent. Therefore, California has a materially greater interest in this matter than New York.
2. Respondent is liable to and shall pay Claimant compensatory damages in the amount of \$191,694.00 to Claimant due to Respondent's breach of the employment agreement. The Panel finds that Respondent breached the covenant of good faith and fair dealing, implied in every contract, by failing to provide Claimant an adequate opportunity to respond to the charges made against her; and by failing to conduct a fair investigation of Claimant's alleged transgressions. The Panel further finds that Respondent's "rush to judgment" had the effect of denying her the full 2007 bonus that would have been due her the very next day after her termination.
3. Respondent is liable to and shall pay Claimant pre-judgment interest on \$191,694.00 at the statutory rate of 10% per annum from February 14, 2008 until the date the Award is paid.
4. Claimant's request for "waiting time penalties" is denied.
5. Respondent's counterclaim of \$82,692.00 for violation of the New York "faithless servant doctrine" is dismissed since New York law is inapplicable and California law has no corresponding doctrine.
6. Claimant's and Respondent's requests for attorney's fees are denied.
7. The parties shall bear their respective costs.
8. Any and all relief not specifically addressed herein is denied.
9. The Panel has provided an explanation of their decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

### **FEEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

FINRA Dispute Resolution assessed a filing fee\* for each claim:

|                          |              |
|--------------------------|--------------|
| Initial claim filing fee | = \$1,425.00 |
| Counterclaim filing fee  | = \$1,750.00 |

*\*The filing fee is made up of a non-refundable and a refundable portion. Pursuant to Armendariz v. Foundation Health Psychcare Services, 24 Cal.4<sup>th</sup> 83 (2000), Claimant is assessed \$200.00 of the non-refundable portion of the filing fee and Respondent Cowen & Company, LLC is assessed \$100.00 of the non-refundable portion of the filing fee.*

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Cowen & Company, LLC is assessed the following:

|                         |              |
|-------------------------|--------------|
| 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:

|   |              |
|---|--------------|
| March 01- 05, 2010, adjournment by Respondent | = \$1,125.00 |
|---|--------------|

1. The Panel assessed \$1,125.00 of the adjournment fee to Respondent.

**Contested Motion for Issuance of a Subpoena Fees**

Fees apply for each decision on a contested motion for the issuance of a subpoena.

|   |             |
|---|-------------|
| One (1) Decision on a contested motion for the issuance of a subpoena |             |
| (1) One arbitrator @ \$200.00   | = \$ 200.00 |

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|--|--------------------|
| <b>Total Contested Motion for Issuance of Subpoenas Fees</b> | <b>= \$ 200.00</b> |
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1. The Panel has assessed \$200.00 of the contested motion for issuance of subpoenas fee to Respondent.

**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A 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 @ \$1,125.00/session | = \$2,250.00 |
| Pre-hearing conferences: April 02, 2009                        | 1 session    |
| March 17, 2010   | 1 session    |

|   |              |
|---|--------------|
| Six (6) Hearing sessions @ \$1,125.00/session | = \$6,750.00 |
|---|--------------|

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|                       |                           |                   |
|-----------------------|---------------------------|-------------------|
| <b>Hearing Dates:</b> | <b>September 28, 2010</b> | <b>2 sessions</b> |
|                       | <b>September 29, 2010</b> | <b>2 sessions</b> |
|                       | <b>September 30, 2010</b> | <b>2 sessions</b> |

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|-----------------------------------|---------------------|
| <b>Total Hearing Session Fees</b> | <b>= \$9,000.00</b> |
|-----------------------------------|---------------------|

1. The Panel has assessed \$9,000.00 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Sheldon Michaels - Public Arbitrator, Presiding Chairperson  
Joseph Berzok - Public Arbitrator  
Terri Coster Boesch - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Sheldon Michaels  
Sheldon Michaels  
Public Arbitrator, Presiding Chairperson

10.07.10  
Signature Date

Joseph Berzok  
Joseph Berzok  
Public Arbitrator

Signature Date

Terri Coster Boesch  
Terri Coster Boesch  
Non-Public Arbitrator

Signature Date

October 11, 2010  
Date of Service (For FINRA Dispute Resolution use only)