
Award
NASD DISPUTE RESOLUTION

In the Matter of the Arbitration Between:

Names of Claimants

Case Number: 00-03677

Mary Anderson Mackie Trust
Mary Anderson Mackie
Richard Glenn Mackie Trust
Richard Glenn Mackie

Names of Respondents

Hearing Site: New Orleans, LA

Legg Mason Wood Walker, Inc.
Frederic Kirby Newburger
Kevin George Mackey

REPRESENTATION OF PARTIES

For Mary Anderson Mackie Trust, Mary Anderson Mackie, Richard Glenn Mackie Trust, and Richard Glenn Mackie, hereinafter collectively referred to as "Claimants": Pierre V. Miller II, Esq., Patrick, Miller, Burnside & Belleau, L.L.C., New Orleans, LA and Ronald T. White, Esq. and Peter B. Sloss, Esq., Murphy, Rogers & Sloss, A.P.L.C., New Orleans, LA.

For Respondents Legg Mason Wood Walker, Inc. ("LMWW") and Kevin George Mackey ("Mackey"): Thomas K. Potter, III, Esq., Jones, Walker, Waechter, Poitevent, Carrere & Denegre L.L.P., New Orleans, LA.

Respondent Frederic Kirby Newburger appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: August 23, 2000.

Amended and Restated Statement of Claim filed on or about: March 6, 2001.

First Supplement to Amended and Restated Statement of Claim filed on or about: October 30, 2001.

Claimants Mary Anderson Mackie Trust and Richard Glenn Mackie Trust signed the Uniform Submission Agreement on: August 21, 2000.

Claimant Richard Glenn Mackie signed the Uniform Submission Agreement on: March 7, 2001.

Claimant Mary Anderson Mackie signed the Uniform Submission Agreement on: August 20, 2000.

Statement of Answer and Counterclaim filed by Respondents LMWW and Mackey on or about: May 14, 2001.

Claimants' Answer to LMWW and Mackey's Counterclaim filed on or about: August 28, 2001.

Statement of Answer and Counterclaim filed by Respondent Newburger on or about: May 4, 2001.

Claimants' Answer to Newburger's Counterclaim filed on or about: August 28, 2001.

Respondents LMWW, Mackey, and Newburger did not file executed Uniform Submission Agreements.

Respondents LMWW and Mackey's Motion to Dismiss Claimants' Claim Under the Securities Act of 1933 ("First Motion to Dismiss") filed on or about: July 30, 2001.

Opposition to the First Motion to Dismiss filed by Claimants on or about: July 30, 2001.

Reply to Claimants' Opposition to the First Motion to Dismiss filed by Respondents LMWW and Mackey on or about: September 10, 2001.

Respondents LMWW and Mackey's Motion to Dismiss Time-Barred Claims ("Second Motion to Dismiss") filed on or about: August 10, 2001.

Opposition to the Second Motion to Dismiss filed by Claimants on or about: August 27, 2001.

Respondents LMWW and Mackey's Motion to Dismiss Breach of Fiduciary Duty Claims ("Third Motion to Dismiss") filed on or about: July 30, 2001.

Opposition to the Third Motion to Dismiss filed by Claimants on or about: August 27, 2001.

Respondents LMWW and Mackey's Motion to Dismiss Mary Anderson Mackie and Richard Glenn Mackie as Parties ("Fourth Motion to Dismiss") filed on or about: July 30, 2001.

Claimants' Opposition to the Fourth Motion to Dismiss filed on or about: August 27, 2001.

Respondents LMWW and Mackey's Reply to Claimants' Opposition to the Fourth Motion to Dismiss filed on or about: September 10, 2001.

Motion to Dismiss Arbitration of all Claims and Counts Against F. Kirby Newburger ("Fifth Motion to Dismiss") filed on or about: August 10, 2001.

Opposition to the Fifth Motion to Dismiss filed by Claimants on or about: August 27, 2001.

Reply to Claimants' Opposition to the Fifth Motion to Dismiss filed by Respondent Newburger on or about: September 10, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; churning; unsuitability; excessive trading; lack of supervision; negligent hiring; breach of loyalty, trust and fiduciary duty under the Louisiana Trust Code; fraud; negligence; breach of contract; violations of Louisiana Securities Law and the Securities and Exchange Act of 1934; and, respondeat superior liability. The causes of action relate to the purchase and sale of Coca-Cola and Ralston Purina stock and other unspecified securities products in Claimants' accounts.

Unless specifically admitted in their Answer, Respondents LMWW and Mackey denied the allegations made in the Statement of Claim and Amended and Restated Statement of Claim and asserted various affirmative defenses. In their counterclaim, Respondents LMWW and Mackey asserted that Claimants' claims were frivolous and defamatory.

Unless specifically admitted in his Answer, Respondent Newburger denied the allegations made in the Statement of Claim and Amended and Restated Statement of Claim and asserted various affirmative defenses. In his counterclaim, Respondent Newburger asserted that Claimants' claims were frivolous and defamatory.

Unless specifically admitted in their Answers to Respondents' counterclaims, Claimants denied the allegations made in Respondents' counterclaims and asserted various defenses.

RELIEF REQUESTED

Claimant requested rescission or compensatory damages of \$793,333.17, punitive and exemplary damages, pre- and post-judgment interest, costs, attorneys' fees, dismissal of Respondents' counterclaims, and any and all other equitable relief that the undersigned arbitrators (the "Panel") determine the Claimants are entitled to.

Respondents LMWW and Mackey requested dismissal of the Statement of Claim, that all fees and costs of this arbitration be borne by Claimants, and such other relief as the Panel deemed appropriate. In their counterclaim, Respondents LMWW and Mackey requested expungement of all references to the above-captioned arbitration from their registration records maintained by the NASD Central Registration Depository ("CRD"), attorneys' fees, costs, and such other equitable and general relief as the Panel deemed appropriate.

Respondent Newburger requested dismissal of the Statement of Claim, that all fees and costs of this arbitration be borne by Claimants, and such other relief as the Panel deemed just, proper, and equitable. In his counterclaim, Respondent Newburger requested expungement of all references to the above-captioned arbitration from his registration records maintained by the NASD CRD, compensatory damages, attorneys' fees, costs, and such other equitable and general relief as the Panel deemed appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 19, 2001, the Panel issued an order which denied all five motions to dismiss.

Respondents LMWW, Mackey, and Newburger did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") 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 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 (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

No damages are awarded to any party.

Claimants' claims against Respondents LMWW and Mackey are dismissed, with prejudice.

Claimants' claims against Respondent Newburger, in his capacity as an associated person, are dismissed, with prejudice.

Claimants' claims against Respondent Newburger, in his capacity as trustee, are dismissed, without prejudice and the Panel refers the parties to their judicial remedies.

Respondents LMWW and Mackey's counterclaim is dismissed, with prejudice.

Respondent Newburger's counterclaim is dismissed, with prejudice.

The parties shall pay their own expenses and legal fees. All requests for attorneys' fees are denied.

The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Mackey's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Mackey must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages and Respondents LMWW and Newburger's requests for expungement, are 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	= \$ 375.00
Counterclaim filing fee (LMWW and Mackey)	= \$ 500.00
Counterclaim filing fee (Newburger)	= \$ 250.00

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. Accordingly, Respondent LMWW is a party.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$3,500.00</u>
Total Member Fees	= \$6,100.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

April 15-21, 2002, adjournment by Claimants.	= \$1,200.00
The Panel assessed the adjournment fee against Respondent Newburger.	

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were assessed during these proceedings.

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:

Four (4) Pre-hearing sessions with Panel @ \$1,200.00 = \$4,800.00

Pre-hearing conferences:	July 5, 2001	1 session
	September 11, 2001	1 session
	May 6, 2003	1 session
	May 28, 2003	1 session

Seventeen (17) Hearing sessions @ \$1,200.00 = \$20,400.00

Hearing Dates:	November 26, 2001	2 sessions
	November 27, 2001	2 sessions
	November 28, 2001	2 sessions
	November 29, 2001	2 sessions
	November 30, 2001	2 sessions
	June 12, 2003	2 sessions
	June 13, 2003	3 sessions
	June 14, 2003	2 sessions

Total Forum Fees = \$25,200.00

The Panel has assessed forum fees of \$8,400.00 jointly and severally to Claimants Mary Anderson Mackie Trust and Richard Glenn Mackie Trust.

The Panel has assessed forum fees of \$8,400.00 to Respondent LMWW.

The Panel has assessed forum fees of \$8,400.00 to Respondent Newburger.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 375.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Claimants Mary Anderson Mackie Trust and Richard Glenn Mackie Trust are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 8,400.00
<u>Total Fees</u>	= \$ 8,400.00
<u>Less payments</u>	= \$ 1,200.00
Balance Due NASD Dispute Resolution	= \$ 7,200.00

Respondent LMWW is solely liable for:

<u>Member Fees</u>	= \$ 6,100.00
<u>Forum Fees</u>	= \$ 8,400.00
<u>Total Fees</u>	= \$ 14,500.00
<u>Less Payments</u>	= \$ 7,100.00
Balance Due NASD Dispute Resolution	= \$ 7,400.00

Respondents LMWW and Mackey are jointly and severally liable for:

<u>Counterclaim Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Newburger is solely liable for:

<u>Counterclaim Filing Fee</u>	= \$ 250.00
<u>Adjournment Fee</u>	= \$ 1,200.00
<u>Forum Fees</u>	= \$ 8,400.00
<u>Total Fees</u>	= \$ 9,850.00
<u>Less Payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 9,850.00

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

ARBITRATION PANEL

Robert C. Upton, Jr.	-	Non-Public Arbitrator, Presiding Chairperson
Dorri Jacobs	-	Public Arbitrator
Charles H. Peterson	-	Public Arbitrator

Concurring Arbitrators' Signatures

/s/

Robert C. Upton, Jr.
Non-Public Arbitrator, Presiding Chairperson

Signature Date

NASD Dispute Resolution

Arbitration No. 00-03677

Award Page 7 of 7

/s/

Dorri Jacobs

Public Arbitrator

Signature Date

/s/

Charles H. Peterson

Public Arbitrator

Signature Date

July 18, 2003

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 00-03677

Award Page 6 of 7

Claimants Mary Anderson Mackie Trust and Richard Glenn Mackie Trust are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 8,400.00
<u>Total Fees</u>	= \$ 8,400.00
<u>Less payments</u>	= \$ 1,200.00
Balance Due NASD Dispute Resolution	= \$ 7,200.00

Respondent LMWW is solely liable for:

<u>Member Fees</u>	= \$ 6,100.00
<u>Forum Fees</u>	= \$ 8,400.00
<u>Total Fees</u>	= \$14,500.00
<u>Less Payments</u>	= \$ 7,100.00
Balance Due NASD Dispute Resolution	= \$ 7,400.00

Respondents LMWW and Mackey are jointly and severally liable for:

<u>Counterclaim Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Newburger is solely liable for:

<u>Counterclaim Filing Fee</u>	= \$ 250.00
<u>Adjournment Fee</u>	= \$ 1,200.00
<u>Forum Fees</u>	= \$ 8,400.00
<u>Total Fees</u>	= \$ 9,850.00
<u>Less Payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 9,850.00

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

ARBITRATION PANEL

Robert C. Upton, Jr.

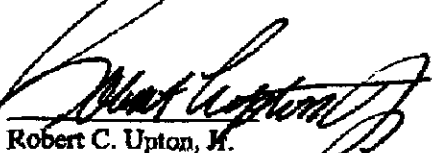
Dorri Jacobs

Charles H. Peterson

Non-Public Arbitrator, Presiding Chairperson

Public Arbitrator

Public Arbitrator

Concurring Arbitrators' Signatures


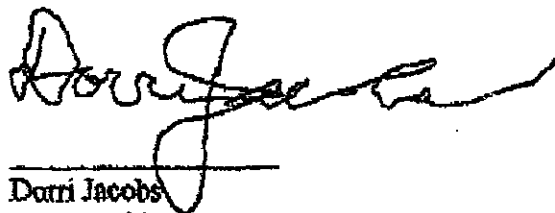
Robert C. Upton, Jr.

Non-Public Arbitrator, Presiding Chairperson

17 JULY 03

Signature Date:

NASD Dispute Resolution
Arbitration No. 00-03677
Award Page 7 of 7



Dorri Jacobs
Public Arbitrator

July 17, 2003
Signature Date

Charles H. Peterson
Public Arbitrator


Signature Date

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 00-03677
Award Page 7 of 7

Dorri Jacobs
Public Arbitrator

Signature Date


Charles H. Peterson
Public Arbitrator

7/17/03
Signature Date

Date of Service (For NASD Dispute Resolution office use only)