

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION, INC.**

CASE: 00-03689

Joyce J. Edwards, Claimant vs. WM Financial Services, Inc., Andrew Stout, Hans Henselman, and Marvin Scofield, Respondents.

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**ATTORNEYS:**

Claimant, Joyce J. Edwards, ("Claimant"), appeared Pro Se., Oakland, CA.

Respondents, WM Financial Services, Inc., Andrew Stout, Hans Henselman and Marvin Scofield (collectively "Respondents") appeared through Scott J. Stilman, Esq., and Sherrill L. Johnson, Esq., of WM Financial Services, Inc., Chatsworth, CA.

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DATE FILED: August 23, 2000

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**CASE SUMMARY:** Claimant alleged that she was grossly misrepresented by Respondents and was denied funds in her account. Claimant further alleged that respondents without her authorization and prior consent sold securities from her account. Claimant maintained that as a result of Respondents' actions she suffered financial losses.

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**ARBITRATOR'S REPORT:** See also attached narrative award.

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**Claim Data**

Claim: \$2,500.00  
Filing Fees: unspecified  
Interest: \$.00

Other: unspecified

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**Award Data**

Award: \$1,500.00  
Filing Fees: \$.00  
Interest: after 30 days, @ CA  
legal rate on judgment  
Other: \$.00

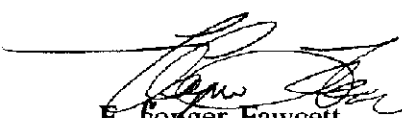
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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of Claimant against Respondents, Andrew Stout, Hans Henselman and Marvin Scofield are dismissed in their entirety. 2) Respondent WM Financial Services, Inc. is liable and shall pay to the Claimant \$1,500.00. 3) Respondent WM Financial Services, Inc., is liable and shall pay to the Claimant interest after 30 days at the California legal rate on judgment. 4) All other relief requests are denied. 4) The \$75.00 filing fee was waived by NASD Dispute Resolution, Inc. 5) Respondent WM Financial Services, Inc. is liable and shall pay NASD Dispute Resolution, Inc. \$75.00 for the filing fee.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, Respondent, WM Financial Services, Inc. has paid to NASD Dispute Resolution, Inc. the \$150.00 Member Surcharge previously invoiced.

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Award 00-03689



F. Conger Fawcett

Sole Public Arbitrator

**AFFIRMATION**

I, F. Conger Fawcett, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



F. Conger Fawcett

June 1, 2001  
Date of award

**NASD DISPUTE RESOLUTION, INC.**

Joyce R. Edwards,	)	
	)	
Claimant,	)	
	)	NASD-DR Arbitration No. 00-03689
v.	)	
	)	
WM Financial Services, Inc.,	)	<b>ARBITRATOR'S AWARD</b>
Andrew Stout, Hans Henselman, and	)	
Marvin Schofield,	)	
	)	
Respondents.	)	
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This matter was submitted to the undersigned, as sole arbitrator, to be considered and decided pursuant to the Simplified Arbitration Procedures of the NASD-DR Code of Arbitration Procedure. Pursuant to those Procedures the undersigned has considered the papers submitted by both sides, and now issues his Award.

It is (as Respondents correctly state) difficult to ascertain the precise nature of at least some of Claimant's claims of injury. However, the following analysis of what appear to be her major points of concern may be made:

Claimant raises allegations of grossly inaccurate (and possibly fraudulent) misrepresentation in the information entered onto the Suitability Update and Client Application forms prepared for her by Respondent Stout without (as she asserts) review by herself. Whatever the correct factual genesis of the forms (which do appear to contain at least some wildly inaccurate information), and responsibility therefor, Claimant does not present any clear evidence of improper action taken or resulting damage arising from the (assertedly) incorrect entries. Specifically, although Claimant complains here and there of unsuitable (or at least undesired) investments, there is a significant absence of factual specifics or analysis to support such a claim, or any damages award attributable to it.

Claimant also complains, in several places, of Respondents' improper sale of one or another of her investments, generally however again without anything resembling a factual basis. One possible exception is Respondents' sale of her Franklin Income Fund holding and deposit of the proceeds back into her savings account (apparently), which sale Claimant asserts was without her authorization and contrary to her wishes. The facts of this may lie in a letter from Claimant dated August 17, 1999, which regrettably both sides omitted from their respective written presentations. However, a letter from Respondents (per Mr. Henselman) to Claimant dated September 21, 1999 -- included as an Exhibit to Claimant's Reply presentation -- carries the following recitation: "In regard to the liquidation of the Franklin Income Fund, you had authorized this action in your letter of August 17, 1999. In this letter you state '... it is imperative the money be returned to my account immediately...'" (If perhaps the reference should properly have been to a letter of Claimant's dated August 14, that letter was not provided to the Arbitrator, either.) This September 21 assertion by Respondents, unchallenged by Claimant, would seem to put an end to any award based on the Franklin Income Fund element.

A third theme running through Claimant's papers is an alleged on-going failure of Respondents to provide Claimant with an adequate statement of her account. However,

Claimant does not press the issue in her actual Claim-proper, nor does she allege any damages flowing therefrom; and as a consequence no award may be based on it.

Finally, however, there is the matter of the Ariel Fund investment. Claimant has clearly raised the matter of an asserted on-going lack of meaningful response from Respondents to her repeated inquiries about this investment, and appears to base her damages claim squarely on the matter; yet curiously Respondents' response to this focused allegation is little more than a bare reference to a letter from their Michael Boyle to Claimant, dated August 2, 1999, which recites in full, insofar as concerns this issue: "As per your request, a copy of your most recent statement and a copy of the year end statement for 1998 are enclosed. Since the Ariel mutual fund is held by the mutual fund company, for further assistance you should contact Ariel at 1-800-292-7435." Thus, say Respondents in their Answer, it is "simply untrue" "that [as Claimant alleged] it took WM Financial '20 months' to locate her Ariel account." And that, apparently, in Respondents' view is all there is to that.

The Arbitrator is not so readily persuaded. Respondents do not include the "copy of the year end statement for 1998" stated to have been enclosed in Mr. Boyle's letter, but that may be one of the documents attached as Exhibit I to Claimant's Reply; and for purposes of the analysis which follows the undersigned so assumes. That document, on stationery of "Washington Mutual Bank, FA, Retirement Plans Department," shows the Ariel Fund as one of two holdings in Claimant's IRA Plan account as of December 31, 1998 -- a month and a half prior to Claimant's first involvement with Respondents and at the time of Mr. Boyle's letter then some eight months past.

According to Respondents' presentation, at some point or points beginning in October of 1997 Washington Mutual Bank, FA, "became the successor to" Great Western Bank and subsequently WM Financial Services, Inc., acquired Great Western Financial Securities Corporation by merger. "Consequently," continues the Answer, "Claimants [sic] deposit accounts were assumed by Washington Mutual and her investment portfolio by WM Financial."<sup>1</sup> Yet it appears that the first written communication (Mr. Boyle's) to Claimant regarding the Ariel investment -- "assumed by Washington Mutual" -- was six months after Mr. Stout made first contact with her and "discussed the merger, and the resulting assumption of her deposit accounts by Washington Mutual Bank." And as noted it provided Claimant with only bare information, then eight months stale.

Insofar as Mr. Boyle's letter (and other actors' asserted prior oral advisements, according to Respondents' Answer) advised that the Ariel account was "held by the mutual company" for which reason Claimant was given Ariel's telephone number and told she must contact Ariel directly, that information would appear to have been incorrect

A June 16, 2000, form letter from WM Financial Services (attached as a part of Exhibit P to Claimant's Reply), advised the recipients that WM Financial Services would, through Fiserv Securities, be taking over the transfer details of Ariel, while "Washington Mutual Bank, FA, will continue to be the trustee . . ." (emphasis added).

Respondents' bare referrals of Claimant to Ariel's direct telephone number -- alone -- are in the face of this fact inexplicable. Washington Mutual Bank was not only the successor to Great Western as the depository of this account (as Mr. Stout apparently took pains to explain to Claimant); it was, as proclaimed in the June 2000 form letter, "the trustee" of the account. A simple and early referral of Claimant to an appropriate individual

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<sup>1</sup> Respondents make no attempt to separate the affairs of the two affiliated "Washington Mutual" entities, nor therefore does the Arbitrator.

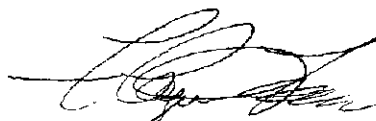
in the Bank's Retirement Plans Department (or even simply to that Department, without a name) would have been an appropriate and probably entirely sufficient response. The failure to provide even this most modest (and accurate) relief was neither appropriate nor sufficient.<sup>2</sup>

Mere rudeness or lack of attention, by themselves, generally do not rise to a level of compensable injury. The picture that emerges here however is more than mere inattention, and seems to rise to the level of callous disregard and "run-around." As such, in the opinion of the Arbitrator it also rises to the level of breach of fiduciary duty.

Although at least one or more of the individual Respondents would appear to have played some part in the run-around, the failure seems to have been basically institutional, not personal. Accordingly, the undersigned holds WM Financial Services, Inc., but not the individual Respondents, liable in the matter

Accordingly, the following disposition is made of the proceeding:

1. Claimant shall receive from Respondent WM Financial Services, Inc., as general compensatory damages, the sum of One Thousand Five Hundred Dollars (\$1,500.00).
2. Payment of the foregoing sum shall be made not later than thirty (30) days from the effective date of this ruling and Award, and if and to the extent not so paid the said sum shall thereafter bear interest at the California legal rate on judgments, until paid.
3. Claimant's Claim insofar as concerns the individual Respondents is denied.
4. Forum fees for this Arbitration proceeding, including Claimant's filing fees, shall be borne by Respondent WM Financial Services, Inc.
5. Upon satisfaction of the foregoing, this proceeding shall be dismissed.



F. Conger Fawcett  
Arbitrator

<sup>2</sup> Somewhat in mitigation of Respondents' actions up to that point is an August 20 letter from Mr. Henselman (part of Claimant's Reply's Exhibit H-1), which for the first time does advise Claimant as to how she might effect changes in the Ariel Fund account. That letter still, however, ignores the (apparent) fact that WM Financial's Service's own "sister" entity, Washington Mutual Bank, was both custodian and trustee of the account.