

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

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In the Matter of the Arbitration Between

**Name of Claimant**

UBS PaineWebber Inc.

Case No. 01-01183

**Names of Respondents**

Legg Mason Wood Walker, Inc.  
Glenn E. Brandon, Jr.

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**REPRESENTATION OF PARTIES**

For UBS PaineWebber Inc. ("PaineWebber"), hereinafter referred to as "Claimant": L. Andrew Brehm, Esq. of Schuyler, Roche & Zwirner, Chicago, Illinois and Lee H. Zell, Esq. of Balch & Bingham, Birmingham, Alabama.

For Legg Mason Wood Walker, Inc. ("Legg") and Glenn E. Brandon, Jr. ("Brandon") hereinafter collectively referred to as "Respondents": Dana N. Pescosolido, Esq. and David W. Erb, Esq. of Saul Ewing, Baltimore, Maryland.

**CASE INFORMATION**

Statement of Claim filed on or about: March 12, 2001.

Claimant signed the Uniform Submission Agreement: March 8, 2001.

Answer and Counterclaims filed by Respondents on or about: April 6, 2001.

Respondent Legg signed the Uniform Submission Agreement: April 11, 2001.

Respondent Brandon signed the Uniform Submission Agreement: April 3, 2001.

**CASE SUMMARY**

Claimant asserted the following: Respondent Brandon violated various restrictive covenants contained in an agreement signed by Brandon in connection with his employment by PaineWebber following PaineWebber's acquisition of J.C. Bradford & Co., Inc. ("Bradford"), Brandon's former employer. Claimant also brought claims against Respondent Brandon and Respondent Legg, Brandon's present employer, for Legg's inducement of Brandon's breaches of that agreement, conversion of Claimant's records and misappropriation of Claimant's trade secrets, breach by Brandon of his fiduciary duties to Claimant and Legg's inducement of those breaches, tortious interference with Claimant's employee and client relationships, and unfair competition. Claimant also claimed that Brandon owed Claimant for withholding taxes with respect to amounts forgiven pursuant to

an employee forgivable loan received by Brandon in connection with his PaineWebber employment.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's contract was not supported by consideration, the restrictive covenants lacked a legitimate business purpose, and were overbroad and unenforceable, and asserted other defenses. Respondent Brandon also asserted counterclaims arising out of PaineWebber's obtention of a preliminary injunction and PaineWebber's negligent and/or fraudulent inducement to accept employment with PaineWebber.

Claimant denied the allegations contained in the counterclaims.

### **RELIEF REQUESTED**

At the conclusion of the evidentiary hearing, Claimant requested that the Panel provide Claimant with such injunctive relief as the Panel deemed to be warranted, including the maintenance of the prior court injunction. Claimant also asked the Panel to direct Legg to accumulate and to pay over to PaineWebber the commissions and fees received by it through and including March 2, 2002 from those clients whose accounts were previously serviced by Respondent Brandon at PaineWebber, and/or to require Brandon to disgorge the amount received by him with respect to the sale of his Bradford membership "points" in excess of the amount of his invested and retained capital in Bradford. In the alternative, Claimant requested compensatory damages in an amount that the Panel deemed to be appropriate. In addition, Claimant requested payment by Respondent Brandon of \$7,418.54 in taxes due under Brandon's employee forgivable loan. Further, Claimant requested interest, attorneys' fees and costs and a dismissal of the counterclaims.

Respondents requested a dismissal of Claimant's Statement of Claim. Further, Respondent Brandon requested compensatory damages on his counterclaims in the sum of \$1,700,000.00 plus punitive damages in the sum of \$1,000,000.00. In addition, Respondent Brandon requested that the Panel refer for disciplinary proceedings PaineWebber and any agent at PaineWebber who was responsible for the decision to seek injunctive relief.

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

By agreement of the parties, Count III of the counterclaim, in which Respondent Brandon sought additional compensation for the sale of his Bradford membership units, was withdrawn, without prejudice.

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant is awarded as compensatory damages the sum of \$50.00 plus \$7,418.54 which latter amount shall be received by Claimant and paid over per the provisions of the paragraph titled "Payments and Withholding Taxes" on page 4 of the so called "Employee Forgivable Loan" which is captioned "Promissory Note # 20016." This award is joint and several as against both Respondents.
2. Respondent Legg shall maintain a separate accounting for commissions earned on all trades in all accounts which were accounts of Respondent Brandon at PaineWebber as of the close of business on March 2, 2001 and which were or shall be transferred to Respondent Legg within the six month period following such date. Respondent Legg shall remit to Claimant monthly, on the fifth day of each month, an amount equal to thirty percent of the commissions earned on such accounts since the date of any prior payment hereunder along with a certification of the accounting for and calculation of such commissions. Such obligations to account, report and pay over commissions shall terminate and cease as of September 2, 2001. The first report and payment shall be due May 15, 2001 and shall include all prior transactions and the last report and payment shall be due September 5, 2001 and shall include all transactions through September 2, 2001.
3. Interest on the amount(s) awarded herein shall accrue at the rate, if any, at which interest on Alabama judgments of courts of competent jurisdiction accrues. Interest on the amount described in (1) above shall begin to accrue on the 5th business day following the date this award is transmitted to the parties. Interest on the amounts coming due under (2) above shall begin to accrue on the first business day following the due date of the amount to be paid. Interest shall cease to accrue on the date payment is delivered to Claimant.
4. Claimant's request for entry of a permanent injunction is denied. To the extent of the power and authority of the Panel to do so, the Preliminary Injunction entered by the United States District Court for the Northern District of Alabama, Southern Division, H. Dean Buttram, Jr., USDC, by Order entered March 22, 2001 hereby is dissolved and terminated. To the extent that further action of such Court is necessary or reasonable to effect such dissolution, the parties are directed to cooperate reasonably and promptly to accomplish same.
5. Any and all other claims of Claimant are denied.
6. Respondent Brandon's Counterclaims One and Two are denied.
7. Respondent Brandon's request for punitive damages is denied.

8. All other requests for relief not specifically addressed herein are 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	= \$500.00
Counterclaim filing fee	= \$500.00

#### 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. In this matter, the member firms are parties.

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$2,000.00

#### Adjournment Fees

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

#### 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:

One Pre-hearing session with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: March 29, 2001	1 session
Six Hearing sessions x \$1,200.00	= \$7,200.00
Hearing Dates: April 17, 2001	2 sessions
April 18, 2001	2 sessions
<u>April 19, 2001</u>	<u>2 sessions</u>
Total Forum Fees	= \$8,400.00

The Panel has assessed \$4,200.00 of the forum fees to Claimant.

The Panel has assessed \$4,200.00 of the forum fees to Respondents, jointly and severally.

#### Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services

including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$500.00
Injunctive Relief Surcharge	= \$2,500.00
Member Fees	= \$3,800.00
Forum Fees	= \$4,200.00
Total Fees	= \$11,000.00
<u>Less payments</u>	<u>= \$7,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,200.00

Respondent Legg be and hereby is solely liable for:

Member Fees	= \$3,800.00
Total Fees	= \$3,800.00
<u>Less payments</u>	<u>= \$1,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,000.00

Respondent Brandon be and hereby is liable for:

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

Respondents Legg and Brandon be and hereby are jointly and severally liable for:

Forum Fees	= \$4,200.00
Total Fees	= \$4,200.00
<u>Less payments</u>	<u>= \$1,500.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,700.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Harris, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Harriet H.  
Signature Date

/s/

James G. Killough, Esq.  
Public Arbitrator

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

/s/

Thomas M. Johnson, Jr., Esq.  
Industry Arbitrator

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

May 8, 2001  
Date of Service (For NASD-DR office use only)

including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$500.00
Injunctive Relief Surcharge	= \$2,500.00
Member Fees	= \$3,800.00
Forum Fees	= \$4,200.00
Total Fees	= \$11,000.00
<u>Less payments</u>	<u>= \$7,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,200.00

Respondent Legg be and hereby is solely liable for:

Member Fees	= \$3,800.00
Total Fees	= \$3,800.00
<u>Less payments</u>	<u>= \$1,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,000.00

Respondent Brandon be and hereby is liable for:

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

Respondents Legg and Brandon be and hereby are jointly and severally liable for:

Forum Fees	= \$4,200.00
Total Fees	= \$4,200.00
<u>Less payments</u>	<u>= \$1,500.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,700.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

**Concurring Arbitrators' Signatures**

Harriet H. Harris, Esq.  
Harriet H. Harris, Esq.  
Public Arbitrator, Presiding Chair

5/7/01  
Signature Date



James G. Killough, Esq.  
Public Arbitrator

Thomas M. Johnson, Jr., Esq.  
Industry Arbitrator

5/7/2001  
Signature Date

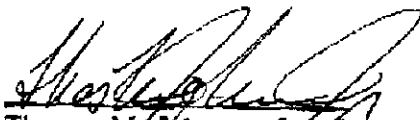
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Signature Date

\_\_\_\_\_  
Date of Service (For NASD-DR office use only)



James G. Killough, Esq.  
Public Arbitrator

Signature Date

  
Thomas M. Johnson, Jr., Esq.  
Industry Arbitrator

5/7/01  
Signature Date

Date of Service (For NASD-DR office use only)

Attn: Jill Wile -