

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 03-04598 and 03-04621

Maryann B. Lamantia, Claimant v. Legg Mason Wood Walker, Inc. and Kevin Wesner, Respondents.

John F. Lamantia, Claimant v. Legg Mason Wood Walker, Inc. and Kevin Wesner, Respondents.

ATTORNEYS:

For Claimants, Maryann B. Lamantia and John F. Lamantia, (collectively "Claimants") appeared Ronald E. Lyons, Esq., Rockville, MD.

For Respondents, Legg Mason Wood Walker, Inc. and Kevin Wesner, (collectively "Respondents"), appeared in-house counsel Hallie A. Moreland, Esq., Baltimore, MD.

NATURE OF DISPUTE: Customer v. Member Firm and Associated Person

DATE FILED: 03-04598 - June 25, 2003
 03-04621 - June 25, 2003

CASE SUMMARY: Claimants alleged that Respondents were negligent, breached their fiduciary duty, misrepresented and omitted facts, traded without authorization and in excess, failed to supervise, churned, and engaged their accounts in unsuitable Unit Investment Trusts. Claimants maintained that due to Respondents' actions their personal accounts and individual retirement accounts suffered losses. Claimants' claims involved various common stock and mutual funds.

ARBITRATOR'S REPORT: See attached Exhibit A.

Claim Data

Claim: M. Lamantia \$25,000.00
Claim: J. Lamantia \$25,000.00
Attorney Fees: M. Lamantia Unspecified
Attorney Fees: J. Lamantia Unspecified
Filing Fee: M. Lamantia \$425.00
Filing Fee: J. Lamantia \$425.00
Other: M. Lamantia Unspecified
Other: M. Lamantia Unspecified

Award Data

Award: \$.00
Award: \$.00
Attorney Fees: \$.00
Attorney Fees: \$.00
Filing Fee: \$.00
Filing Fee: \$.00
Other: \$.00
Other: \$.00

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 Claimants are dismissed in their entirety. 2) All requests for attorney fees are denied. 3) All other relief requests are denied. 4) NASD shall retain the \$850.00 filing fee previously deposited by each Claimant.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Dispute Resolution the \$850.00 Member Surcharge previously invoiced for each case.


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Award 03-04598 and 03-04621

Anthony S. Paetro, Esq.

Sole Public Arbitrator

AFFIRMATION

I, Anthony S. Paetro, Esq., 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.



Anthony S. Paetro, Esq.



Signature Date

October 29, 2003

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
DISPUTE RESOLUTION**

In the Matter of the Arbitration Between:

MARYANN B. LMANTIA,

Case #: 03-04598

Claimant,

vs.

LEGG MASON WOOD WALKER, Inc.
and KEVIN E. WESNER,

Respondents.

_____ /

SIMPLIFIED ARBITRATION CASE FINAL ORDER

This cause was submitted to the undersigned to enter an arbitration award, without a hearing and based solely upon the documents filed by the parties. Upon review of these documents, it is ordered as follows:

1. Are you awarding damages to the Claimant? ____ Yes X No
2. Are you dismissing this case in its entirety? X Yes ____ No
3. Claimant asserted that she sustained damages relating to her two investment accounts caused by negligence, failure to supervise, breach of fiduciary duty, churning, unauthorized trading and lack of suitability. Claimant included monthly brokerage statements and an opinion letter from a third party expert, in support of these claims.

The crux of the claim is that Respondent, Wesner, improperly bought and sold Unit Investment Trusts and mutual funds without authority, too frequently, and that these investments were unsuitable, given the Claimant's investment objectives. It is asserted that Respondent, Legg Mason, was negligent and failed to properly supervise the transactions..

Respondent denied the material allegations. An affidavit of Respondent, Wesner, was attached to the Amended Answer in the companion case and reflects some

material information concerning commissions. Otherwise, the record is silent regarding the amount of commissions generated. There were no other documents submitted for review.

There is insufficient evidence to support the material allegations. Although, for example, the monthly statements reflect the transactions, there is no record evidence proving that the purpose and intent of the transaction was improper (i.e., for reasons not relating to market conditions) or that the actual investments were, per se, unsuitable, when viewed in light of the Claimant's total financial circumstances.

Claimant suggests that the investments were made without her authorization, although she had numerous conversations regarding the performance of the investments. Assuming the lack of prior authorization, nothing is said regarding her ratification of the transactions nor the reason that the unauthorized transactions were neither reversed nor reported to management, nor the reason that she continued to do business with the Respondents. Respondents denied the allegations and raised ratification as an affirmative defense.

Likewise, the only record evidence of churning [transactions intended to generate commissions] is that the total commissions for all accounts for both Claimant and his wife, over four years, was \$2,700 (which, presumably, included commissions earned on the sale of investments purchased by the Claimant and/or her husband elsewhere). There may have been any number of explanations for the transactions in question, including those alleged by the Claimant, however, the record simply does not support a finding of wrongdoing.

Claimant also suggests that the losses were caused by the margin interest and commissions, yet there is no explanation nor calculation of the actual damages sustained nor the damages being sought.

4. INTEREST

- A. Granted _____. Interest is awarded at the rate of ____% per annum from _____ to _____.
- B. Denied X.

5. ATTORNEY FEES

- A. , Granted _____ In the amount of \$_____.
- B. Denied X.


6. NASD DISPUTE RESOLUTION FILING FEES:

- A. Assessed against Claimant.

AFFIRMATION

State of Maryland
County of Montgomery

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

By: 
Anthony S. Paetro

Dated: October 14, 2003

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
DISPUTE RESOLUTION**

In the Matter of the Arbitration Between:

JOHN LMANTIA,

Case #: 03-04621

Claimant,

vs.

LEGG MASON WOOD WALKER, Inc.
and KEVIN E. WESNER,

Respondents.

_____ /

SIMPLIFIED ARBITRATION CASE FINAL ORDER

This cause was submitted to the undersigned to enter an arbitration award, without a hearing and based solely upon the documents filed by the parties. Upon review of these documents, it is ordered as follows:

1. Are you awarding damages to the Claimant? ____ Yes X No
2. Are you dismissing this case in its entirety? X Yes ____ No

3. Claimant asserted that he sustained damages relating to his two investment accounts caused by negligence, failure to supervise, breach of fiduciary duty, churning, unauthorized trading and lack of suitability. Claimant included monthly brokerage statements and an opinion letter from a third party expert, in support of these claims.

The crux of the claim is that Respondent, Wesner, improperly bought and sold Unit Investment Trusts, individual equities and mutual funds without authority, too frequently, and that these investments were unsuitable given the Claimant's investment objectives. It is asserted that Respondent, Legg Mason, was negligent and failed to properly supervise the transactions..

Respondent denied the material allegations and supported its position with an affidavit of Respondent, Wesner, and documents reflecting the investment distribution

within a variable annuity. There were no other documents submitted.

There is insufficient evidence to support the material allegations. Although, for example, the monthly statements reflect the transactions, there is no record evidence proving that the purpose and intent of the transaction was improper (i.e., for reasons not relating to market conditions) or that the actual investments were, per se, unsuitable, when viewed in light of the Claimant's total financial circumstances.

Claimant suggests that the investments were made without her authorization, although she had numerous conversations regarding the performance of the investments. Assuming the lack of prior authorization, nothing is said regarding her ratification of the transactions nor the reason that the unauthorized transactions were neither reversed nor reported to management, nor the reason that she continued to do business with the Respondents. Respondents denied the allegations and raised ratification as an affirmative defense.

Likewise, the only record evidence of churning [transactions intended to generate commissions] is that the total commissions for all accounts for both Claimant and his wife, over four years, was \$2,700 (which, presumably, included commissions earned on the sale of investments purchased by the Claimant elsewhere). There may have been any number of explanations for the transactions in question, including those alleged by the Claimant, however, the record simply does not support a finding of wrongdoing nor the damages alleged.

4. INTEREST

A. Granted _____. Interest is awarded at the rate of ____% per annum from _____ to _____.

B. Denied X .

5. ATTORNEY FEES

A. Granted _____ In the amount of \$ _____.

B. Denied X.

6. NASD DISPUTE RESOLUTION FILING FEES:

A. Assessed against Claimant.

AFFIRMATION

State of Maryland
County of Montgomery

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

By: Anthony S. Paetro
Anthony S. Paetro

Dated: October 14, 2003