

**Revised Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 03-05856

Richard A. Weiner

Name of the Respondent

Hearing Site: Charlotte, North Carolina

Legg Mason Wood Walker, Inc.

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Nature of the Dispute: Associated Person vs. Member.

**REPRESENTATION OF PARTIES**

Claimant, Richard Weiner, hereinafter referred to as "Claimant," was represented by Michael G. Sullivan, Esq. of the firm Michael G. Sullivan, P.A. and Peter D. Protopapas, Esq. of the firm Lewis, Babcock & Hawkins, L.L.P., Charlotte, North Carolina.

Respondent, Legg Mason Wood Walker, Inc. ("Legg Mason"), hereinafter referred to as "Respondent," was represented by Jason W. Gaarder, Esq., Associate General Counsel of Legg Mason, Baltimore, Maryland.

**CASE INFORMATION**

Statement of Claim filed on August 8, 2003.

Claimant signed the Uniform Submission Agreement on August 8, 2003.

Respondent filed its Statement of Answer and Counterclaims on November 6, 2003.

A representative of Respondent signed the Uniform Submission Agreement on November 6, 2003.

Claimant filed a Statement of Answer to Counterclaim and Additional Claim on November 24, 2003.

The Parties Joint Motion to Amend the Stipulated Award was filed on February 15, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: breach of contract, fraud, breach of fiduciary duty, defamation per se, intentional infliction of emotional distress, interference with contractual and/or prospective contractual relationship, negligence, and gross negligence. Claimant alleged that Respondent wrongfully terminated his employment and filed a factually incorrect Form U-5 with the NASD following the termination of his employment.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted, Respondent acted in good faith at all times, contributory negligence, failure to mitigate, and claims are barred by the doctrines of waiver, estoppel and ratification. In its Counterclaim, Respondent asserted a cause of action for breach of contract to recover amounts allegedly owed to Respondent pursuant to several forgivable up-front payments provided by Respondent to Claimant.

Unless specifically admitted in his Answer, Claimant denied the allegation made in the Counterclaim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted, and claims are barred by the doctrines of waiver, estoppel and unclean hands.

### **RELIEF REQUESTED**

Claimant requested actual, consequential and punitive damages in an amount in excess of \$10,000,000.00, attorneys' fees, costs and such other and further relief as may be just and proper. In response to Respondent's Counterclaim, Claimant requested dismissal and denial thereof.

Respondent requested dismissal of Claimant's Statement of Claim, an award of costs and expenses incurred in defending Claimant's claim and such other relief as is just and proper. In the Counterclaim, Respondent requested the sum of \$58,376.54, plus interest through the date of the award and all attorney's fees, cost and expenses expended in collecting all amounts due.

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

Prior to the hearing on the merits, the parties fully and finally settled all claims by and between them. The parties requested a hearing with the Panel to request that an Award be entered expunging Claimant's record with the NASD Central Registration Depository. This hearing took place on January 25, 2005.

At the hearing, the parties agreed to proceed with two arbitrators.

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. Pursuant to the parties' settlement, Claimant's claims are dismissed in their entirety and Respondent's claims are dismissed in their entirety, except to the extent that the Claimant agreed to reimburse Respondent for a certain portion of the up-front payments pursuant to an agreed settlement of those claims between Claimant and Respondent;

2. The Panel recommends the expungement of the Reason for Termination as reported on the Form U5 filed with CRD by Respondent Legg Mason. ~~The Reason for Termination as reported on the Form U5 is "Permitted to Resign."~~ The Reason for Termination should be expunged and replaced with "voluntary";
3. The Panel also recommends the expungement of the Termination Comment from the Form U5 form filed with CRD by Respondent Legg Mason, which states "Mr. Weiner admitted that he violated firm policy and NYSE Rule 408 in that he accepted orders for an account from a person other than the account owner without first obtaining written authorization from the customer." Replacement language for the termination comment is not required as a "voluntary" termination does not require a Termination Comment on Form U5;
4. As the reason for termination and related termination comment are being expunged and the U5 reason for termination will reflect "voluntary," the Panel further recommends that all U4 disclosures of the Legg Mason termination (i.e., affirmative response to question 14J(1) and accompanying U4 Termination DRP) should also be expunged from Claimant Weiner's CRD record (CRD #2304262) maintained by the NASD Central Registration Depository ("CRD");
5. The Panel also recommends that any and all references to this arbitration that may appear on Claimant Weiner's CRD registration records be expunged;
6. The expungement recommendations are made with the understanding that Claimant Weiner must obtain confirmation of the expungement recommendations contained in this award from a court of competent jurisdiction before the CRD will execute the expungement directives;
7. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and
8. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

#### **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	= \$ 600.00
Counterclaim filing fee	= \$ 1,000.00

### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent is a party.

Member surcharge	= \$ 3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00
Total Member Fees	= \$ 9,600.00

### Forum Fees and Assessments

The Panel has assessed forum 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 sessions with Panel @ \$1,200.00	= \$2,400.00
Pre-hearing conferences: April 5, 2004 1 session	
January 25, 2005 1 session	
Total Forum Fees	= \$2,400.00

1. The Panel has assessed \$1,200.00 of the forum fees to Claimant.
2. The Panel has assessed \$1,200.00 of the forum fees to Respondent.

### **SEE SUMMARY**

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,800.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent is assessed and shall pay the following fees:

Filing Fee	= \$ 1,000.00
Member Fees	= \$ 9,600.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$11,800.00
Less payments	= \$11,800.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

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**ARBITRATION PANEL**

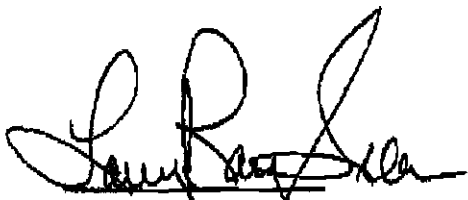
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Larry Ray Green, JD, CPA

Donald L. Tarkenton

- Public Arbitrator, Presiding Chairperson
- Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**



Larry Ray Green, JD, CPA  
Public Arbitrator, Presiding Chairperson

5/2/05  
Signature Date

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Donald L. Tarkenton  
Non-Public Arbitrator, Panelist

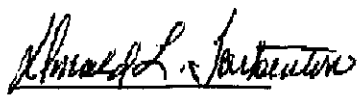
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Signature Date

May 12, 2005  
Date of Service (For NASD Dispute Resolution office use only)

**Concurring Arbitrators' Signatures**

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Larry Ray Green, JD, CPA  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
\_\_\_\_\_  
Donald L. Tarkenton  
Non-Public Arbitrator, Panelist

5-2-05  
\_\_\_\_\_  
Signature Date

May 12, 2005  
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