
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

F. Kirby Newburger

Case Number: 04-05151

Name of the Respondent

Legg Mason Wood Walker, Inc.

Hearing Site: New Orleans, Louisiana

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For F. Kirby Newburger, hereinafter referred to as "Claimant": Benjamin R. Slater, III, Esq., Lemle & Kelleher, L.L.P., New Orleans, Louisiana.

For Legg Mason Wood Walker, Inc., hereinafter referred to as "Respondent": Thomas K. Potter, III, Esq., Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P., New Orleans, Louisiana.

CASE INFORMATION

Statement of Claim filed on or about: July 19, 2004.

Claimant signed the Uniform Submission Agreement on: July 16, 2004.

Response to Statement of Claim, Motion to Dismiss and "Counterclaim" filed on or about: October 4, 2004.

Respondent signed the Uniform Submission Agreement on: October 13, 2004

CASE SUMMARY

Claimant asserted a claim for the reimbursement of attorneys' fees, costs and expenses incurred by Claimant who, as a registered representative of Respondent, was compelled to arbitrate claims brought against him in his capacity as a broker for and trustee of two irrevocable, *inter vivos* trusts established under the laws of Louisiana.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in the amount of \$404,850.00; 2) interest; 3) attorneys' fees; 4) costs; and 5) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent requested: 1) dismissal of the Statement of Claim, with prejudice; 2) costs; 3) attorneys' fees; 4) forum fees; and 5) any general and equitable relief that the Panel deemed just under the circumstances.

OTHER ISSUES CONSIDERED AND DECIDED

On or about October 4, 2004, Respondent filed its Response to Statement of Claim and Motion to Dismiss. On or about February 7, 2005, Claimant filed his Opposition. On or about February 14, 2005, Respondent filed its Reply. On or about February 18, 2005, the Panel heard oral argument on the motion. On or about February 22, 2005, the Panel granted the motion and dismissed, with prejudice, Claimant's claims.

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 Motion to Dismiss, and arguments of counsel presented at the telephonic pre-hearing conference on February 18, 2005, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed, with prejudice.
2. Claimant's request for attorneys' fees is denied.
3. Respondent's request for attorneys' fees is denied.
4. Respondent shall pay to Claimant the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD.
5. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 300.00

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 is a member firm and a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

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.

There were no injunctive relief fees 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 per session	= \$ 900.00
Pre-hearing conferences: January 6, 2005	1 session
February 9, 2005	1 session
Two (2) Pre-hearing sessions with Panel @ \$1,125.00 per session	= \$2,250.00
Pre-hearing conferences: December 6, 2004	1 session
February 18, 2005	1 session
<hr/> Total Forum Fees	<hr/> = \$3,150.00

The Panel has assessed the total forum fees in the amount of \$3,150.00 to Respondent.

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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent is solely liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Forum Fees</u>	= \$3,150.00
<u>Total Fees</u>	= \$8,350.00
<u>Less payments</u>	= \$5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$3,150.00

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

ARBITRATION PANEL

<i>Esmond Phelps Gay, J.D.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Claude F. Reynaud, Jr., Esq.</i>	-	<i>Public Arbitrator</i>
<i>Sandra J. Bakalus</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Esmond Phelps Gay, J.D.
Public Arbitrator, Presiding Chairperson

02/25/05
Signature Date

/s/
Claude F. Reynaud, Jr., Esq.
Public Arbitrator

03/03/05
Signature Date

/s/
Sandra J. Bakalus
Non-Public Arbitrator

03/02/05
Signature Date

03/03/05
Date of Service (For NASD Dispute Resolution office use only)

Feb 25, 2005 6:20PM

NASD

No. 5999 P. 5/6

NASD Dispute Resolution
Arbitration No. 04-05151
Award Page 4

Fee Summary

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Esmond Phelps Gay, J.D.

Public Arbitrator, Presiding Chairperson

2/25/05

Signature Date

Claude F. Reynaud, Jr., Esq.
Public Arbitrator

Signature Date

Sandra J. Bakalus
Non-Public Arbitrator

Signature Date

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

03/03/05 15:11

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Feb. 25. 2005 4:40PM NASD

No: 5969 P. 5/5

NASD Dispute Resolution
Arbitration No. 04-05151
Award Page 4

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Public Arbitrator, Presiding Chairperson

Signature Date

Claude F. Reynaud, Jr., Esq.
Public Arbitrator

Signature Date

Sandra J. Bakalus
Non-Public Arbitrator

Signature Date

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02/23/05 FRI 13:54 [TX/RX NO 5882]

03/03/05 THU 12:39 [TX/RX NO 5189]

NASD Dispute Resolution

Arbitration No. 04-05151

Award Page 4

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Non-Public Arbitrator

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Esmond Phelps Gay, J.D.

Public Arbitrator, Presiding Chairperson

Signature Date

Claude F. Reynaud, Jr., Esq.

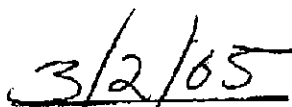
Public Arbitrator

Signature Date



Sandra J. Bakalus

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