

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

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In the Matter of the Arbitration Between:

WM Financial Services, Inc., Claimant v. Aaron Thomas Leone, Michael Wayne Hobson, Heather Oliver Hofland, Tech Carreon Jacobs, Maria Selina Reyes and Wells Fargo Investments, LLC, Respondents

Aaron Thomas Leone, Michael Wayne Hobson, Heather Oliver Hofland, Tech Carreon Jacobs, Maria Selina Reyes and Wells Fargo Investments, LLC, Counter-Claimants v. WM Financial Services, Inc. and David Campbell Eccles, Counter-Respondent and Third-Party Respondent

Case Number: 05-03355

Hearing Site: San Francisco, California

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Nature of the Dispute:     Member vs. Associated Persons and Member  
                                  Associated Persons and Member v. Member and Associated Person

**REPRESENTATION OF PARTIES**

For Claimant and Third-Party Respondent:

Barry D. Hovis, Esq.  
Musick, Peeler & Garrett LLP  
San Francisco, California

For Respondents:

Michael D. Early, Esq.  
Steefel, Levitt & Weiss  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: July 1, 2005

Reply to Counterclaim and Third-Party Claim filed by Claimant/Counter-Respondent WM Financial Services, Inc. ("WMFS") and Third-Party Respondent David Campbell Eccles: August 5, 2005

Claimant's Arbitration Brief filed: August 19, 2005

Claimant's Uniform Submission Agreement signed: September 8, 2005

Joint Statement of Answer, Counterclaim and Third-Party Claim filed by Respondents Aaron Thomas Leone, Michael Wayne Hobson, Heather Oliver Hofland, Tech Carreon Jacobs, Maria Selina Reyes and Wells Fargo Investments, LLC ("Wells Fargo"): July 21, 2005

Respondents' Arbitration Brief filed: August 19, 2005

### **CASE SUMMARY**

Claimant WMFS alleged that it filed the above-referenced dispute because of Respondents' misappropriation of trade secrets, unfair competition, interference with contractual relations, breach of contract, breach of fiduciary duty and conversion.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted affirmative defenses.

Respondents alleged the following claims: 1) Common Law Unfair Competition and Violation of California Business and Professions Code Sections 17200 et seq. (By Counter-Claimants against WMFS and Eccles); 2) Intentional Interference With Prospective Economic Advantage (By Counter-Claimants against WMFS and Eccles); and 3) Slander as Defined in California Civil Code Section 46 (By Leone, Hobson, Hofland and Jacobs against WMFS and Eccles).

Claimant WMFS and Third-Party Respondent David Campbell Eccles denied Respondents' allegations of wrongdoing and denied any liability to Respondents.

### **RELIEF REQUESTED**

Claimant requested an order prohibiting Aaron Thomas Leone, Michael Wayne Hobson, Heather Oliver Hofland, Tech Carreon Jacobs, Maria Selina Reyes, Wells Fargo, their agents, affiliates, representatives and all persons acting in concert or participation with them, from:

- A. Directly or indirectly, soliciting any customer of WMFS ("WMFS customer") who was served by, or whose identity became known to, Leone, Hobson, Hofland, Jacobs or Reyes while employed by WMFS, or through the use of WMFS customer information, or assisting anyone else to solicit or do business with such customer, for a period of one year from the termination of the individual Respondents' employment.
- B. Initiating any contact or communication of any kind whatsoever for the purpose of inviting, encouraging or requesting any WMFS customer:
  - a. to transfer an account from WMFS to Leone, Hobson, Hofland, Jacobs, Reyes, Wells Fargo or any third party;
  - b. to open a new account with Leone, Hobson, Hofland, Jacobs, Reyes, Wells Fargo or any third party;
  - c. to surrender, redeem or terminate a product, service or relationship with WMFS;
- C. Using, disclosing or transmitting to any third party any information derived or obtained from or contained in any WMFS records or documents including

particularly, without limitation, the names, addresses, or telephone numbers, and account information of any WMFS customer.

Claimant also requested that the Panel order Leone, Hobson, Hofland, Jacobs, Reyes, Wells Fargo, their agents, affiliates, representatives and all persons acting in concert or participation with them, to:

- A. Immediately return to WMFS (a) all documents (including computer discs and removable media devices) taken or copied from WMFS, be they original or copies, (b) all copies or reproductions of any documents (including computer discs and removable media devices) which were obtained from WMFS and (c) any and all other documents (including computer discs and removable media devices) containing, referring or relating to any information derived or obtained from WMFS or any records of WMFS, including but not limited to information about WMFS customers or their accounts; and to purge all such information from any form of record in their possession or under their control;
- B. Identify all persons who have seen or otherwise had access to the documents or other records identified above and to obtain from those persons a written agreement that they will not use the documents or records or the information contained therein or disclose such documents or information to any person or entity.

Claimant also requested monetary damages in an amount to be determined at hearing but in the amount of at least \$100,000.00, punitive damages in an amount to be determined by the Panel, and such other and further relief as the Panel may deem proper.

Respondents requested:

1. That Claimant's Statement of Claim be dismissed in its entirety and that Claimant be awarded nothing;
2. Costs;
3. The Arbitrators include within their Award a recommendation that a court order all references to this matter be expunged from the regulatory records of Aaron Thomas Leone, Michael Wayne Hobson, Heather Oliver Hofland, Tech Carreon Jacobs and Maria Selina Reyes; and
4. Such other relief as the Arbitrators deem appropriate.

Regarding their counterclaims/third-party claims, Respondents requested:

1. General damages to Counter-Claimants in an amount to be determined at hearing;
2. Special damages to Counter-Claimants in an amount to be determined at hearing;
3. A preliminary and permanent injunction prohibiting WMFS and Eccles, and all those acting in concert with them, from making false, misleading, and/or disparaging statements about Counter-Claimants or their business or in any other way harming Counter-Claimants' business reputations.

4. Restitution to Counter-Claimants and disgorgement of WMFS' ill-gotten gains obtained as a result of its unfair, unlawful or fraudulent business practices; and
5. Such further relief as the Arbitrators deem appropriate.

Claimant WMFS and Third-Party Respondent David Campbell Eccles requested that Respondents recover nothing based on their claims.

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

Respondents Aaron Thomas Leone, Michael Wayne Hobson, Heather Oliver Hofland, Tech Carreon Jacobs, Maria Selina Reyes, Wells Fargo and Third-Party Respondent David Campbell Eccles did not file with NASD Dispute Resolution ("NASD-DR") properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having filed Statements of Answer, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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, testimony, and evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. The Preliminary Injunction filed June 29, 2005 in the San Francisco County Superior Court, Case No, CPF-05-505423, shall be made Permanent as modified hereafter and shall become effective September 2, 2005 and shall expire April 21, 2006:

- a. In Paragraph 2 b), page 2 at line 16, the following shall be added:  
"except as to providing papers or information to persons who have without violation of any other provisions of this modified Permanent Injunction requested a transfer of any account from WMFS to Wells Fargo.

- b. Paragraph 6 shall be added: "Nothing in the Preliminary Injunction dated June 29, 2005, or this Permanent Injunction, shall prohibit the use by Respondents of the name, address, or telephone number provided to WMFS by any customer of WMFS for the sole purpose of announcing employment with Wells Fargo during the period of April 21, 2005 to June 29, 2005."

2. Claimant's prayer for damages for breach of contract, breach of fiduciary duty, misuse of trade secret information, interference with business interests, and unfair competition, conversion, and disgorgement is denied. Claimant has failed to prove that any account(s) transferred thus far to Wells Fargo from WMFS, or to be transferred to Wells Fargo from WMFS through the period ending April 21 2006, was or is the result of a violation of law or the Preliminary Injunction

dated June 29, 2005. The contract provisions of the employment agreement is trumped by law permitting use of names, addresses and telephone numbers for the purpose of announcing an employment change. The witnesses who testified that they regarded telephone or written contact from Respondents to be solicitation of their business did not transfer their accounts. Further, Claimant has failed to prove (vs. speculation) damages sustained as a result of any account(s) being transferred from WMFS to Wells Fargo.

3. Respondents' cross complaint that Claimant be enjoined from its policy of not revealing the current employer of Respondents upon inquiries from customers of WMFS is denied. Not only was such policy not proven unlawful, but such a request is not seen as timely.

4. Respondents' request for damages for defamation against WMFS and David Campbell Eccles is denied. The evidence did not support a finding of defamation, nor were damages from such proven.

5. Respondents' request for a recommendation that a court order all references to this matter be expunged from the regulatory records of Aaron Thomas Leone, Michael Wayne Hobson, Heather Oliver Hofland, Teché Carreon Jacobs and Maria Selina Reyes is denied.

6. Each party shall bear its own costs, including attorney's fees.

7. All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$1,000.00
Counterclaim/Third-Party claim filing fee	= \$ 500.00

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, WMFS and Wells Fargo are parties and the following fees are assessed:

**WMFS**

Member Surcharge	= \$1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

**Wells Fargo**

Member Surcharge	= \$1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

**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. In this matter, the member firm WMFS is a party and the following fees are assessed:

Injunctive relief surcharge = \$2,500.00

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$450.00  
Pre-hearing conference: August 24, 2005 1 session

(1) Pre-hearing conference session with the Panel @ \$1,000.00/session = \$1,000.00  
Pre-hearing conference: July 20, 2005 1 session

(8) Hearing sessions @ \$1,000.00/session = \$8,000.00  
Hearings: August 30, 2005 2 sessions  
August 31, 2005 2 sessions  
September 1, 2005 2 sessions  
September 2, 2005 2 sessions

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Total Forum Fees = \$9,450.00

The Panel assessed \$4,725.00 in forum fees jointly and severally to Claimant WMFS and Third-Party Respondent David Campbell Eccles.

The Panel assessed \$4,725.00 in forum fees jointly and severally to Respondents Aaron Thomas Leone, Michael Wayne Hobson, Heather Oliver Hofland, Techii Carreon Jacobs, Maria Selina Reyes and Wells Fargo.

### Fee Summary

1. Claimant WMFS is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,550.00
<u>Injunctive Relief Fees</u>	<u>= \$ 2,500.00</u>
Total Fees	= \$ 7,050.00
<u>Less Payments</u>	<u>= \$( 2,250.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,800.00</b>

2. Claimant WMFS and Third-Party Respondent David Campbell Eccles are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 4,725.00
<u>Less Payments by WMFS</u>	<u>= \$( 750.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,975.00</b>

3. Respondent Wells Fargo is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
<u>Less Payments</u>	<u>= \$( 3,550.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

4. Respondents Aaron Thomas Leone, Michael Wayne Hobson, Heather Oliver Hofland, Techii Carreon Jacobs, Maria Selina Reyes and Wells Fargo are charged jointly and severally with the following fees and costs:

Counterclaim/Third-Party Claim Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 4,725.00</u>
Total Fees	= \$ 5,225.00
<u>Less Payments</u>	<u>= \$( 0.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,225.00</b>

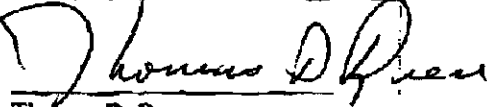
All balances are payable to NASD Dispute Resolution and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Thomas D. Reese  
Thomas C. McNally, III, Esq.  
Nicholas J. Caputo

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Thomas D. Reese  
Chair, Public Arbitrator

Sept 14, 2005

Signature Date

Thomas C. McNally, III, Esq.  
Public Arbitrator

Signature Date

Nicholas J. Caputo  
Non-Public Arbitrator

Signature Date

9/16/05

Date of Service



**ARBITRATION PANEL**


Thomas D. Reese  
Thomas C. McNally, III, Esq.  
Nicholas J. Caputo

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Thomas D. Reese  
Chair, Public Arbitrator

Signature Date

  
Thomas C. McNally, III, Esq.  
Public Arbitrator

9-15-05  
Signature Date

Nicholas J. Caputo  
Non-Public Arbitrator

Signature Date

9/16/05  
Date of Service

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Thomas D. Reese  
Thomas C. McNally, III, Esq.  
Nicholas J. Caputo

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Thomas D. Reese  
Chair, Public Arbitrator

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Signature Date

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Thomas C. McNally, III, Esq.  
Public Arbitrator

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Signature Date

  
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Nicholas J. Caputo  
Non-Public Arbitrator

9/14/05  
\_\_\_\_\_  
Signature Date

9/16/05  
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Date of Service