

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Helen Elliott Family Irrevocable Trust, Richard D. Wallace, Trustee (Claimant) vs. UBS Financial Services, Legg Mason Wood Walker, Christopher J. Roering and Mark Cote (Respondents)

Case Number: 06-00441

Hearing Site: Boston, Massachusetts

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Nature of the Dispute: Customers vs. Members and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant Helen Elliott Family Irrevocable Trust, Richard D. Wallace, Trustee hereinafter referred to as "Claimant": Richard D. Wallace, Wakefield, MA.

Respondent UBS Financial Services ("UBS") hereinafter referred to as "UBS": Jon D. Kaplon, Esq., UBS Financial Services, Inc., Weehawken, NJ.

Respondent Legg Mason Wood Walker ("Legg Mason"), Christopher J. Roering ("Roering") and Mark Cote ("Cote") hereinafter referred to as "Legg Mason Respondents": Dana N. Pescosolido, Esq., Legg Mason Wood, Walker, Inc., Baltimore, MD.

**CASE INFORMATION**

Statement of Claim filed on or about: January 30, 2006.  
Response to Respondent UBS' Answer filed on or about: March 25, 2006.  
Response to Legg Mason Respondents' Answer filed on or about: March 25, 2006.  
Amendment to the Statement of Claim filed on or about: April 3, 2006.  
Amendment to the Claim filed on or about: April 29, 2006.  
Amendment No. 3 to Statement of Claim filed on or about: June 9, 2006.  
Claimant signed the Uniform Submission Agreement: January 25, 2006.

Statement of Answer filed by Legg Mason Respondents on or about: March 22, 2006.  
Motion to Dismiss and Answer of Respondents Legg Mason, Cote and Roering (for time employed at Legg Mason) filed on or about: June 20, 2006.  
Respondent Legg Mason signed the Uniform Submission Agreement: March 22, 2006.  
Respondent Roering signed the Uniform Submission Agreement: March 15, 2006.  
Respondent Cote signed the Uniform Submission Agreement: March 15, 2006.

Statement of Answer filed by Respondent UBS on or about: March 22, 2006.  
Motion to Strike Claimant's Third Amended Pleading and Answer to Amended Pleading

filed by Respondent UBS on or about: June 21, 2006.

Respondent UBS signed the Uniform Submission Agreement: March 22, 2006.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty, failure to supervise, misrepresentation, lack of independent oversight. The causes of action relates to a variable annuity.

In the Amendment No. 3 to Statement of Claim, Claimant asserted the following causes of action: negligence.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$21,718.27, punitive damages in the amount of \$10,000.00, legal fees in the amount of \$5003.50 and trustee fees in the amount of \$5,000.00. Claimant also sought injunctive relief to insure that a recording mechanism was set up to provide documentation of verbal conversations.

In the Amendment to the Statement of Claim dated April 3, 2006, Claimant increased its request for damages to \$47,021.77, representing \$21,718.27 for the portion of the liquidated annuity that was lost, \$5000.00 for trustee fees, \$5,300.00 for anticipated trustee fees, \$5,003.50 for legal fees and \$10,000.00 for punitive damages.

In the Amendment to the Claim dated April 29, 2006, Claimant withdrew its request for injunctive relief.

In the Amendment No. 3 to Statement of Claim, Claimant requested compensatory damages in the amount of \$44,218.27, trustee fees in the amount of \$25,000.00, legal fees in the amount of \$5,003.50, interest, arbitration fees, costs and penalties as determined by the Panel.

The Legg Mason Respondents requested the dismissal of the Statement of Claim in its entirety, that the Panel assess all costs and expenses incurred in defending this case, including attorney costs, NASD fees, forum fees and travel costs, against Claimant, if the Panel concludes that Mr. Wallace intentionally misled MaineCare with respect to the true facts relating to the ownership of the annuity, that Mr. Wallace be commanded to reimburse the proper authorities in the amount of \$45,000.00. Mr. Cote and Mr. Roering requested expungement of all references to this action from their CRD records and costs for attorneys' fees to enforce the Panel's expungement order.

Respondent UBS requested the dismissal of the Statement of Claim and an award in its favor of the costs and disbursements of this proceeding and such other and further relief as is just and proper.

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

On September 22, 2006 the Panel heard oral argument on Respondents' respective Motions to Dismiss. After due deliberation, the Panel granted the Motions.

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. Claimant's claims are dismissed in their entirety.
2. Claimant is liable for and shall pay to Respondent Mark Cote costs in the amount of \$2,500.00.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Mark Cote's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Mark Cote must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

4. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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	= \$ 175.00
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### **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 persons at the time of the events giving rise to the dispute. Accordingly, UBS Financial Services, Inc. and Legg Mason Wood Walker, Inc. are parties.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

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Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

One (1) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conferences: June 1, 2006	1 session

Two (2) Pre-hearing session with Panel @ \$600.00	= \$1,200.00
Pre-hearing conference: August 9, 2006	1 session
September 22, 2006	1 session

Total Forum Fees	= \$1,650.00
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1. The Panel has assessed \$1,650.00 of the forum fees to Claimant.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$1,650.00
Total Fees	= \$1,825.00
Less payments	= \$ 625.00
Balance Due NASD Dispute Resolution	= \$1,200.00

2. Respondent UBS is solely liable for:

Member Fees	= \$2,625.00
Total Fees	= \$2,625.00
Less payments	= \$2,625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Legg Mason is solely liable for:

Member Fees	= \$2,625.00
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Total Fees	= \$2,625.00
<u>Less payments</u>	<u>= \$2,625.00</u>
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.

**ARBITRATION PANEL**

Chesley Oriel, Esq.	-	Public Arbitrator, Presiding Chairperson
Elizabeth K. Norsworthy, Esq.	-	Public Arbitrator
Susan Lauder Stewart	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Chesley Oriel, Esq.  
Public Arbitrator, Presiding Chairperson

11/7/06  
\_\_\_\_\_  
Signature Date

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Elizabeth K. Norsworthy, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Susan Lauder Stewart  
Non-Public Arbitrator

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

November 9, 2006  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

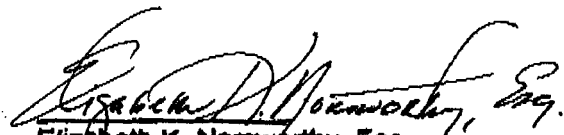
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Public Arbitrator, Presiding Chairperson

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Signature Date

  
Elizabeth K. Norsworthy, Esq.  
Public Arbitrator

November 6, 2006  
Signature Date

\_\_\_\_\_  
Susan Lauder Stewart  
Non-Public Arbitrator

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Signature Date

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