

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Annie Merrill Scarborough

90-02222

Name of Respondent(s)

Legg Mason Wood Walker, Inc. d/b/a Legg  
Mason Howard Weil, Inc., f/k/a Howard, Weil,  
Labouisse, Freidrichs, Inc.;  
Craig Lang

REPRESENTATION

For Claimant: Annie Merrill Scarborough was represented by Roger V. Davidson, Esq. of Davidson & Associates, P.C., Boulder, Colorado.

For Respondent: Legg Mason Wood Walker, Inc. d/b/a Legg Mason Howard Weil, Inc., f/k/a Howard, Weil, Labouisse, Freidrichs, Inc. and Craig Lang were represented by Charles W. Lane, III, Esq. and Thomas K. Potter, III, Esq. of Jones, Walker, Waschter, Poitevent, Carrere & Denegre, New Orleans, Louisiana.

CASE INFORMATION

Statement of Claim filed: August 14, 1990

Claimant's Submission Agreement signed on: August 10, 1990

Joint Statement of Answer filed by Respondents Howard, Weil, Labouisse, Freidrichs, Inc. and Craig Lang on: December 6, 1990

Respondent Howard, Weil, Labouisse, Friedrich, Inc.'s Submission Agreement signed on: November 29, 1990 by John B. Levert, Jr.

Respondent Craig Lang's Submission Agreement signed on: November 28, 1990

HEARING INFORMATION

Pre-Hearing Conference: None Held

Hearing Dates/Sessions: October 24, 1991 for two (2) sessions  
October 25, 1991 for three (3) sessions  
December 23, 1991 for one (1) session

Hearing Location: New Orleans, Louisiana

### CASE SUMMARY

Claimant Annie Merrill Scarborough ("Scarborough") alleged that Respondent Craig Lang ("Lang"), while employed by or acting as an agent for Respondent Legg Mason Wood Walker, Inc. d/b/a Legg Mason Howard Weil, Inc., f/k/a Howard, Weil, Labouisse, Freidrichs, Inc. ("Howard Weil"), engaged in the following acts:

1. The excessive trading of Scarborough's account unrelated to the investment objectives and financial situation of the Client;
2. The short-term trading of mutual fund shares for Scarborough's account;
3. Fraudulently executed transactions which were unauthorized;
4. Recommended or fraudulently made unauthorized transactions for Scarborough's account which were unsuitable given the investment objectives and financial situation of Scarborough;
5. Fraudulently induced Scarborough to transfer certain securities to her son's Howard Weil account as a pledge to cover his margin debit;
6. Made false and/or misleading representations to Scarborough regarding the risk involved in the transfer of the securities to her son's margin account;
7. Mislead Scarborough in an effort to divert her attention from the way her account was handled whenever she had questions about the transaction; and
8. Acted in a negligent manner with respect to gathering and disseminating information to Scarborough and in dealing with her account.

Based upon the above allegations, Scarborough asserted claims for violation of the NASD Rules of Fair Practice; violation of the civil and criminal laws of the State of Louisiana; violation of the federal securities laws; fraudulent and negligent misrepresentation; and breach of fiduciary duty.

Respondents Howard Weil and Lang denied the material allegations of the Statement of Claim, alleging that:

1. Any and all transfers of Scarborough's securities to her son's account were made at all times pursuant to her instructions and written authorizations;
2. Scarborough did not maintain an investment portfolio with Howard Weil, but from time to time would deliver stock certificates to Lang, who, pursuant to her investment objectives and instructions, would sell these securities to reposition Scarborough's assets in more diversified, stable, income-producing securities. In most instances, the stock certificates were

delivered out to Scarborough and at all times, she retained possession, control and custody of her stock certificates;

3. Contrary to the claims of unauthorized short-term trading in mutual funds, Scarborough never had any investments in any mutual funds in her account, but from time to time invested in money market funds. Dividends produced from her money market funds were reinvested in new shares in these money market funds, shares were sold or amounts withdrawn to meet Scarborough's cash needs and Scarborough sold certain stocks and the proceeds re-invested in the money market funds. These re-investments appear on the account forms, but do not constitute short-term trading; and

4. Contrary to the allegations of churning, unauthorized or unsuitable transactions, Scarborough customarily retained personal possession of her stock certificates. By requesting, receiving and controlling her own certificates (rather than maintaining a portfolio with the securities held in street name), Scarborough ensured and maintained control over her non-discretionary account.

Respondents alleged the following affirmative defenses:

1. Any claims are barred by the applicable statute of limitations and by the doctrines of estoppel, waiver, laches, acquiescence and/or ratification;

2. The Statement of Claim fails to state claims upon which relief can be granted;

3. Scarborough failed to allege in sufficient detail her allegations of fraud and/or misrepresentation;

4. Scarborough caused, or contributed to, or failed to mitigate any and all losses or damages claimed by her;

5. Scarborough lacks standing to assert claims under the criminal laws of the State of Louisiana or to obtain a revocation of any security licenses held by Lang; and

6. Scarborough is not entitled to recover punitive damages and these non-recoverable damages are vague and speculative.

#### RELIEF REQUESTED

Claimant Scarborough requested entry of an award against Respondents Howard Weil and Lang in the sum of \$1,000,000.00, plus \$1,000,000.00 in punitive damages pursuant to Louisiana law, all arbitration fees, attorneys' fees and expenses and costs of the arbitration as provided for by Louisiana law. In addition, Scarborough sought the permanent revocation of all securities licenses held by Respondent Lang.

Respondents Howard Weil and Lang requested that a decision be rendered rejecting each and every claim asserted by Scarborough, at her cost.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

In the Joint Statement of Answer, Respondents stated that Legg Mason Wood Walker, Inc. was not doing business as Legg Mason Howard Weil, Inc., formerly known as Howard, Weil, Labouisse, Freidrichs, Inc., but that Legg Mason Howard Weil, Inc. was a non-existent legal entity and that Howard Weil was a separate and distinct entity from Legg Mason Wood Walker, Inc. Respondents admitted that at all pertinent times, Lang was employed as a registered representative of Howard Weil, was acting within the scope of his employment as registered representative, and Scarborough's account was through Howard Weil.

Pursuant to the stipulation of the parties, the following claims and issues were removed from the arbitration:

1. Scarborough withdrew all claims for excessive trading or churning;
2. Scarborough withdrew all claims for short-term trading of mutual funds;
3. No trades in Scarborough's account were made without first discussing them with her;
4. Scarborough withdrew all claims for censure, bar, license revocation or violation of criminal statutes;
5. Scarborough withdrew all claims for damages on options or covered calls;
6. Scarborough withdrew all claims for damages for pain and suffering, emotional injury, mental anguish or other non-economic alleged injury;
7. Scarborough withdrew all claims for losses from any transaction occurring before July, 1983;
8. Scarborough's claims for damages are limited to transactions involving the following securities: Cleveland Electric/Centerior, Columbia Gas, Masa, Offshore Logistics, Sun Energy Partners, Countrywide Mortgages and all securities purchased with the proceeds from the sales of any securities loaned to her son, Daniel Scarborough's account, including Transco National Intergroup and Texaco;
9. Cleveland Electric merged into Centerior Energy in May of 1985; and
10. Daniel Scarborough gave 750 shares of Cleveland Electric back to Claimant Scarborough.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Howard, Weil, Labouisse, Freidrichs, Inc. and Craig Lang are jointly and severally liable for and shall pay to Claimant Annie Merrill Scarborough the sum of \$9,662.00;

2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following total Forum Fees are assessed: Six (6) sessions x \$1,000.00 = \$6,000.00.

The National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$250.00 and refund the hearing session deposit of \$1,000.00 previously deposited by the Claimant Annie Merrill Scarborough. Respondents Howard, Weil, Labouisse, Freidrichs, Inc. and Craig Lang are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$6,000.00.

Fees are payable to the National Association of Securities Dealers, Inc.

BY THE ARBITRATION PANEL

Dated:

John F. Galvin  
John F. Galvin, Esq.  
Public Arbitrator  
Chairperson

February 8, 1992

Daniel Eugene Bivens III  
Daniel Eugene Bivens III  
Public Arbitrator

February 8, 1992

Charles A. Schildhauer  
Charles A. Schildhauer  
Industry Arbitrator

February 10, 1992

Date Served: \_\_\_\_\_