

**N.A.S.D. AWARD****NATIONAL ASSOCIATION OF SECURITIES DEALERS****In the Matter of Arbitration Between**

Name of Claimant  
Natalie Emery

90-02454

Name of Respondents  
Legg Mason Wood Walker, Inc.  
Champlin J. Carney  
William Jones, Jr.

**National Association of  
Securities Dealers, Inc.**  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 858-4389

**REPRESENTATION**

For Claimant: John S. Stoppleman, Esq. Of Counsel Robert  
R. Gregory, Esq.

For Respondent: M. Albert Figinske, Esq. and Andrew J.  
Bowden, Esq. of the law firm of Weinberg &  
Green.

**CASE INFORMATION**

Statement of Claim filed on: September 5, 1990.

Amended Statement of Claim filed on: July 15, 1991.

Claimant's Memorandum of Law filed.

Claimant's Submission Agreement signed on: August 29, 1990.

Joint Statement of Answer filed by Respondents on: January 14,  
1991.

Response to Amended Statement of Claim filed on: August 12,  
1991.

Respondent's Memorandum of Law filed on: August 14, 1991.

Legg Mason Wood Walker, Inc.'s Submission Agreement signed on:  
March 26, 1991.

William Jones's Submission Agreement signed on: January 24, 1991.

Claimant's and Respondents' Post Hearing Briefs filed on:  
January 29, 1992.

HEARING INFORMATION

Hearing Dates/Sessions:	February 21, 1992, One Session
	December 20, 1991, One Session
	December 18, 1991, Two Sessions
	December 17, 1991, Two Sessions
	December 16, 1991, Two Sessions
	November 1, 1991, Two Sessions
	October 8, 1991, Two Sessions
	October 4, 1991, Two Sessions
	September 27, 1991, Two Sessions
	September 26, 1991, Two Sessions
	September 25, 1991, Two Sessions
	September 24, 1991, Two Sessions
	September 23, 1991, Two Sessions

Pre Hearing Conference:	July 11, 1991, One Session
	June 27, 1991, One Session

Hearing Location:	NASD offices of located in Washington, D. C.
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CASE SUMMARY

Claimant alleged that Respondents continuously churned her discretionary account; by purchasing high-risk, unsuitable investments; by excessive and illegal use of margin borrowings, by continually exposing the account to excessive risk with the hope of quick profits; by a constant stream of in-and-out trading in stocks and by a scheme of wild options speculation. Claimant further alleged these activities, which by and large resulted in constant losses, were financed by steadily increasing use of margin borrowings which at times exceeded 70% of the value of the equity in the account. Claimant further alleged Respondents Legg Mason Wood Walker, Inc., and William Jones failed to even minimally supervise their registered representative Champlin J. Carney in accordance with their established policies and the rules of the NASD, NYSE and SEC. Claimant further alleged Respondents handling of the account reflects a total and callous disregard of the fiduciary duties owed to Claimant and constitutes a violation of state and federal rules and a violation of the Federal RICO statute and by being totally oblivious to the destruction of Claimant's account, when they had a duty to know Respondents Legg Mason Wood Walker, Inc., and William Jones, Jr., participated actively in the scheme to defraud Claimant and no registered options principal ever reviewed or approved either the options strategies or the options trading in the account.

Respondents maintained Claimant was a former registered stock broker and a sophisticated investor who transferred her account to Legg Mason Wood Walker, Inc. because she was dissatisfied with her prior broker's conservative handling of her account and step by step she methodically transferred her stocks and executed account documents authorizing the purchase and sale of options, the use of margin and the exercise of discretion. Respondents further maintained Claimant and Champlin Carney had previously discussed an investment strategy involving the use of margin and a controlled options strategy that presented Claimant with the opportunity to generate the additional income she wanted and to diversify her holdings and Claimant understood every aspect of margin and the options strategy she discussed with Carney and how they would be used and Claimant had used margin for over 10 years in her Wheat First Securities, Inc. account and the options strategy was virtually the same one that she had pursued when she was a stockbroker handling her own account. Respondent further maintained after the market crash hit Claimant's account, she discussed with Champlin Carney and authorized a more aggressive strategy in hopes of recouping her losses and she was aware of the risks of the strategies she discussed and pursued and she was never misled and her allegations of regulatory wrongdoing are inapplicable as a matter of law and contrived and Claimant's computation of damages have no basis in fact and the fact that the strategies Claimant pursued ran headlong into the October 1987 market crash and were not profitable does not entitle her to relief. Respondents further maintained that her claims are barred by applicable statutes of limitations and the doctrines of ratification, estoppel, res judicata and collateral estoppel and she has failed to properly allege and prove all of the essential elements of a RICO claim.

RELIEF REQUESTED

Claimant's requests for damages included the following:

- a. \$701,850.00 for economic loss for the period May 15, 1987 to December 31, 1988 calculated as follows:

Market value of securities and cash transferred to Legg Mason Wood Walker, Inc.	\$874,606.00
Less withdrawals	67,035.00
	807,571.00
Less equity at 12/31/88	-217,186.00
	590,386.00

Plus subsequent losses on securities  
purchased on discretion by Champlin Carney  
at Legg Mason Wood Walker, Inc. 72,475.00

Plus additional margin interest incurred  
to carry positions at Boettcher & Co. 37,673.00  
\$701,850.00

- b. A refund of commissions and markups earned by Champlin Carney and Legg Mason Wood Walker, Inc. during the relevant period at \$102,111.40;
- c. A refund of margin interest charged in the amount of \$60,617.15;
- d. Interest from May 17, 1987 to December 31, 1988 @ 10%, equal to \$108,000.00;
- e. Punitive damages in the amount of \$2,000,000.00 to deter future outrageous conduct of this character;
- f. Treble damages under RICO;
- g. Attorney's fees under RICO;
- h. Reimbursement for all costs of this proceeding including the costs of expert witnesses;
- i. Legal interest on the total from September 1, 1990, until paid;

Claimant further requested all other relief in law or equity to which she may be entitled under the Federal Arbitration Act, the Rules of the New York Stock Exchange, the Rules of the National Association of Securities Dealers, Inc. the Virginia Securities Act, at common law under the laws of the state of Virginia (Mrs. Emery's residence), the District of Columbia (the place where the account was), and Maryland (the state of domicile of Legg Mason Wood Walker, Inc.), or under principles of equity.

Respondents requested that an Award be entered in their favor and specifically requested that the entire cost of the proceeding be assessed against the Claimant.

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AWARD

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

I  
Claimant's Claims Of Breach  
Of Fiduciary Duty And Of  
Unsuitability  
(Claims 1 and 3)

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Insofar as Claimant's claims of the alleged breach of fiduciary duties by Respondents and of an inherently unsuitable investment program, by using margin and trading and at the same time holding a core of oil industry stocks as a base to finance such a program, the panel rules this structure was dictated by Claimant's own instructions and participation. The panel further observes the unrebutted testimony of Champlin Carney that her program was reviewed by her accountant prior to its implementation.

Claimant had sufficient financial sophistication to understand the nature, risks and problems of her investment program, including approximately two years actual experience as an NASD Registered Representative, and the panel charges her with knowledge of the impact of margin and commission costs on her investment program. The panel rules she undertook her program knowing, or to the extent she distained competent advice and knowledge, having sufficient financial training, experience, sophistication, intelligence, energy, awareness and participation in the program and investment knowledge, that she should have known and understood the nature and scope of investment risks involved. Further, the panel observes that Claimant's expert testimony did not quantify in any meaningful manner the actual economic effect on her investment program of her taking tax deductions for margin interest and commissions. Thus, the panel rules Claimant did not prove her investment program was inherently unsuitable under the facts and circumstances here present.

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Further, the panel rules her resources were such that she could adequately bear the risks of her investment course of action. The panel observes, however, that Claimant directed Respondents to change her investment objectives in early March, 1988 from those discussed above to an income and capital appreciation objective.

With respect to Krupp Resources Investments, the panel rules that Claimant ratified these transactions. With respect to the Northwinds Limited Partnership Investment, the panel rules that full and sufficient disclosure was made to her of the potential unsuitability of the investment and further notes that Claimant had the proposed investment documents reviewed by her offeree representative, an attorney, prior to her execution of them. The panel further notes that Claimant executed the Northwinds documents under oath. The panel rules that Northwinds Investment was not, after careful review of all the facts and circumstances, an unsuitable investment for her.

With respect to the Texfi, Residential Resources and First Boston Strategic Income Fund Investments only, however, the panel rules these investments were, under the particular circumstances here present, unsuitable. The panel assesses Respondent Legg Mason Wood Walker, Inc., with compensatory damages of \$93,000.00 caused by such unsuitable investments, being the panel's calculation of Claimant's damages less the value of retained First Boston Strategic Income Fund shares. The panel rules Claimant is not required to retransfer to Respondents any First Boston Strategic Income Fund shares she continues to retain in connection with this award of damages. The panel rules Claimant, by her course of conduct, ratified all other transactions made after mid-March, 1988.

II  
Claimant's Claims Of  
Violation of Rule 10b-5,  
Comparable Virginia Statutes,  
Common Law Fraud,  
And of Rico  
(claims 2, 8 and 9 )

Having carefully borne in mind that the anti-fraud provisions of the Federal Securities Exchange Act of 1934 and comparable provisions of Virginia law apply to all transactions involved in this proceeding, the panel has decided that Claimant had sufficient financial sophistication and experience, in view of her having been an NASD Registered Representative for approximately a two-year period, and in view of the evidence concerning her experience as a Registered Representative, to be well-aware of the risks involved in undertaking her investment course of action. Further, her own prior investment experience entailed many of the same elements of the program effectuated by Respondents.

The panel has decided, after careful review of all the evidence, that she clearly maintained effective control of her account at the time it was with Respondents, notwithstanding the discretionary designation of the account. In that connection, the panel finds Claimant was not under such domination, intimidation, influence or control of Champlin Carney as to alter its decision.

The panel finds Claimant was plainly sufficiently skilled and knowledgeable enough to knowledgeably evaluate Champlin Carney's performance. The panel finds she was sufficiently knowledgeable and skilled as to how to evaluate her account's investment performance when she should have done so, and plainly knowledgeable as to when and how to obtain expert advice should it be required, after having taken the initiative herself in the fall of 1987 to begin such an evaluation but that she did not do so in a timely manner by March 2, 1988.

Thus, the panel finds Claimant was not justified in reliance upon Champlin J. Carney's purported performance evaluation of her account for the year 1987. The panel notes the unrebutted evidence of Champlin Carney that the purported evaluation for 1987 was sent to Claimant's accountant and not directly to her. The panel further rules that Claimant did not prove to a sufficiency that she in fact relied upon the purported performance evaluation or upon any statements made by Champlin Carney.

In evaluation of Claimant's fraud claims, the panel further finds she ratified Respondents' actions by failing to respond, after having notice of the performance failures in her account, to the request of Respondent Legg, Wood, Mason & Walker, Inc. for a response as to the discretionary and options trading character of her account in April, 1988.

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Accordingly, the panel rules there was no "churning", nor any other violation of either Rule 10b-5, Section 15 of the Securities Exchange Act, or comparable Virginia laws and regulation, and that there was no commission of common law fraud under either District Of Columbia, Maryland or Virginia law. In that connection, the panel further rules, after a careful review of the relevant evidence, that Claimant is time-barred as to her fraud claims by the applicable statutes of limitation and, further, that she is estopped from any claims of violation of Rule 10b-5, Virginia securities laws or common law fraud under the laws of Virginia, Maryland or the District of Columbia.

Likewise, having found no predicate offenses cognizable in this proceeding under "RICO", the panel finds no violation of any of sections 18 U.S.C. 1341, 1961, 1962, 1963, or 1964.

III  
Claimant's Claims of  
Unethical Practices And Conflicts  
Of Interest, Gross Negligence  
In Supervision, Abuse of  
Margin Credit and Breach  
Of Contract  
( claims 4, 5, 6 and 7 )

The panel rules that Claimant did not prove any separate private cause of action under any of Sections 1, 2, 15 or 27 or under any of Sections 15, 18, 19 or 20 of Appendix E of the NASD Rules of Fair Practice, nor any separable private cause of action under any of Rules 401, 405 or 408 of the New York Stock Exchange Rules, nor under Regulation T of the Federal Reserve Board ( 12 C.F.R. Sections 220.1-220.18).

The panel finds no violation of supervisory requirements for which Respondents Legg, Mason Wood & Walker, Inc. or Jones should be held responsible in damages as asserted in Claimant's Claim 5. The panel rules Claimant's claims of unethical practices and conflicts of interest by Respondents or any of them were not proven to be claims for which any of Respondents should be held liable for damages.

The panel finds no breach of contract as asserted in Claimant's Claim 7 for which any of Respondents should be held liable for damages.

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The panel awards Claimant a total of \$93,000.00 representing Claimant's compensatory damages, with simple interest thereon at the rate of 6% per annum as from the date of the award until the date of payment of the award; for which damages and interest Respondent Legg, Mason Wood & Walker, Inc. alone should be held responsible and denies the Claimant's request for punitive damages.

Each party shall bear their respective costs including attorneys' fee

FORUM FEES

nn24 sessions X \$1,000.00 = \$24,000.00 minus hearing deposit of \$1,000.00 = net \$23,000.00 due plus 2 pre-hearing conferences X \$300.00 = \$600.00 due.  
Total due: \$23,600.00

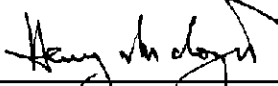
Forum Fees to be Assessed as Follows:

1- The Claimant be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of \$11,300.00 to represent forum fees.

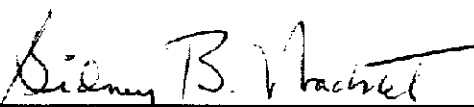
2- The Respondent Legg Mason Wood Walker, Inc. be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of \$12,300.00 to represent forum fees.

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

Concurring Arbitrators' Signature

  
Henry McCoy, II, Esq./Public Arbitrator

  
Stephen B. Crable, Esq./Public Arbitrator

  
Sidney B. Wachtel/Industry Arbitrator

Date of Decision: April 20, 1992  
Dated by the NASD: May 28, 1992