

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Alfred J. Balerna

vs.

Case #
91-00381

Name of Respondents

Legg Mason Wood Walker Inc.
Eliot Robinson

vs.

Name of Third-Party Respondent

Michael Cerato

REPRESENTATION

For Claimant, Alfred J. Balerna: Daniel J. Murphy, Esq. of Gordon & Wise

For Respondent, Legg Mason Wood Walker, Inc.: Bryan G. Killian, Esq. of Sherin & Lodgen

For Respondent, Eliot Robinson: Allen C. B. Horsley, Esq. of LeBoeuf, Lamb, Leiby & MacRae

For Third-Party Respondent, Michael Cerato: Bryan G. Killian, Esq. of Sherin & Lodgen.

CASE INFORMATION

Statement of Claim filed: February 4, 1991.

Reply to Counterclaim filed: April 29, 1991.

Claimant's Submission Agreement signed on: January 7, 1991.

Statement of Answer filed by Respondent, Legg Mason Wood Walker, Inc., on: April 15, 1991.

Respondent's Submission Agreement signed on: May 8, 1991.

Statement of Answer and Counterclaim of Respondent, Eliot Robinson, dated: April 12, 1991.

Cross Claim and Third-party Claim filed by Respondent on: October 31, 1991.

Respondent's Submission Agreement signed on: July 17, 1991.

HEARING INFORMATION

Hearing Dates/Hearing Sessions: November 13, 1991 - Two sessions

November 14, 1991 - Two sessions
January 16, 1992 - Two sessions
January 17, 1992 - Two sessions
January 21, 1992 - Two sessions
January 22, 1992 - Two sessions
February 18, 1992 - Two sessions
February 21, 1992 - One session
February 24, 1992 - Two sessions
February 25, 1992 - Two sessions
March 23, 1992 - One session
March 24, 1992 - Two sessions
March 25, 1992 - One session
April 2, 1992 - One session
April 27, 1992 - Two sessions.

Hearing Location: Boston, Massachusetts.

CASE SUMMARY

Claimant alleges that claims outlined in Counts I through XI arise out of the violation of the anti-fraud provisions of the Securities Exchange Act of 1934, Section 10(b), 15 U.S.C. Section 78j(b) and Rule 10b-5 of the Securities and Exchange Commission promulgated thereunder, 17 C.F.R. Section 240 10b-5; 18 U.S.C. Section 1362; and Massachusetts State Law.

Claimant further alleges Eliot Robinson solicited business and that he told Robinson that he was financially unable to risk large amounts of money or money on speculative stock investments. Claimant also alleges that he explained to Robinson that he needed to support his six children through college.

Claimant contends that despite Robinson's knowledge of Balerna's financial condition and investment objectives, Robinson recommended and persisted that Balerna purchase Organogenesis stock. Claimant further alleges that Robinson introduced Balerna and other potential investors to the founders of Organogenesis who provided them with a guided tour of the production facilities. Claimant also alleges that Robinson would periodically call him and strongly advise him to purchase additional shares of the stock up to an including the margin limit. Claimant states that Robinson advised him that Eli Lilly Company was going to purchase Organogenesis at approximately \$30.00 per share, that the purchase was imminent and that Claimant should borrow money from whatever source to purchase additional share of Organogenesis which Claimant did.

Claimant contends that Robinson was attempting to inflate trading activity in an attempt to lend credence to his statement regarding the market potential for the stock. Claimant maintains that in October, 1988, he gave Robinson an order to sell his shares of the stock which would have resulted in a profit of approximately \$100,000.00 and that Robinson advised him not to sell but to increase his equity investment. Claimant alleges that in December, 1988, he was told that 9,600 of his shares were sold to meet a

margin call. Claimant contends that Robinson agreed to make up the losses personally and continued to advise Claimant to hold on to his remaining shares.

Claimant also contends that Legg Mason increased its margin requirements from thirty percent to fifty percent and failed to timely advise him of the change. Claimant further alleges that he sustained damages as a result of Respondents' actions.

Respondents, Legg Mason and Michael Cerato, deny the allegations of wrongdoing as stated in Counts I through XI and deny liability. Respondent maintains that they were unaware of any payment by Robinson to Balerna to cover a margin call and that such an act would be a violation of the rules of all applicable self-regulatory organizations and Legg Mason's internal policies. Respondents allege that as soon as Mr. Cerato became aware of the settlement agreement, he confronted Eliot Robinson who assured him that there was a misunderstanding and that Claimant would withdraw the letter. Respondents further allege that Mr. Cerato informed Claimant's counsel at the time, that Mr. Robinson has no authority to negotiate any settlement on Cerato or the firm's behalf.

Respondents contend that there is a higher margin maintenance requirement where a large amount of securities are held in a high concentrated position. Respondent asserts eight affirmative defenses.

Respondent, Eliot Robinson, denies liability, interposes a Counterclaim, Cross Claim and Third-party claim for damages. Respondent also asserts ten affirmative defenses.

Respondent maintains that Claimant was a certified public accountant and sophisticated investor. Respondent further admits that he contacted Claimant and others regarding Organogenesis and that Claimant was skeptical and did independent research regarding the stock. Respondent further denies that he recommended that Claimant borrow money from a third party to purchase additional shares. Respondent admits that he wrote a check for \$100,000 to Peter Fiumara at Claimant's instruction.

Respondent Robinson alleges that when he was employed at another brokerage firm, Claimant was his customer from 1974 until 1978 and held several thousand shares of highly speculative securities which he acquired from another source. Respondent states that he contacted Claimant in 1986 to discuss Organogenesis, Inc., a biotech start-up company. Respondent contends that Claimant conducted independent research and was determined and did purchase several thousand shares of the stock. Respondent further states that Claimant moved his account to another brokerage firm in October, 1989 which would allow him a thirty percent margin requirement. Respondent contends that by this time the stock had fallen and Claimant was experiencing severe financial difficulties and unable to satisfy debts owed to Peter Fiumara who was indicted for his alleged involvement in loan-sharking and to the Employee Stock Option Plan.

Respondent contends that the claim letter dated April 30, 1989, was grossly false and misleading, that Balerna knew the allegations were false. Respondent contends that Claimant wrote the letter to force Robinson and his employer to pay substantial funds because of extreme pressure being placed on Claimant by his lenders, including people with alleged connections to organized crime. Respondent contends that the April 30, 1992, letter was directed to Mr. Cerato who told him to personally settle the issue or he would be fired. Mr. Robinson further states that he pleaded with Claimant who instead borrowed \$7,500.00 to cover his margin debit. Respondent contends that it was out of fear for the loss of his job and reputation, his health and safety, he agreed to pay Claimant an additional \$100,000.00 and wrote the check out to a third party, who also had alleged organized crime connection. Respondent further alleges that he contacted to Chief of Police and the Federal Bureau of Investigation after he made the payment.

Claimant denies the allegations in the Counterclaim, denies liability and asserts one affirmative defense.

RELIEF REQUESTED

Claimant requests that the panel enter judgment against all Respondents on Counts I through XI of the Claim, costs and expenses including attorneys' fees in this action and such other and further relief as the arbitrators deem just and proper.

Respondent, Legg Mason, requests that the claims be dismissed and that it be award costs including reasonable attorney's fees.

Respondent, Robinson, request that the Statement of Claim be dismissed and that the panel enter judgment for him and against Claimant in the amount of \$107,500.00 plus interest and costs. Additionally, Robinson requests damages for loss of employment, damage to his professional reputation and standings, intentional infliction of severe emotional distress, treble damages, attorney's fees and costs as a result of Claimant's violation of G.L.C. 93A.

OTHER ISSUES CONSIDERED AND 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 received conformed copies of the Award while the originals remain on file with the NASD.

By letter dated November 1, 1992, Respondent, Eliot Robinson, moved to amend his Statement of Answer to include a cross claim and third-party claim. Over the remaining parties' objections, the panel granted the motion.

AWARD

After considering the pleadings, the testimony and the evidence presented at

the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Legg Mason Wood Walker, Inc. is hereby liable to the Claimant and shall pay him **FORTY THOUSAND DOLLARS AND ZERO CENT (\$40,000.00)**;
2. All claims asserted against Eliot Robinson are denied in their entirety;
3. The claim for punitive damages is denied;
4. No interest is awarded on the above amount;
5. The claim for attorney's fees is denied;
6. Claimant, Alfred J. Balema, is hereby liable to Eliot Robinson on the Counterclaim and shall pay him **THIRTY SIX THOUSAND DOLLARS AND ZERO CENT (\$36,000.00)**;
6. The Cross Claim and Third-party Claim asserted by Eliot Robinson are denied in their entirety.

FORUM FEES


Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1. Forum fees in the amount \$26,000.00 for twenty-six hearing sessions at \$1,000.00 per session are assessed and shall be borne by Legg Mason Wood Walker, Inc.;
2. Claimant is assessed \$250.00 non-refundable filing fee;
3. Claimant and Eliot Robinson deposited \$1,250.00 and \$2,750.00, respectively and are therefore entitled to refunds as outline in paragraph 7;
4. Respondent, Eliot Robinson is assessed non-refundable filing fees in the amount of \$500.00 for the Counterclaim and \$500.00 for the Cross Claim and Third-Party Claim;
5. Eliot Robinson is further assessed \$1,000.00 for postponement of the hearing which was scheduled for September 19, 1991.
6. The parties are each assessed \$333.33 for postponement of the hearing scheduled for February 14, 1992.
7. Respondent, Legg Mason Wood Walker, Inc., shall satisfy its assessment by reimbursing Claimant \$666.67, reimbursing Eliot Robinson \$416.67 and by remitting the balance, \$25,000.00 to the NASD.

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

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Concurring Arbitrator's Signature
Name



David Love, Esq.
Chairperson - Public Arbitrator

Executed on:

~~xxxxxx~~ May 26, 1992

Date of Decision: May 26, 1992

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Concurring Arbitrator's Signature

Name

John R. Thompson

John R. Thompson

Public Arbitrator


Executed on:

~~Date of Decision:~~ 5-12-92

Date of Decision: May 26, 1992

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Concurring Arbitrator's Signature
Name


John B. Haggerty
Industry Arbitrator

Executed on:
~~Date of Decision:~~ 5/12/92

Date of Decision: May 26, 1992