

## N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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

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In the Matter of the Arbitration BetweenName of Claimant

Norma Bradford

91-02928

Name of Respondents

Legg Mason Wood Walker, Inc  
Monica Coleman

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REPRESENTATION

For Claimant: Patrick G. Finnegan, Jr., Esq.

For Respondent: Dana N. Pescosolido, Esq. of the law firm of Fairbanks,  
Gault & Pescosolido.CASE INFORMATION

Statement of Claim filed: September 20, 1991.

Amended Statement of Claim filed.

Claimants' Submission Agreement signed on: September 11, 1991.

Joint Statement of Answer filed by Respondents on: December 4, 1991.

Response to First Amendment to Statement of Claim filed on January 7, 1992.

Respondent Legg Mason Wood Walker, Inc.'s Submission Agreement signed on:  
November 11, 1991.

Respondent's Motion for Summary Judgment filed on: February 10, 1992.

Respondent Monica Coleman's Submission Agreement signed on November 26, 1991.

Claimant's Response to Respondent Motion for Summary Judgment  
filed on: March 5, 1992.Reply Memorandum in Support of Motion for Summary Judgment filed on: March  
20, 1992.

HEARING INFORMATION

Hearing Date/Sessions: June 16, 1992, 2 sessions.  
June 9, 1992, 2 sessions.  
June 8, 1992, 2 sessions.  
May 28, 1992, 2 sessions.  
May 27, 1992, 2 sessions.

Pre Hearing Conference: May 6, 1992, 1 session.

Hearing Location: Baltimore, Maryland.

CASE SUMMARY

Claimant had a securities account with Respondent Legg Mason Wood Walker, Inc. ("Legg") and Claimant's broker at Legg was Respondent Monica Coleman ("Coleman"). Claimant desired to place the \$200,00.00 proceeds of her deceased husband's insurance policy into some type of securities investment. Claimant alleged that Respondent Coleman recommended unsuitable investments. Claimant alleged that she had expressed her desire to invest in safe and secure ventures and that Respondent Coleman represented that real estate limited partnerships were suitable investments. Claimant alleged that she was never apprised of the risks of real estate limited partnerships and that if she had been aware of the risks she would never have become involved in; Garden State Investors, a private placement real estate limited partnership, Mid-atlantic Centers, a public real estate limited partnership, Wilmington Properties, a private placement real estate limited partnership, Liberty High Income Plus Limited Partnership, a public real estate limited partnership, Residential Resource Mortgage, a real estate investment trust, Putnam High Income Government Trust, and Putnam Fund for Growth and Income. Claimant alleged that Respondent Coleman repeatedly assured her that these investments were growing and safe despite the fact the investments were speculative in nature and were declining in value. Claimant further alleged that since Respondent Legg had a syndicator/underwriter interest in several of Claimant's real estate and stock investments, the money earned by Respondents on such a principal transaction was circumspect. Claimant alleged that Respondent Legg had a duty to supervise Respondent Coleman and to make sure the separate, distinct investments of the Claimant were suitable to her understanding and investment needs. Claimant alleged that Respondent Coleman churned the account by a pattern of transactions executed only in order to generate commissions thereby violating SEC Rule 10b-5 and SEC Rule 15c1-7(a) and the NASD Rules of Fair Practice Article III, Section(a). Claimant further alleged that Respondent Coleman perpetrated securities fraud by not disclosing that real estate investments were inherently risky ventures. Claimant alleged that Respondents deliberately misrepresented the safety of the investments and the subsequent value resulting in common law fraud. Claimant further alleged that Respondents were negligent using the NASD

standards as stated in the NASD Rules of Fair Practice Article III, Section 2. Claimant alleged that Respondent Coleman violated the Racketeer Influenced and Corrupt Organization Act by making deliberate and false misstatements about separate related investments.

Respondents maintained that Claimant's allegations of churning, fraud, unsuitability, negligence, and violations of the RICO statute were unfounded. Respondents maintained that Claimant was fully apprised of all material facts prior to purchasing the investments. Respondents maintained claimant often rejected Respondent Coleman's advice as well as utilizing the services of an outside investor representative. Respondents maintained there was no churning in the account as all investments were long term and the annual commission-to-equity ratio was approximately 2% a year. Respondents further maintained that there was nothing illegal in acting in the capacity of syndicator/underwriter in several of her investments. Respondents maintained that notwithstanding any of the above, all private actions brought under Section 10(b) and Rule 10(b)(5) of the Securities and Exchange Act of 1933, are subject to a uniform limitation period of one year after the discovery of the alleged fraud, with an outside limitation of three years from the occurrence of the alleged fraud. Respondents maintained that this action is barred by the above statute of limitations and by the Maryland statute of limitations of three years from the date that the violations were, or should have been discovered. Respondents further maintained that there is no RICO claim as the statement of claim fails to allege a "pattern of racketeering activity" required by the RICO Statute.

Respondents made a Motion for Summary Judgment in order to eliminate all of the counts in the Statement of Claim except Common Law Fraud and Negligence. Respondents alleged that all other claims are time barred by the applicable statute of limitations and by the fact that the NASD and the NYSE do not confer a private right of action upon the individual. Respondents further alleged that the cause of action based on the RICO statute fails to state a claim in any respect against the Respondents.

Claimant's response to the Motion for Summary Judgment maintained that courts must review a complaint like this one in the most favorable light for the plaintiff; therefore, the arbitrators must do the same. Claimant maintained that the claim is not barred by the statute of limitations because of the traditional rule of "equitable tolling" and that section 10b5 of the Securities and Exchange Act of 1934 and the Maryland Statute of Limitations only begin to run when the last overt act has occurred in Respondent's scheme to defraud the Claimant. Claimant further maintained that Mrs. Bradford had no outside representative and she was not qualified or equipped to understand the risks involved in a private placement offering. Claimant maintained that each of the cited rules while maybe not being a

cause of action in and of themselves, goes to buttress the central allegation of fraud, both under section 10b5 and Common Law Fraud. Claimant further maintained that inducement, execution, and obstruction are the tools of sophisticated, planned malfeasance A/K/A "racketeering" therefore RICO applies to this case.

Respondents' reply in support of the Motion for Summary Judgment maintained that Section 16 of the NASD Code of Arbitration Procedure allows for the arbitrators to dismiss a claim before hearing. Respondents maintained that Claimant's interpretation of equitable tolling is incorrect and does not apply in claims arising out of the Federal Securities Laws. Respondents maintained that Claimant never attempts to argue that private rights of action exist for violations of SRO Rules but only that arbitrators are free to disregard existing laws. Respondents maintained that arbitrators are required not to disregard applicable law when it is made known to them. Respondents further maintained that Claimant's attempt to broaden the RICO claim from the facts in the pleadings is unavailing.

RELIEF REQUESTED

Claimant's requests for damages include the following:

- a) On the first cause of action, Churning, damages in the amount of \$17,500 + \$175,000.
- b) On the second cause of action, Securities Fraud, damages in the amount of \$175,000.
- c) On the third cause of action, Common Law Fraud, damages in the amount of \$175,000.
- d) On the fourth cause of action, Unsuitable Recommendations, damages in the amount of \$175,000.
- e) On the fifth cause of action, Negligence, damages in the amount of \$175,000.
- f) On the sixth cause of action, RICO Statute, damages in the amount of \$525,000 plus fees.
- g) On the seventh cause of action, punitive damages in the amount of \$525,000.

Respondents requested that the claims set forth in the Statement of Claim all be dismissed in their entirety.

**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:

1. Respondent Coleman be and hereby is liable and shall pay to the Claimant the sum of \$17,000.00 inclusive of interest.
2. Respondent Legg be and hereby is liable and shall pay to the Claimant the sum of \$51,000.00 inclusive of interest.
3. The Claimant's request for punitive damages is denied.
4. The Claimant's request for damages under the RICO statute is denied.
5. Each party shall bear their respective costs including attorney's fees.

**FORUM FEES**

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

10 sessions X \$1,000.00 = \$10,000 plus pre-hearing conference fee of \$300.00 = \$10,300.00 minus hearing session deposit of \$1000.00 = net \$9,300.00 due.

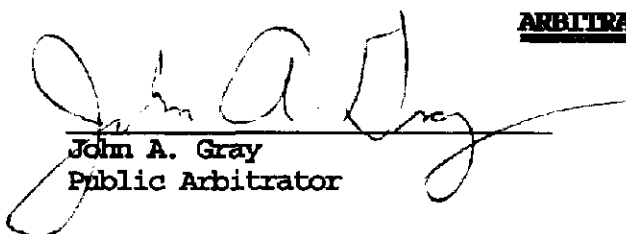
The Claimant be and hereby is liable and shall pay to the NASD the sum of \$4,150.00 to represent forum fees.

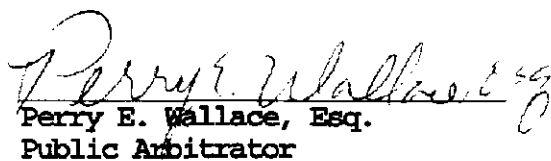
The Respondents be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$5,150.00 to represent forum fees.

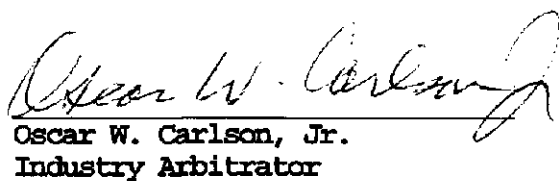
The NASD will retain the \$250.00 filing fee previously paid by the Claimant.

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

ARBITRATOR SIGNATURES

  
John A. Gray  
Public Arbitrator

  
Perry E. Wallace, Esq.  
Public Arbitrator

  
Oscar W. Carlson, Jr.  
Industry Arbitrator

Date of Decision: September 3, 1992

Claimants' Submission Agreement signed on: September 11, 1991.