

## 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

Legg Mason Wood Walker, Inc.

92-00332

Name of Respondent

Jack C. Pappas

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REPRESENTATION

For Claimant Legg Mason Wood Walker, Inc. ("Claimant"): Dana Pescosolido, of Fairbanks, Gault et al.

For Respondent Jack C. Pappas ("Pappas"): Mr. Pappas had no representation and did not appear at the hearing.

CASE INFORMATION

Reply to renewed Motion to Dismiss and Memorandum in Support of Respondent's Opposition to Claimant's Statement of Reply filed: March 30, 1992.

Statement of Reply filed: March 17, 1992.

Statement of Claim filed: January 29, 1992.

Claimant's Submission Agreement signed on: January 20, 1992.

Memorandum in Support of Respondent's Opposition to Claimant's Statement of Reply filed: March 25, 1992.

Motion to Dismiss and For Summary Judgment filed: March 18, 1992.

Statement of Answer and Counterclaim (denoted by Respondent as Crossclaim) filed by Respondent on: February 24, 1992.

Respondent's Submission Agreement signed on: February 21, 1992.

HEARING INFORMATION

Hearing Date/Sessions: August 14, 1992/1 session.

Hearing Location: NASD, Inc./ Washington, D.C.

CASE SUMMARY

Claimant alleged on June 13, 1991, Pappas directed Gary Ganson ("Ganson"), a registered representative of Claimant, to purchase at the market price 1,000 shares of Genex Corporation ("Genex") common stock. On June 19, 1991, Pappas directed Ganson to purchase, at the market price 1,000 shares of Biospherics,

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Inc. ("Biospherics") common stock. Claimant alleged this second transaction was unsolicited. Claimant alleged Pappas failed to deliver funds to pay for these purchases and on July 10, 1991, Claimant liquidated these securities leaving his account with an unsecured debit balance.

Respondent Pappas maintained he placed an unsolicited order to purchase 1,000 shares of Biospherics through Ganson. Pappas asserted Ganson solicited the sale of the same 1,000 shares of Biospherics one day later and stated that Claimant maintained a market in the common stock of Biospherics. Pappas maintained this information was false and cost him a substantial amount of money since Biospherics tripled in value within the following four (4) business days. (Pappas alleged he inquired before the sell order was given why there would not be a commission on the sale of this stock). Pappas maintained Ganson provided unsolicited fraudulent information stating that Over-the-Counter stocks which become listed on an Exchange for trading were immediate recipients of a special consideration of margin capability and that Pappas could margin (under \$5.00 per share) his 1,000 shares of Identix, Inc. ("Identix"). Pappas alleged Ganson acknowledged this misleading information and promised to reimburse Pappas in the form of no commission charges on any subsequent trades up to a certain amount of rebate. Respondent asserted he purchased 1,000 shares of Genex (unsolicited) and was charged a commission fee then purchased 1,000 shares of Biospherics on June 19, 1991 (unsolicited). Pappas alleged the information given by Ganson regarding the Biospherics purchase was fraudulent in that Ganson stated Claimant maintained a market in Biospherics and Respondent maintained he complained to Ganson and then discovered Claimant did not maintain a market in Biospherics.

Claimant maintained in its Statement of Reply that in April 1991, it made a market in Biospherics; Ganson never advised Pappas the sale of Biospherics would be commission-free; in the one day in which Pappas held the stock the price appreciated; Pappas suffered no loss whether or not he would be charged a commission; and that he received the best price available at the time of execution. Claimant further maintained Ganson incorrectly advised Pappas regarding the Identix trade and that Ganson informed Pappas of the error and promised to make up the difference by conducting future trades without charging a commission. Claimant asserted the June 19, 1991 transaction in Biospherics was unsolicited and Claimant was no longer making a market in Biospherics and the trade was going to be commission-free; and he asserted that according to a corrected confirmation slip, Pappas was not charged a commission. Claimant asserted Pappas was not defrauded and was not entitled to any relief under the RICO statute.

In response, Pappas asserted Claimant did not maintain a market in Biospherics stock as of April 16, 1991 (which he did not discover until August 01, 1991 after receiving information concerning this situation); Claimant's Reply does not satisfy the requirement imposed by the Code

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of Arbitration Procedure - Section 34 and the Rules of Evidence as the Reply contains hearsay, conjecture and fails to set forth any facts upon which a cognisable claim could be based; the Reply failed to establish Claimant as maintaining a market or as a market maker on April 16, 1991 when a solicited sell order damaged Respondent by a misstatement of facts. Pappas further maintained Claimant's Reply suggested that a market maker and maintaining a market in a stock are one in the same and this was false information; Claimant's Reply admitted misleading information concerning the Identix trade was provided; and his application of the RICO statute in this matter is correct.

Pappas further asserted Claimant did not file the correct fees pursuant to the Code of Arbitration Procedure and that as he did not institute these proceedings and is not an Industry Claimant he is not subject to such fees. Pappas requested the arbitrator dismiss Claimant's claim and grant his Counterclaim.

Claimant maintained it paid the correct fees and asked to be advised if additional fees were required.

#### RELIEF REQUESTED

Claimant requested: actual damages in the amount of \$3,286.85, plus interest from the date of the award to the date of payment; costs; attorney's fees in the amount of \$8,612.00; and that the Counterclaim be denied.

Respondent requested in his Counterclaim: actual damages in the amount of the sum of the equivalent of 1,000 shares of BioSpherics, 1,000 shares of Identix, and 1,000 shares of Genex; plus an unspecified amount of damages under the RICO statute; dismissal of Claimant's claim with prejudice; and the granting of Respondent's Motion to Dismiss and Motion for Summary Judgment.

#### OTHER ISSUES CONSIDERED & DECIDED

1- Respondent Pappas did not appear at the hearing; however, the Arbitrator proceeded with the hearing as he was satisfied that Respondent had received proper Notice as required pursuant to Section 26 of the Code of Arbitration Procedure.

#### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrator has

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decided in full and final resolution of the issues submitted for determination as follows:

1- Respondent Pappas is liable and shall pay to Claimant Legg Mason Wood Walker, Inc. the sum of \$3,286.85, plus simple interest at the rate of twelve (12%) percent per annum from the date of the decision to the date of payment of the award;

2- Respondent Pappas' Counterclaim is denied in its entirety;

3- Respondent Pappas' Motions to Dismiss and for Summary Judgment are denied;

4- Respondent Pappas is liable and shall to pay to Claimant Legg Mason Wood Walker, Inc. the sum of \$2,153.00 to represent attorney's fees;

a- Attorney's fees are awarded in reliance on The Margin Agreement, which was admitted into evidence as Claimant's Exhibit #2 at the hearing on August 14, 1992, which provided, in pertinent part, that Claimant "shall be entitled to charge and collect from [the account] all reasonable costs (including attorneys' fees) associated with...enforcing any of your rights under this Agreement." The Margin Agreement further provided that "[t]his Agreement is a continuing agreement and shall be governed by the laws of the State of Maryland..." The case of Webster v. Peoples Loan, Savings & Deposit Bank, 160 Md. 57, 61 152 A. 815, 817 (1931), stated "that the parties to a contract have the right to agree for the payment of an attorney's fee in the event of default in payment by the promisor has long been recognized in the decisions of this court."

5- All other claims for relief are denied;

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$500.00 and \$100.00 non-refundable filing fees paid by Claimant and Respondent, respectively and the following Forum Fees are assessed.

1 session X \$300.00 = \$300.00

Forum fees Assessed Against:

1- The NASD shall retain the \$175.00 hearing session deposit previously paid by Respondent Pappas and Respondent Pappas shall pay to Claimant the sum of \$125.00 to reimburse it the hearing session deposit previously paid.

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

Arbitrator's Signature

 9/17/92  
Paul A. Yates/Public Arbitrator

Date of Decision: September 18, 1992.