

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Charles V. Dwyer

93-00270

Name of Respondent

Legg Mason Wood Walker, Inc

REPRESENTATION

For Claimant: Charles V. Dwyer ("Dwyer") was represented by William S. Shepard, Esq. of Houston, Texas.

For Respondent: Legg Mason Wood Walker, Inc. ("Legg Mason") was represented by Barbara Weaver, Esq. of Legg Mason Wood Walker, Inc., New Orleans, Louisiana.

CASE INFORMATION

Statement of Claim filed: January 26, 1993.

Claimant's Submission Agreement signed on: January 20, 1993.

Statement of Answer filed by Respondent Legg Mason on: May 3, 1993.

Respondent Legg Mason's Submission Agreement signed on: May 3, 1993 by Barbara L. Weaver, Vice President, Legg Mason Wood Walker, Inc.

HEARING INFORMATION

Pre-Hearing Conference: November 5, 1993 for One (1) session before One (1) arbitrator.

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Hearing Dates/Sessions: October 21, 1993 for One (1) session;
November 9, 1993 for Two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant Dwyer alleged that Respondent Legg Mason liquidated his account without authorization in February of 1990. Dwyer specifically alleged that:

1. In February and March of 1990, following surgery, Dwyer lapsed into a coma. While Dwyer was still in a coma, Dwyer's Legg Mason broker advised Mrs. Dwyer that the securities in his account be sold to prevent the account from being "frozen" in the event of Dwyer's death;
2. The account was liquidated at a loss in February of 1990, even though the securities were in the sole name of Charles V. Dwyer. The purchase price of the portfolio was \$38,409.12 and the securities were sold for \$9,058.05;
3. Dwyer recovered and learned that the account was liquidated. The broker took advantage of his friendship to the Dwyer family and the vulnerability of Dwyer's wife to make unwarranted and unauthorized recommendations; and
4. Dwyer at no time ratified or acquiesced to the sale of the securities.

Based upon the above allegations, Dwyer asserted claims for violation of the Securities and Exchange Act of 1934; violation of the Texas Securities Act; violation of Section 27.01 of the Texas Business and Commerce Code; violation of the Texas Deceptive Trade Practice Consumer Protection Act; common law fraud; breach of contract; breach of fiduciary duty; breach of duty of good faith and fair dealing; negligence and gross negligence; and failure to diligently supervise.

Respondent Legg Mason denied the material allegations of the Statement of Claim, alleging that:

1. The Dwyers had known their Legg Mason broker since 1976 when he had worked with Dwyer at the brokerage firm of Loeb Rhodes and Company;
2. In February of 1990, Dwyer's wife called her broker and advised him Dwyer's grave illness. The broker spoke to one of Dwyer's doctors who advised him that Dwyer's condition was critical;

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3. The broker asked Mrs. Dwyer if she needed money and indicated that the assets in the account could be liquidated when she informed him that she did not know what money they had. Mrs. Dwyer instructed that the stocks be sold and the proceeds sent to her attention. Based upon these instructions, the broker entered the orders and the checks were disbursed made payable to Charles V. Dwyer. The checks were cashed on February 20th and 23rd, 1990;

4. The broker visited Dwyer during his recovery and was told by Dwyer that he had done the right thing. Other than several brief social contacts, Dwyer had no conversations with his broker regarding his account. Legg Mason received no complaints regarding the transactions until Dwyer wrote to the firm on March 30, 1992, alleging that the trades were unauthorized; and

5. Dwyer has ratified the transactions by failing to make a timely repudiation and by retaining the benefits of the transaction.

RELIEF REQUESTED

Claimant Dwyer requested entry of an award against Respondent Legg Mason for damages in the amount of not less than \$29,351.07; punitive damages in an amount not less than \$100,000.00; reasonable attorneys' fees and costs; pre-judgment and post-judgment interest; and for such other relief that Dwyer showed himself entitled.

Respondent requested an award denying any award to the Claimant.

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.

AWARD

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

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hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby dismissed with prejudice and denied its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. All relief not specifically granted is hereby denied.

OTHER COSTS

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, Claimant Charles V. Dwyer is liable for and shall pay to Respondent Legg Mason Wood Walker, Inc. the sum of \$283.00 for the travel expenses incurred by Legg Mason to attend the hearing date of October 21, 1993 because of Claimant's failure to timely notify Legg Mason that counsel was unavailable and that a continuance would be requested.

Claimant Dwyer's request for \$500.00 for hearing costs incurred for the pre-hearing conference is hereby denied.

Claimant Charles V. Dwyer is liable for and shall pay to the NASD the postponement fee of \$750.00 incurred on October 21, 1993.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) Pre-Hearing Session with One (1) Arbitrator x \$300.00 per session = \$300.00; Three (3) hearing sessions x \$750.00 per session = \$2,250.00; Total Fees = \$2,550.00.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit previously deposited by the Claimant, Charles V. Dwyer. Claimant Charles V. Dwyer is liable for and shall pay to the NASD additional forum fees in the sum of \$1,800.00.

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

Concurring Arbitrators' Signatures

Name

Date

David G. Beerbower, Esq.
David G. Beerbower, Esq.
Public Arbitrator
Chairperson

/s/

December 14, 1993

Judith A. Swinney, Esq.
Judith A. Swinney, Esq.
Public Arbitrator

/s/

January 21, 1994

James G. Cooper
James G. Cooper
Industry Arbitrator

/s/

December 14, 1993

For NASD Use Only

Date of Service of Award: January 26, 1994