

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Francis W. McCleary

93-02394

Name of Respondents

Thomas Michael Joyce,  
Connecticut Securities  
and Legg Mason Walker, Inc.

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REPRESENTATION OF PARTIES

Claimant, Francis McCleary ("McCleary") was represented at the hearing by Linda J. Garofola, Esq. of Reynolds, Motl, Sherwood and Wright, Helena, Montana.

Respondent, Thomas Michael Joyce ("Joyce") appeared at the hearing Pro Se.

Respondent, Connecticut Securities ("Connecticut") was represented at the hearing by Thomas J. Clark, Esq. of Connecticut Securities, Hartford, Connecticut.

Respondent Legg Mason Walker, Inc. ("Legg Mason") was represented at the hearing by John R. Gilner, Esq. of Legg Mason, Baltimore, Maryland.

CASE INFORMATION

The Statement of Claim was filed on June 16, 1993. Response to Legg Mason's Motion To Dismiss filed on October 13, 1993. Claimants' Submission Agreement was signed on June 14, 1993.

Statement of Answer and Motion To Dismiss filed by Respondent Joyce on or about November 17, 1993. Respondent's Submission Agreement signed on November 16, 1993.

Statement of Answer and Motion To Dismiss filed by Respondent Connecticut Securities on October 14, 1993. Respondent's Submission Agreement signed on October 12, 1993.

Statement of Answer and Motion To Dismiss filed by Respondent Legg Mason on September 28, 1993. Respondent's Submission Agreement signed on September 23, 1993.

HEARING INFORMATION

A telephonic pre-hearing conference was held on September 26, 1994 for one (1) session.

The hearing was held on October 25, 1994 for two (2) sessions and on October 26, 1994 for two (2) sessions in Minneapolis, Minnesota for a total of four (4) hearing sessions.

CASE SUMMARY

Claimant McCleary alleged that Respondent Joyce, while employed at Connecticut and Legg Mason recommended and purchased investments which were unsuitable, engaged in unauthorized trades and churned McCleary's account. More specifically, McCleary alleged that Joyce purchased Polaris limited partnership and Alert III limited partnership and that they were not apprised of the risks in the investments.

Respondent Joyce stated in his Answer that he denies any wrongdoing. Joyce further stated that the investments were suitable for McCleary and that all purchases and sales were discussed fully.

Respondent Connecticut stated in their Answer that McCleary was fully informed of the risks of the investment and also represented to Connecticut that they had sufficient financial resources to withstand losing the entire investment. Connecticut further stated that Joyce discussed the investment in great detail with McCleary.

Respondent Legg Mason stated in their Answer that McCleary fails to state a claim against them because there is no specific wrongdoing as to Legg Mason. Legg Mason further stated that any trading done while the account was held with Legg Mason was consistent with McCleary's investment objectives.

RELIEF REQUESTED

Claimant requested actual damages in the approximate amount of \$311,500.00, prejudgment interest, punitive damages, attorney's fees, and costs.

Respondent Joyce requested that the claim be dismissed with prejudice and all costs and fees be paid for by the Claimant. Respondent Connecticut requested that the claim be dismissed. Respondent Legg Mason requested that the claim be dismissed with prejudice with all costs and fees to be paid by McCleary.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed by 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Thomas Michael Joyce shall be and hereby is liable for, and shall pay to the Claimant, damages in the amount of One Thousand Dollars (\$1000);
2. Respondent, Thomas Michael Joyce shall reimburse the Claimant the nonrefundable filing fee and the hearing session deposit which were previously deposited with the NASD by the Claimant in the sum of \$950;
3. The Respondents, Connecticut Securities and Legg Mason Walker, Inc. are not held liable and are hereby dismissed;
4. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically enumerated for herein;

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

4 hearing sessions x \$750 = \$3000 minus hearing session deposit of \$750 = \$2250 plus one prehearing conference session x \$300 = net \$2550 due to the NASD.

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$200, and shall retain the hearing session deposit in the amount of \$750 previously paid to the NASD by Claimant.

Additional Forum Fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

**By The Arbitration Panel:**

Dated:

12/13/94

s/s Arthur L. Sirkin

Arthur L. Sirkin, Esq., Presiding  
Public Arbitrator

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s/s Arlen G. Restad

Arlen G. Restad

Public Arbitrator

12/13/94

s/s Michael E. Dougherty

Michael E. Dougherty

Industry Arbitrator

Date Award Served By The NASD: 12/21/94

N.A.S.D. Disciplinary Referral

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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The undersigned panel of arbitrators would like to make the following referral to the NASD District Conduct Committee:

"After careful deliberation in the above-captioned matter, the testimony taken during the arbitration hearing indicates that Respondent Michael Joyce engaged in unauthorized trades."

**By The Arbitration Panel:**

**Dated:**

12/13/94

s/s Arthur L. Sirkin

Arthur L. Sirkin, Esq., Presiding  
Public Arbitrator

12/14/94

s/s Arlen G. Restad

Arlen G. Restad  
Public Arbitrator

12/13/94

s/s Michael E. Dougherty

Michael E. Dougherty  
Industry Arbitrator