

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Susan S. Erb

93-04199

Name of Respondents

Legg Mason Wood Walker, Inc.  
Oscar J. Leon

---

**REPRESENTATION**

For Claimant Susan S. Erb ("Claimant"): Arthur M. Schwartzstein, Attorney at Law, Washington, D.C.

For Respondent Legg Mason Wood Walker, Inc. ("LMWW"): Andrew Jay Graham, Esq. of the law firm of Kramon & Graham, Baltimore, MD

For Respondent Oscar J. Leon ("Leon"): Richard J. Solomon, Esq. of the law firm of Futrovsky & Associates, Bethesda, MD

**CASE INFORMATION**

Statement of Claim filed: October 11, 1993  
Claimant's Submission Agreement signed on: July 28, 1993

Statement of Answer filed by LMWW on: January 13, 1994  
LMWW's Submission Agreement signed on: December 23, 1994<sup>3</sup>

Statement of Answer filed by Leon on: January 17, 1994  
Leon's Submission Agreement signed on: January 14, 1994

### **HEARING INFORMATION**

**Hearing Dates/Sessions:**

October 12, 1994 - two sessions  
October 13, 1994 - two sessions  
October 24, 1994 - two sessions  
November 2, 1994 - one session

**Hearing Location:** NASD District Office, Washington, D.C.

### **CASE SUMMARY**

Claimant alleged, that among other things, Leon forged Claimant's name on LMWW checks. Claimant alleged that Leon cashed the checks for himself. Claimant alleged that Leon prepared a false port folio report to deceive Claimant as to Respondents handling of her account. Claimant alleged that Leon churned Claimant's account. Claimant alleged that Leon engaged in transactions which were unsuitable for Claimant. Claimant alleged that Leon made transactions to generate commissions, sales charges that were for his benefit and LMWW. Claimant alleged that Leon knew that she was unable to support herself through her employment and relied on her inheritance to get by. Claimant alleged that Leon knew Claimant was ill and that Claimant was relying on Leon and LMWW to properly handle her investments. Claimant alleged that LMWW had a duty to supervise Leon, including employing safeguards to keep Leon from stealing from Claimant either directly through cashing checks or indirectly by generating improper sales charges and commissions. Claimant alleged that LMWW had a duty to know Claimant and to see that her account was maintained suitably. Claimant alleged that LMWW failed to properly exercise its supervisory responsibility to detect the fraud and to alert Claimant.

Claimant alleged that Respondents employed various devices to loot Claimant's account. Claimant alleged that her account was churned, mutual funds were switched, tax-free investments were bought when the account was on margin and options were traded. Claimant asserted that a routine examination of her account should have alerted LMWW to problems in her account. Claimant alleged that Respondents have caused Claimant severe emotional trauma and that they are liable to Claimant for the damage they have caused her. Claimant alleged that Respondents are liable under the federal and state securities laws, for common law fraud, deceit, theft breach of fiduciary duty, breach of contract, negligence and negligent misrepresentation.

Respondents categorically denied all allegations of wrongdoing. Respondents denied that Leon forged Claimant's name on LMWW checks. Respondents denied that Leon prepared a false portfolio report to deceive Claimant as to Leon's handling of Claimant's account. Respondents denied that Leon made unsuitable investments for Claimant. Respondents maintained that Claimant's account was handled properly and that Respondents were not trading Claimant's account for the purposes of generating commissions and fees. Respondents maintained that Claimant did not lose the amount of money she claims was lost. Respondents maintained that they were unaware that Claimant was "ill." Respondents denied that Leon "looted" Claimant's account. Respondents maintained that at Claimant's direction, Leon requested checks drawn on her LMWW account and that LMWW provided such checks to Leon. Respondents maintained that at Claimant's direction and with her authorization, Leon endorsed the checks as Erb's agent and that the checks were properly handled. Respondents maintained that LMWW did not permit its bank to "fraudulently" endorse checks out of Claimant's account. LMWW maintained that it did not allow Claimant's checks to be given Leon and that the endorsed checks were not obvious forgeries. LMWW maintained that it properly supervised its agent Leon and Claimant's account. Respondents maintained that Claimant's account was not churned or mishandled in any way. Respondents maintained that they did not cause financial damage or severe emotional trauma to Erb. Respondents denied all allegations of fraud and maintained that there was no violations of either federal or state securities laws, that no deceit or theft occurred, that Respondents did not breach their fiduciary duty or commit breach of contract. Respondents maintained that there was no negligence, negligent misrepresentations and/or violations of RICO.

#### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$500,000.00, treble damages under RICO, \$1,000,000.00 for intentional infliction of emotional distress, \$3,000,000.00 in punitive damages plus costs, including the arbitration filing fees and forum fees. Claimant also requested attorney's fees.

Respondents requested judgment in their favor, that they be awarded costs, expenses and reasonable attorneys fees.

#### **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.

Respondent Leon knowingly decided not to appear or be represented at the hearing conducted in this matter and acknowledged that due notice of these hearings had been received. Leon sent notice through counsel that he has decided not to participate in these proceedings and that he is fully aware of these implications. Leon indicated that he would be willing to voluntarily surrender his license. (See attachment A). Claimant's counsel requested that the Panel issue an order to appear and to produce documents to Respondent Oscar Leon. The Panel signed such an order on Claimant's behalf and that order was received by Leon. Leon's counsel notified the Panel that Leon was invoking his rights under the Fifth Amendment of the United States Constitution and would not appear at the hearings. Leon chose not to produce documents as ordered.

#### **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. That Respondents Legg Mason Wood Walker, Inc. and Oscar J. Leon are jointly and severally liable to Claimant Susan S. Erb and shall pay to her the amount of \$420,000; inclusive of interest.
2. That Claimants claim for treble damages under RICO are denied.
3. Claimant's claim for punitive or exemplary damages is denied.
4. Claimant's claim for intentional infliction of emotional duress is denied.
5. That the parties shall bear their respective costs including attorneys' fees except as specifically provided for below.

#### **FORUM FEES**

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

7 sessions X \$1500 = \$10,500

Forum Fees Assessed Against: Claimant and Respondents equally. Claimant is assessed forum fee in the amount of \$5,250.00; however, Claimant is entitled to

Erb Award  
Case No. 93-04199  
Page 5

offset this amount with her hearing session deposit of \$1,500 so that the amount due from Claimant as forum fees is \$3,750. Respondents LMWW and Leon are jointly and severally assessed forum fees in the amount of \$5,250.

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

Concurring Arbitrator's Signature

Name

  
Steven R. Bralove

Public/Industry



NASD Date of Decision: December 5, 1994

Erb Award  
Case No. 93-04199  
Page 5

offset this amount with her hearing session deposit of \$1,500 so that the amount due from Claimant as forum fees is \$3,750. Respondents LMWW and Leon are jointly and severally assessed forum fees in the amount of \$5,250.

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

Concurring Arbitrator's Signature  
Name

Public/Industry

Michael Fischetti  
Michael Fischetti

Public

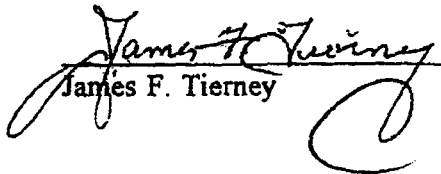
NASD Date of Decision: December 5, 1994

Erb Award  
Case No. 93-04199  
Page 5

offset this amount with her hearing session deposit of \$1,500 so that the amount due from Claimant as forum fees is \$3,750. Respondents LMWW and Leon are jointly and severally assessed forum fees in the amount of \$5,250.

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

Concurring Arbitrator's Signature  
Name

  
James F. Tierney

Public/Industry



NASD Date of Decision: December 5, 1994

ATTACHMENT A

F.W.

LAW OFFICES  
FUTROVSKY & ASSOCIATES  
SUITE 825 WEST

7315 WISCONSIN AVENUE  
BETHESDA, MARYLAND 20814

(301) 652-9300  
TELECOPIER (301) 656-3692

MARK EDWARD FUTROVSKY\*\*  
RICHARD G. SOLOMON\*\*  
REBECCA A. NITKIN\*  
JOHN M. KOTZKER\*\*

SCOTT B. GOLDSCHNID\*  
OF COUNSEL

\* MD \* DC \* VA \* PA

VIRGINIA OFFICE  
8045 LEBURG PIKE  
SUITE 750  
VIENNA, VIRGINIA 22182  
(703) 827-7786

SILVER SPRING, MD OFFICE  
8517 PINEY BRANCH ROAD  
SILVER SPRING, MARYLAND 20901  
(301) 495-3600

October 4, 1994

VIA FACSIMILE (202) 728-6952  
AND REGULAR MAIL

Shari L. Sturm, Esquire  
NASD  
NASD Financial Center  
33 Whitehall Street  
New York, NY 10004

Re: NASD Arbitration Number 93-04199  
Susan Erb v. Legg Mason Wood Walker and Oscar Leon

Dear Ms. Sturm:

Reference is made to the above captioned matter. The purpose of this letter is to inform you my client, Mr. Oscar Leon, has decided not to participate in the current proceeding set for October 12, 1994. Mr. Leon is fully aware of the implications of this decision with respect to your agency. Accordingly, Mr. Leon is quite willing to voluntarily surrender his license. If this is the desire of your agency, please contact me so that the proper arrangements can be made.

If I can be of any further assistance, please feel free to contact me.

Sincerely,



Richard G. Solomon

cc: Andy Graham, Esquire (via regular mail)  
Arthur M. Schwartzstein, Esquire (via regular mail)