

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Thomas M. Joyce

vs.

Case #

93-05039

Name of Respondent

Legg Mason Wood Walker, Inc

REPRESENTATION

For Claimant, Thomas M. Joyce ("Claimant"), appeared Igor Sikorsky, Esq., located in Rocky Hill, Connecticut.

For Respondent, Legg Mason Wood Walker, Inc. ("Respondent"), appeared William S. Rogers, Esq. of Tyler, Cooper & Alcorn, located in Hartford, Connecticut.

CASE INFORMATION

Statement of Claim was filed on December 7, 1993.

Claimant's Submission Agreement was signed on November 29, 1993

Statement of Answer and Counterclaim was filed by Respondent on March 21, 1994.

Respondent's Submission Agreement was signed on February 23, 1994.

Claimant's reply to Respondent's Counterclaim was filed on April 1, 1994.

Respondent's response to Claimant's reply to Respondent's Counterclaim was filed on November 4, 1994.

HEARING INFORMATION

Hearing Dates/Sessions: December 5, 1994 - 2 sessions

Hearing Location: NASD offices located in New York, New York.

CASE SUMMARY

Claimant alleged that he was wrongfully terminated by the Respondent in violation of public policy and the implied covenant of good faith and fair dealing because he filed a Chapter 7 bankruptcy petition. Claimant further alleged that Respondent defamed him by stating on his U-5 that he violated certain firm policies and committed other illegal acts.

Claimant alleged that in February 1990, he was offered employment as a vice president with Legg Mason Wood Walker, Inc. in his Hartford office. Claimant alleged that prior to the job offer, he met with Respondent's President, James Brinkley, whereby Claimant stated that he required honesty, integrity and loyalty if he was to be employed by Respondent. Claimant further alleged that Brinkley guaranteed that Respondent would abide by these requirements and this promise was restated in a letter from Claimant to Brinkley on February 15, 1990. Claimant alleged that Respondent understood this statement to require that Claimant could only be terminated for just cause.

Claimant alleged that by accepting Respondent's offer, he rejected offers of employment with Shearson Lehman Brothers, Merrill Lynch, PaineWebber, E.T. Andress, Investa Corp and Private Ledger. Claimant further alleged that after only one and a half years of employment, his performance was ranked in the top 10% of all of Respondent's brokers.

Claimant alleged that in October 1990, he informed Respondent's office manager Alan Moutran, that his personal real estate holdings sustained a severe loss and that he may be required to file a bankruptcy petition. Claimant also alleged that he was informed by his superiors at the firm that he could not be terminated for filing the petition according to the professional guidelines. Claimant stated that he filed a Chapter 7 petition in November of 1990 and he received a discharged of his debts on June 3, 1991. Claimant alleged that this was reported to Respondent and his NASD U-4 was amended to reflect the bankruptcy.

On September 19, 1991, Claimant stated he received a copy of the NASD U-5 form Respondent which stated that the Claimant was terminated for: "subordination; abusive; belligerent; refused to attend office meetings; absent without notice frequently for days. Failure to disclose severity of personal financial situation when hired: personal bankruptcy June 3, 1991.

Claimant alleged that as a direct result of the defamatory U-5 notice, Edward D. Jones & Co. canceled a written contract with him to become an investment representative and currently he is unable to secure an interview with any brokerage firm in the Hartford area.

Claimant also alleged that Alan Moutran repeatedly told prospective employers of Claimant that he was guilty of unauthorized trading and churning of accounts.

In its defense, Respondent admitted that Claimant submitted an application for employment dated

February 20 1990; was employed and signed an employment agreement dated February 28, 1990; and was terminated on September 11, 1991. Respondent further admitted that at the outset of his employment, Claimant's performance and relationships with customers and employees appeared to go well.

Respondent maintained that at the end of 1990 and during 1991, Claimant became belligerent and abusive of his fellow employees; ignored discussions and warnings to stop such conduct; was increasingly absent from work, without prior notice or explanations; failed and refused to attend information and training sessions required of all brokers; mishandled the execution of transactions; engaged in misconduct in recommending and executing transactions which led to customer complaints and claims involving fraud, misrepresentation, unsuitability and unauthorized transactions before the NASD in arbitration.

Respondent further maintained that Claimant violated NYSE Rules 345, 351, and 476(1)(4)(6) and (10), NASD Article III, Respondent's internal policies and his implied covenants of loyalty, good faith and fair dealing with Respondent by failing to disclose prior employment and termination for cause by PaineWebber; failing to disclose his poor and deteriorating financial condition at the time of his application.

Respondent maintained that Claimant's termination was the result of the accumulation and cumulative effect of his described conduct.

As defenses, Respondent asserted that a breach of the implied covenants of good faith and fair dealing between employer and employee creates no right of action or claim for the employee, unless the employer's conduct or reasons for the termination are also a violation of the expressed public policy of the State. Respondent asserted that Legg Mason is obligated by the regulations and rules of the SEC, NYSE and NASD to disclose fully and accurately on the U-5 the reasons and circumstances of Claimant's termination, and also to disclose that information to inquiring prospective member employers. Respondent also asserted that the statements of Legg Mason on the U-5 are privileged. Respondent asserted that Claimant's claims and projections of income loss and damages stretching out over 15 years in the future are wholly speculative and unreliable and, therefore, cannot be properly and lawfully accepted or applied in the arbitration.

Respondent Counterclaimed for all amounts it has been or will be compelled to pay to customers who claim to have been harmed by Claimant.

Claimant replied to Respondent's Counterclaim denying all allegations of wrongdoing.

Respondent responded to Claimant's Reply to Respondent's Counterclaim denying all allegations including the arguments and conclusions as to the applicable law and the interpretations offered by the Claimant.

RELIEF REQUESTED

Claimant requested \$73,852.00 in out of pocket expenses for 1992 and 1993, plus \$1,685,737 in total damages due to lost earnings. Also, Claimant requested a right to be reinstated with Respondent, or, if this is not possible due to hostile conditions, a right to front pay. Claimant further requested that the U-5 be changed to reflect the real reason for termination and compensatory damages for Claimant's emotional distress and loss of reputation due to Respondent's defamation. In addition, Claimant requested punitive damages, costs and attorney's fees as appropriate, and such other relief as justice requires.

Respondent requested attorney's fees and all costs of this arbitration as well as the McCleary Arbitration (see Counterclaim) for employment and during 1990 and 1991 which may have affected his recommendations to customers; failing to disclose the NYSE, NASD and Respondent the filing of his bankruptcy petition on November 14, 1990; and failing to provide timely, complete and consistent information on his application for employment. Additionally, they requested reimbursement, restitution, indemnity and damages for all amounts it has been or will be compelled to pay to customers who claim to have been harmed by Claimant, plus attorney's fees and all costs of this arbitration, as well as the McCleary Arbitration which is presently pending in arbitration before the NASD.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and have agreed to receive conformed copies of the Award while the original remain on file with the NASD.

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. All claims are dismissed in their entirety.
2. All counterclaims are dismissed in their entirety.

FORUM FEES

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

Non-refundable Filing Fee: \$500.00

Hearing Session Deposit: \$2,000.00 (2 hearing sessions x \$1,000.00 per session)

Crossclaim Fee: \$850.00

Administrative Costs: \$90.00

Total Fees = \$3,440.00

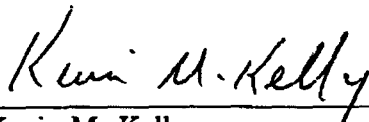
1. Claimant paid \$1,500.
2. Respondent paid \$850.00 and owes \$1,500.00 payable directly to the Claimant and \$1,090.00 payable to the NASD.

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

ARBITRATION PANEL

Marc R. Green, Esq.	-	Industry Chairperson
Kevin M. Kelly	-	Industry Panelist
Clifford J. Friedman	-	Industry Panelist

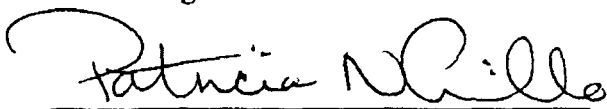
Concurring Arbitrator's Signature


Kevin M. Kelly

NASD Date of Decision: March 8, 1995

State of New York s.s.:
County of New York

On this 9th day of February, 1995, before me personally appeared Kevin M. Kelly known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



PATRICIA N. CIRILLO
Notary Public, State of New York
No. 31-4985700
Qualified in New York County
Commission Expires August 28, 1995

Crossclaim Fee: \$850.00
Administrative Costs: \$90.00
Total Fees = \$3,440.00


1. Claimant paid \$1,500.
2. Respondent paid \$850.00 and owes \$1,500.00 payable directly to the Claimant and \$1,090.00 payable to the NASD.

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

ARBITRATION PANEL

Marc R. Green, Esq.	-	Industry Chairperson
Kevin M. Kelly	-	Industry Panelist
Clifford J. Friedman	-	Industry Panelist

Concurring Arbitrator's Signature

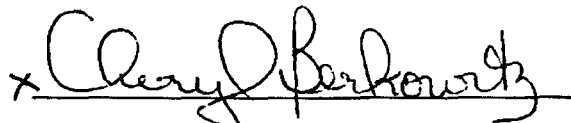


Marc R. Green, Esq.

NASD Date of Decision: March 8, 1995

State of New York s.s.:
County of New York

On this 28th day of February, 1995, before me personally appeared Marc R. Green known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



CHERYL BERKOWITZ
NOTARY PUBLIC, State of New York
No. 4575659
Qualified in Westchester County 9/6
Commission Expires December 26, 1996