

## **NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Vina B. Walker, Personal Representative of the Estate of Vina B. Legault

and

94-00843

Name of Respondent

Waddell & Reed, Inc.

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### **REPRESENTATION OF PARTIES**

Vina B. Walker, Personal Representative of the Estate of Vina B. Legault ("**Claimant**") was represented by Jeffrey J. Scott, Esq., Krys, Boyle, Golz, Reich, Freedman, Bean & Scott, P.C., Denver, Colorado.

Waddell & Reed, Inc. ("**Respondent**") was represented by William D. Nelson, Esq., Robinson, Waters, O'Dorisio & Rapson, Denver, Colorado.

### **CASE INFORMATION**

The Statement of Claim was filed on or about March 7, 1994. Amended Statement of Claim was filed on or about May 9, 1994. Submission Agreement of Claimant Vina B. Legault was signed on March 3, 1994.

Statement of Answer was filed by Respondent Waddell & Reed, Inc. on or about May 13, 1994. Amended Motion to Dismiss and Answer was dated May 24, 1994. Second Amended Statement of Answer was filed on or about November 1, 1994. Submission Agreement of Respondent Waddell & Reed, Inc. was signed on May 13, 1994 by Rodney O. McWhinney.

### **HEARING INFORMATION**

The hearing was held on February 7, 1995 for two (2) sessions and February 8, 1995 for one (1) session in Denver, Colorado for a total of three (3) sessions.

### **CASE SUMMARY**

Claimant alleged that she desired to make conservative investments, with a goal of preservation of capital and income and not risky, illiquid and high-commission products, such as the limited partnerships and other investments recommended and sold to her by Respondent. Specifically, Claimant asserted the following claims for relief: breach of securities laws; *respondeat superior*; suitability; breach of contract; manipulation and deception; breach of fiduciary duty; negligence; misrepresentation; and fraud.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that the investments made by Mrs. Legault were suitable and appropriate for her given her stated investment objectives and economic circumstances and needs. Respondent further stated that all salient features of the investments, including risks, were fully disclosed to her prior to the investments being made. Finally, Respondent stated that throughout the course of the relationship, Mrs. Legault received numerous documents, including account statements and tax reporting documents, which enables her and her accountant to monitor the status of her investments. Respondent asserted various affirmative defenses in this matter. Respondent in its Motion to Dismiss stated that the statute of limitations bars the claims asserted in this matter. Specifically, Respondent stated that the last of the purchases at issue in this matter Occurred in July, 1985.

### **RELIEF REQUESTED**

Claimant requested the panel award her the actual damages for the losses sustained in the account, plus interest, in an amount to be proved at the hearing, and punitive damages for the outrageous conduct of Respondent and its agent and employee. Claimant also requested that she be awarded her attorneys' fees and costs of this proceeding, including expert witness fees.

Respondent requested that the claims asserted against it be denied in its entirety and that it be awarded its costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

At the commencement of the hearing of this matter it was agreed between the parties that Vina B. Walker was accepted as the personal representative of the Estate of Vina B. Legault.

Respondent Waddell & Reed asserted a Motion to Dismiss pursuant to §15 of the NASD Code of Arbitration Procedure. After considering the arguments presented by the parties, the panel took the motion under advisement and requested that the parties present their respective cases. At the conclusion of the hearing, Respondent reasserted the motion.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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. The Motion to Dismiss is **granted**. The arbitrators further state that if they had not granted the Motion to Dismiss, the claims asserted in this matter would have been dismissed in their entirety.
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each prehearing conference, if any. There were three (3) sessions x \$600 = \$1,800 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$250 and shall **retain** as forum fees the hearing session deposit in the amount of \$650 previously deposited with the NASD by the Claimant Vina B. Walker, Personal Representative of the Estate of Vina B. Legault. Claimant Vina B. Walker, Personal Representative of the Estate of Vina B. Legault shall be and hereby is liable for and shall pay to the NASD the sum of \$250 and Respondent Waddell & Reed, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$900 as the balance due for forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrators Concurring:

Dated:

**/s/ James B. Eichberg**

**March 7, 1995**

James B. Eichberg  
Public Arbitrator, Presiding Chair

**/s/ Dennis Dowd**

**March 10, 1995**

Dennis Dowd  
Industry Arbitrator

**Dissenting Arbitrator:**

**/s/ John L. Worceser**

John L. Worceser

Public Arbitrator

**March 13, 1995**