

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Names of Claimants

Stanley C. and Emily Konowicz

94-04716

Name of Respondents

**Legg Mason Wood Walker, Inc
Robert Carmines**

REPRESENTATION

For Claimants Stanley C. Konowicz & Emily Konowicz (the "Konowiczes"): Russell L. Forkey, Esq., of Russell L. Forkey, P.A., Fort Lauderdale, Florida.

For Respondent/Cross-Claimant Legg Mason Wood Walker, Inc. ("Legg Mason"): Dana N. Pescosolido, Esq., of Weinberg & Green LLC, Baltimore, Maryland.

Respondent/Cross-Respondent Robert Carmines ("Carmines") acted pro se.

CASE INFORMATION

Statement of Claim filed on: November 4, 1994.

Claimants' Submission Agreement signed on: November 2, 1994.

Statement of Answer and Cross-Claim filed by Respondent/Cross-Claimant Legg Mason on: January 31, 1995.

Respondent/Cross-Claimant Legg Mason's Submission Agreement signed on: January 31, 1995, by Horace M. Lowman, Jr., Senior Vice President of Legg Mason on behalf of Legg Mason.

Respondent/Cross-Respondent Carmines did not file a Statement of Answer or sign a Submission Agreement as required by Sections 12 and 25 of the Code of Arbitration Procedure.

HEARING INFORMATION

On January 3, 1996, in Fort Lauderdale, Florida, a pre-hearing conference lasting one (1)

session was conducted via telephone conference call with an Arbitrator.

On January 23 through 25, 1996, in Fort Lauderdale, Florida, a hearing lasting five (5) sessions was conducted.

CASE SUMMARY

Claimants, the Konowicz, sued Respondents Legg Mason and Carmines for fraud and deceit, breach of fiduciary duties, negligence, breach of contract; and sued Legg Mason for negligent supervision. The security involved in this matter related to the purchase of 15,000 shares of ImmunoMedics, Inc., on margin.

Respondent/Cross-Claimant Legg Mason denied all claims set forth in the Statement of Claim. While admitting that a recommendation to buy 8,000 shares of ImmunoMedics for an investor in Claimants' financial circumstances would not be suitable, Legg Mason alleged that no such recommendation was made, as evidenced by the fact that the trade was recorded at the time as unsolicited, and as supported by evidence of Claimants' prior trading and Claimants' own written admissions. Claimants further contended that subsequent purchases on margin were unrecommended attempts by Claimant to recoup their losses.

Legg Mason also alleged that if Respondent/Cross-Respondent Carmines was negligent in the handling of the account, Claimants were contributorily and comparatively negligent and that any award should be reduced to reflect that fact.

Legg Mason cross-claimed against Carmines for any amount awarded to Claimants, alleging that its liability to Claimants was grounded on Carmines' breach of duties of care and loyalty to Legg Mason, his employer.

RELIEF REQUESTED

Claimants, the Konowicz, demanded judgment against Respondents Legg Mason and Carmines jointly and severally, for damages of \$177,603.24, interest, costs, attorneys fees, punitive damages of \$50,000.00, and other such relief as the Panel deemed appropriate.

Respondent Legg Mason denied all responsibility to Claimants and requested that in the event it is found responsible to Claimants for any sums, an award in equal amount be assessed in favor of Legg Mason and against Cross-Respondent Carmines.

OTHER ISSUES CONSIDERED & DECIDED

1. Based on the stipulations of the Parties present at the hearing and as evidenced by the Record of Proceedings, the Panel found that
 - a. Respondent Carmine received due notice of the hearing; and
 - b. the NASD, Legg Mason, and the Konowicz had made every effort to serve Carmines with this proceeding.

- c. Jurisdiction exists pursuant to Section 12 of the Code and pursuant to the Form U-4 executed by Respondent/Cross-Respondent Carmines.
2. 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 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. Respondents Legg Mason and Carmines are found liable, jointly and severally, and shall pay to Claimants, the Konowicz, the amount of \$42,063.00, inclusive of interest.
2. Cross-Respondent Carmines is also found liable and shall pay to Cross-Claimants Legg Mason the amount of \$31,507.00, inclusive of interest.
3. Claimants' requests for attorneys fees, costs, and punitive damages are denied.

OTHER COSTS

The Parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorneys fees.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,050.00 (1 pre-hearing session x \$300.00, plus 5 regular sessions x \$750.00).
2. Claimants, the Konowicz, are hereby assessed one-half the forum fees, or \$2,025.00, for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD of \$1,275.00.
3. Respondents Legg Mason and Carmines are hereby assessed one-half the forum fees, or \$2,025.00, jointly and severally, for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD of \$1,275.00.
4. The NASD shall retain the non-refundable filing fee of \$200.00 paid by Claimants and the non-refundable filing fee of \$500.00 paid by Respondent/Cross-Claimants.

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

- c. Jurisdiction exists pursuant to Section 12 of the Code and pursuant to the Form U-4 executed by Respondent/Cross-Respondent Carmines.
2. 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 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. Respondents Legg Mason and Carmines are found liable, jointly and severally, and shall pay to Claimants, the Konowiczes, the amount of \$42,063.00, inclusive of interest.
2. Cross-Respondent Carmines is also found liable and shall pay to Cross-Claimants Legg Mason the amount of \$31,507.00, inclusive of interest.
3. Claimants' requests for attorneys fees, costs, and punitive damages are denied.

OTHER COSTS

The Parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorneys fees.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,050.00 (1 pre-hearing session x \$300.00, plus 5 regular sessions x \$750.00).
2. Claimants, the Konowiczes, are hereby assessed one-half the forum fees, or \$2,025.00, for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD of \$1,275.00.
3. Respondents Legg Mason and Carmines are hereby assessed one-half the forum fees, or \$2,025.00, jointly and severally, for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD of \$1,275.00.
4. The NASD shall retain the non-refundable filing fee of \$200.00 paid by Claimants and the non-refundable filing fee of \$500.00 paid by Respondent/Cross-Claimants.

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

ARBITRATORS

Concurring Arbitrators' Signatures

/s/

Allen Kilik, Esq.
Chairperson/Public Arbitrator

/s/

Douglas Delanoy, Jr.
Panelist/Industry Arbitrator

/s/

Perry Wurst
Panelist/Public Arbitrator

Date of decision April 4, 1996

ARBITRATORS

Concurring Arbitrators' Signatures

/s/

Allen Kilik, Esq.
Chairperson/Public Arbitrator

/s/

Douglas Delanoy, Jr.
Panelist/Industry Arbitrator

/s/

Perry Wurst
Panelist/Public Arbitrator

Date of decision April 4, 1996