

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITY DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Nella Brainis

95-00144

Name of Respondents

Legg Mason Wood Walker, Inc. and  
Octave J. "Todd" Francis

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Representation

For Claimant: Nella Brainis was represented by Janet L. Moulton, Esq. of Janet Lee Moulton & Associates, located in Metairie, Louisiana.

For Respondents: Legg Mason Wood Walker, Inc. and Octave J. "Todd" Francis were represented by Thomas K. Potter, III, Esq. of Jones, Walker, Waechter, Poitevant Carrere & Denegre, located in New Orleans, Louisiana.

Case Information

Statement of Claim filed: January 10, 1994

Claimant's Submission Agreement signed on: December 30, 1994.

Statement of Answer filed on: March 30, 1995

Respondent Legg Mason's Submission Agreement executed on: February 24, 1995.

Respondent Francis' submission Agreement executed on: March 3, 1995.

Hearing Information

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: September 25, 1995 for two (2) sessions;  
September 26, 1995 for two (2) sessions.

Hearing Location: New Orleans, Louisiana

### **Case Summary**

The Claimant, Nella Brainis, alleged that Respondent Francis, motivated by a desire for excessive commissions, wrongfully induced her to embark on a long-term and rigid investment/forced savings scheme which was unsuitable to her financial condition and investment objectives. Respondent Legg Mason is alleged to have failed to perform its duties of supervision over the actions of Mr. Francis and over the Claimant's account. Specifically at issue is Ms. Brainis December 1989 investments, in 2058 units of PLM Equipment Growth Fund IV, a Financial Benefit Life Insurance Company tax deferred annuity contract and Fidelity Destiny Plan I.

The Respondents, Legg Mason Wood Walker, Inc. and Octave J. "Todd" Francis, generally denied the Claimants allegations and affirmatively plead: (1) that Claimant's action is barred by statutes of limitation or repose, prescription or peremption; (2) estoppel; (3) ratification; (4) failure to mitigate damages; and (5) generally, that Claimant's losses were caused by or contributed to by her own lack of due care and not by the actions of the Respondents.

### **Relief Requested**

Claimant Nella Brainis sought the recovery of \$19,000.00 for the decline in account equity; \$157,801.00 for the loss of profits and interest; and \$4,324.00 in excessive commissions and loads, together with interest, costs and attorneys fees.

Respondents Legg Mason Wood Walker, Inc. and Octave J. "Todd" Francis requested that all claims be denied.

### **Award**

After considering the pleadings, the stipulations of counsel, the testimony and the evidence submitted at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is dismissed with prejudice and denied in its entirety;
2. The parties shall bear their owns costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is hereby denied.

### **Forum Fees**

Pursuant to Section 43(c) of the Code of Arbitration, the following Forum Fees are assessed: Four hearing Sessions x \$750.00 per session = \$3,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and the \$750.00 hearing session deposit previously deposited by the Claimant, Nella Brainis. In addition, Claimant Nella Brainis is liable for and shall pay to the NASD the sum of \$2,250.00 as forum fees. Furthermore, The NASD shall retain the \$350.00 surcharge paid by Respondent Legg Mason Wood Walker, Inc. Fees are Payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Date

/s/ Edward J. Gay, III, Esq.  
Edward J. Gay, III, Esq.  
Public Arbitrator  
Chairperson

December 7, 1995

/s/ Clayton J. Borne, III, Esq.  
Clayton J. Borne, III, Esq.  
Public Arbitrator

December 19, 1995

/s/ Ronald M. Roberts, PhD.  
Ronald M. Roberts, PhD.  
Industry Arbitrator

December 8, 1995

For NASD Use Only

Date Served: December 19, 1995