

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of Arbitration Between

Rokade International, Inc.,

Claimant,

and

No. 96-03306

Legg Mason Wood Walker, Inc.,

Respondent.

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## **REPRESENTATION OF PARTIES**

Claimant Rokade International, Inc. ("Claimant") was represented by L. Jerome Stanley, Esq. of Baton Rouge, Louisiana.

Respondent Legg Mason Wood Walker Inc. ("Respondent") was represented by Bruce S. Kingsdorf, Esq. of Barrios, Kingsdorf & Casteix located in New Orleans, Louisiana.

## **CASE INFORMATION**

The Statement of Claim was filed on or about August 2, 1996.

Claimant's Submission Agreement was signed on July 29, 1996 by Arlene Montealegre, President of Rokade International, Inc.

The Statement of Answer was filed on or about September 24, 1996.

Respondent's Submission Agreement was signed on September 23, 1996 by Charles A. Bacigalupo, Senior Vice President of Legg Mason Wood Walker, Inc.

## **HEARING INFORMATION**

A telephonic pre-hearing conference was held on April 9, 1997 for one (1) session.

The hearing was held on: April 29, 1997 for two (2) sessions; April 30, 1997 for two (2) sessions, July 14, 1997 for two (2) sessions; and July 15, 1997 for two (2) sessions.

The hearing was held in New Orleans, Louisiana.

### CASE SUMMARY

Claimant was a Panamanian Corporation whose sole shareholder was Arlene Montealegre ("Montealegre"). Claimant alleged that Montealegre opened a securities account with Respondent and that Oscar Hernandez ("Hernandez") was the account executive assigned to the account. Claimant contended that at the time Montealegre opened the account with Respondent, she was a relatively unsophisticated investor and indicated to Hernandez that Claimant's investment objectives were income and preservation of capital. Claimant asserted that Hernandez recommended and effected a series of transactions in the account involving non-investment grade, "junk" bonds, including \$120,000 face value of F & M Distributors bonds ("F & M bonds") that were purchased on or about February 1994. Claimant maintained that Hernandez failed to disclose the non-investment grade quality of the F & M bonds, failed to disclose the risks associated with the purchase of bonds of the low credit quality of F & M bonds, and misrepresented the risks associated with a purchase of these junk bonds. Claimant alleged that subsequent to the purchase of the F & M bonds, Hernandez continuously reassured Montealegre about her purchase even to the point of telling her that the market value of the F & M bonds was actually higher than was reported on Respondent's monthly account statement. Claimant contended that F & M Distributors has filed for bankruptcy protection under the United States Bankruptcy Code. Claimant asserted that Respondent is liable for the actions of its employees, including Hernandez, under the legal theories of agent/principal, respondeat superior, and as a control person as to Hernandez.

Respondent denied all liability to Claimant in the Statement of Answer. Respondent alleged that Montealegre was a relatively sophisticated investor and that all investments in bonds for the account were directed and/or recommended by persons other than employees of Respondent, including employees of Sama Interacional ("Sama"), Montealegre's investment advisor. Respondent contended that the F & M bonds were purchased by another investment firm and transferred at the request of Sama to the Claimant's Legg Mason account. Respondent made the following affirmative defenses, including: (1) Claimant has failed to state a claim upon which relief can be granted; (2) the damages, if any, suffered by Claimant were caused by the actions of a third party for whose actions Respondent is not responsible; (3) Claimant's damages, if any, must be reduced or eliminated by the contributory or comparative negligence of its representatives; (4) Claimant's damages, if any, are barred as Claimant assumed the risk of its investment and failed to exercise due diligence in connection with its investment; (5) Claimant's damages, if any, must be reduced or eliminated as Claimant failed to mitigate its damages by not liquidating its investment in a timely and prudent matter; and (6) Claimant's claims are barred by the applicable statutes of limitations.

### **RELIEF REQUESTED**

Claimant demanded recession of the sale of the F & M bonds, return of the amount of the original investment, \$120,000, together with interest on the investment from the date of purchase until paid, and all costs of bringing this arbitration, including filing costs and attorneys' fees.

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

### **OTHER ISSUES CONSIDERED AND 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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

### **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) Respondent Legg Mason Wood Walker, Inc. is liable for and shall pay to Claimant Rokade International, Inc. compensatory damages in the amount of Thirty Six Thousand Dollars and No Cents (\$36,000.00), which sum is inclusive of interest;
- (2) Respondent Legg Mason Wood Walker, Inc. is liable for and shall pay to Claimant Rokade International, Inc. attorney's fees in the amount of Twelve Thousand Dollars and No Cents (\$12,000.00); and
- (3) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically enumerated are hereby denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing conference x \$300 = \$300 in forum fees. There were eight (8) hearing sessions x \$750 = \$6,000 in forum fees. Total forum fees = \$6,300. Pursuant

to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code") 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 § 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **refund** the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to § 10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Respondent.

Pursuant to § 10332(c) of the Code, Respondent Legg Mason Wood Walker, Inc. is liable for and shall pay all forum fees incurred in this matter which is the amount of \$6,300.00.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

Concurring Arbitrators' Signatures

\s\ Russell E. Rains  
Russell E. Rains, Esq.  
Chairperson  
Public Arbitrator

August 12, 1997  
Dated:

\s\ Ashley L. Belleau  
Ashley L. Belleau, Esq.  
Panelist  
Public Arbitrator

July 28, 1997  
Dated:

\s\ Kenneth P. Daigle  
Kenneth P. Daigle  
Panelist  
Industry Arbitrator

July 25, 1997  
Dated:

For NASD use only:

Date Award was served on the parties: August 14, 1997