

9/12/11

12/97

AWARD

NASD Regulation. Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Fred B. Richardson, III.

Claimant.

v.

No. 96-05553

Legg Mason Wood Walker, Inc.,

Respondent.

REPRESENTATION OF PARTIES

Claimant Fred B. Richardson, III ("Claimant") was represented by Earl S. Eichin, Jr., Esq. of O'Neil, Eichin, Miller, Saporito & Harris located in New Orleans, Louisiana.

Respondent Legg Mason Wood Walker, Inc. ("Respondent") was represented by Thomas K. Potter, III of Jones, Walker, Waechter, Poitevent, Carrere & Denegre located in New Orleans, Louisiana.

CASE INFORMATION

The Statement of Claim was filed on or about December 13, 1996.

Claimant's Submission Agreement was signed on December 10, 1996.

Respondent's Statement of Answer was filed on or about March 27, 1997.

Respondent did not file a properly executed Submission Agreement.

HEARING INFORMATION

The hearing was held on November 7, 1997 for two (2) sessions and December 9, 1997 for two (2) sessions.

The hearing was held in New Orleans, Louisiana.

CASE SUMMARY

Claimant's claim concerned the proprietary and suitability of Claimant's investment of over \$109,600 with Respondent during the period April 1994 through December 1995. Claimant contended that Respondent made inappropriate, unsuitable and illiquid investments contrary to Claimant's instructions to Respondent that his money was to be conservatively invested. Claimant asserted that, as a result of Respondent's wrongful conduct, the net value of his account on December 31, 1995 was only \$10.04. Claimant maintained that Respondent's acts, practices, misrepresentations, omissions, misstatements, and course of dealing and conduct constitute violations of the anti-fraud provisions of the Securities Exchange Act of 1934, the Louisiana Blue Sky Law, the Rules and Regulations of the New York Stock Exchange and the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

Respondent denied all liability to Claimant in its Statement of Answer. Respondent alleged that Claimant misrepresented his financial condition and undermined his professed investment objectives by persistently withdrawing funds from his account against Respondent's advice. Respondent contended that, in the end, Claimant forced his own account into disarray by treating it as though it were a line of credit and by making cash withdrawals of more than half the money he ever deposited. Respondent asserted various affirmative defenses, including: the Statement of Claim fails to state a cause of action; the claim is barred by statutes of limitation or repose, by prescription or preemption; the claim is barred by the principles of estoppel and ratification; Claimant failed to exercise due diligence and due care; the losses were not caused by Respondent; the claim is vague and ambiguous; and that the Claimant failed to mitigate his damages.

RELIEF REQUESTED

Claimant requested that he be awarded: (1) damages in an amount equal to the difference between the net value of his account as of December 31, 1995 and what his account should and would be today if the funds entrusted to Respondent had been properly and prudently invested; (2) the excessive commissions paid by him to Respondent; (3) margin interest; (4) interest as provided by law; (5) attorneys' fees; and (6) all costs of this proceeding, together with such other relief as the arbitrators deem just and proper.

Respondent requested that the Statement of Claim be dismissed in its entirety with prejudice, at Claimant's cost, together with such other and general relief as the panel deems just under the circumstances.

OTHER ISSUES CONSIDERED & DECIDED

Respondent did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly

executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted

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 NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

1. That Respondent Legg Mason Wood Walker, Inc. is liable for and shall pay to Claimant Fred B. Richardson, III compensatory damages in the amount of Nineteen Thousand One Hundred Twenty Three Dollars and Thirty Four Cents (\$19,123.34);
2. That other than forum fees which are specified below, the parties shall each bear their own costs, expenses, and attorneys' fees incurred in this matter; and
3. That all other claims and requests for relief not specifically awarded here are, and each of them, hereby dismissed in their entirety with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were four (4) hearing sessions x \$600 = \$2,400 in forum fees. Pursuant to §10332(b) of 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 associated with the filing of this claim in the amount of \$250 and shall retain as forum fees the hearing session deposit in the amount of \$600 previously deposited by the Claimant.

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Pursuant to §10332(c) of the Code. Respondent is liable for and shall pay forum fees in the amount of \$1,800 (total forum fees - hearing session deposit)

Pursuant to §10333 of the Code. Respondent is liable for and shall pay the member surcharge in the amount of \$350.

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

Concurring Arbitrators' Signatures:

/s/ William D. Hawkland, Esq.
William D. Hawkland, Esq.
Chairperson
Public Arbitrator

December 12, 1997
Dated:

/s/ Sherrill I. Davidson, Esq.
Sherrill I. Davidson, Esq.
Panelist
Public Arbitrator

December 12, 1997
Dated:

/s/ Carlie M. Kahn
Carlie M. Kahn
Panelist
Industry Arbitrator

December 15, 1997
Dated:

For NASD Regulation use only:

Date award served on the parties: December 15, 1997