

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Gleacher & Company Securities, Inc.  
Legg Mason Wood Walker, Inc.

Hearing Site: Buffalo, New York

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Dochter Kennedy, Esq., and Christopher Cummins, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

Respondent Gleacher & Company Securities, Inc. did not enter an appearance.

Respondent Legg Mason Wood Walker, Inc. did not enter an appearance.

**CASE INFORMATION**

Statement of Claim filed on or about: January 23, 2018.

Claimant signed the Submission Agreement: January 23, 2018.

Gleacher & Company Securities, Inc. did not submit an Answer or sign the Submission Agreement.

Legg Mason Wood Walker, Inc. did not submit an Answer or sign the Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of occurrence numbers [REDACTED], [REDACTED], and [REDACTED] from his CRD records, compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deems just and equitable.

At the close of the hearing, Claimant withdrew his request for monetary damages.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges that she has read the pleadings and other materials filed by the parties.

Respondents Legg Mason Wood Walker, Inc., and Gleacher & Company Securities, Inc. did not file with FINRA Office of Dispute Resolution properly executed Submission Agreements or Statement of Answers but are required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, are bound by the determination of the Arbitrator on all issues submitted.

Respondents Legg Mason Wood Walker, Inc., and Gleacher & Company Securities, Inc. did not appear at the evidentiary hearing. Upon review of the file and the representations made on behalf of the Claimant, the Arbitrator determined that Respondents Legg Mason Wood Walker, Inc., and Gleacher & Company Securities, Inc. have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the Code.

The Arbitrator conducted a recorded telephonic hearing on September 20, 2018 so the parties could present oral argument and evidence on Claimant [REDACTED] request for expungement.

Claimant provided the FINRA Office of Dispute Resolution with proof that he served the customers in the underlying complaints for occurrence numbers [REDACTED] and [REDACTED] with notice of his expungement request and notice of the customers' right to participate and testify at the expungement hearing. In addition, Claimant provided proof that the customer for occurrence number [REDACTED] was deceased.

Claimant provided an Affidavit stating he was unable to obtain a copy of the Settlement Agreement for occurrence number [REDACTED] from either the Member Firm or Counsel for the customer, who could not be located. Claimant testified that the firm originally charged Claimant \$12,000.00 but later, upon Claimant's request, reversed the charge to \$1,000.00 towards payment of a portion of the settlement amount. The Arbitrator determined to grant expungement based on Claimant's credible testimony where he stated he advised the customer in detail how the customer should manage the account based on her investment objectives.

Respondents Legg Mason Wood Walker, Inc., Gleacher & Company Securities, Inc., and the surviving customer did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for Claimant [REDACTED] and the settlement documents associated with occurrence number [REDACTED], considered the amount of payments made to the customer, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the customer for occurrence number [REDACTED] not opposing the request for expungement. The Arbitrator also noted that [REDACTED] did not contribute to the settlement amount.

The Arbitrator noted that Claimant [REDACTED] did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: timing of the customers' complaints in relation to the events complained of, and the customers' lack of specific examples or proof of the alleged misrepresentations by Claimant.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to occurrence numbers [REDACTED] and [REDACTED] from registration records maintained by the Central Registration Depository ("CRD"), for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

The occurrences referenced above involve the same customer. The customer alleged unsuitability and misrepresentation. The oral testimony was

to the contrary, including frequent discussions (phone and in-person) with the customer. Claimant explained to the customer that the investment income objectives required higher risk; that the customer overspent and went on margin; investments at the time of purchase appeared suitable; and that the customer held the investment for several years before and after the first complaint, which the firm denied. The customer waited 1-2 more years before filing an actual FINRA complaint which the firm settled. Claimant did not contribute directly to the the firm's settlement payment, only the portion the firm asked for him to contribute towards the settlement amount paid.

2. The Arbitrator recommends the expungement of all references to occurrence number [REDACTED] from registration records maintained by the Central Registration Depository ("CRD"), for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

The customer preferred and selected her "tech stock" investments. She held them for several years. The customer acquired several securities at a different Firm and transferred them in kind to her account supervised by Claimant. This was after the stock market dotcom "crash" in early 2000. Notwithstanding Claimant's advice, the customer maintained her positions. She selected and directed the majority of her securities. Her claims of misrepresentation and unsuitability are false given that she chose the investments and ignored Claimant's contrary advice. As Claimant moved Firms, the customer maintained her accounts and investments with Claimant. When the customer terminated her relationship with Claimant, she waited 15 months to pursue her claim.

3. Any and all claims for relief not specifically addressed herein are denied.



**ARBITRATOR**

Tracy L. Allen

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

**Arbitrator's Signature**



Tracy L. Allen  
Sole Public Arbitrator

10/30/18

Signature Date

**October 31, 2018**

Date of Service (For FINRA Office of Dispute Resolution office use only)