

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Kevin Hobbs, Claimant v. Lehman Brothers Inc., Karen J. Coviello, Richard S. Fuld, Jr., Elizabeth Liu, David Smythe, and Carlos Velasquez, Respondents

Case Number: 04-00012

Hearing Site: Los Angeles, California

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Nature of the Dispute: Associated Person v. Member, Associated Persons, and Non-Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

R. Jeffery Ward, Esq.  
Bosco, Ward, Nopar & Cicconi  
Los Angeles, California

For Respondents:

Robert S. Shwartz, Esq.  
Orrick, Herrington & Sutcliffe, LLP  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: December 31, 2003

Claimant's Uniform Submission Agreement signed: December 31, 2003

Joint Statement of Answer filed by Respondents Lehman Brothers Inc., Karen J. Coviello, Richard S. Fuld, Jr., and Carlos Velasquez: April 14, 2004

Respondent Lehman Brothers Inc.'s Uniform Submission Agreement signed: March 15, 2004

Respondent Karen J. Coviello's Uniform Submission Agreement signed: April 5, 2004

Respondent Carlos Velasquez's Uniform Submission Agreement signed: March 18, 2004

### **CASE SUMMARY**

Claimant alleged creation of unreasonable burdens, retaliation, sexual harassment, failure to mitigate intolerable conditions occurring in the workplace, and failure to accommodate a disability in violation of the California Government Code §§ 12940 et seq., the California Fair Employment and Housing Act (hereinafter "FEHA"), and the California Labor Code. Claimant also alleged wrongful termination, negligence, and intentional infliction of emotional distress.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested \$500,000.00 in compensatory damages, punitive damages of \$2,500,000.00, pre- and post-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and costs, including attorney's fees.

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

Respondents Elizabeth Liu and David Smythe did not file with NASD Dispute Resolution a properly executed submission agreement but are required to submit to arbitration pursuant to the Code are bound by the determination of the Panel on all issues submitted.

On March 3, 2004, Claimant Kevin Hobbs and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On July 4, 2004, Respondent Carlos Velasquez and his counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On August 30, 2004, Claimant dismissed his claims against Richard S. Fuld, Jr. and Karen Coviello.

On January 24, 2005, Respondent Lehman Brothers Inc. moved the Panel to Dismiss Claimant's Claim in its entirety. After due deliberation of the evidence, witnesses, and testimony presented by the parties in this matter, the Panel reserved its decision on Claimant's claim of intentional infliction of emotional distress, granted the motion as to Claimant's claim of sexual harassment, and denied the motion as to the remainder of Claimant's claims.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

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

1. Respondents Elizabeth Liu and David Smythe are dismissed without prejudice.
2. Claimant's claims against Carlos Velasquez are denied in their entirety on the grounds that Claimant submitted insufficient evidence to sustain the claims.
3. Respondent Lehman Brothers Inc. is liable to and shall pay Claimant the sum of \$78,000.00 in compensatory damages on the grounds that Claimant is a disabled individual as defined under the California Fair Employment and Housing Act ("FEHA") and Respondent Lehman Brothers Inc. failed to reasonably accommodate Claimant's disability.
4. Claimant's claims of creation of unreasonable burdens, retaliation, sexual harassment, and failure to mitigate intolerable conditions occurring in the workplace in violation of the California Government Code §§ 12940 et seq., the California Fair Employment and Housing Act (hereinafter "FEHA"), and the California Labor Code, are denied in their entirety on the grounds that Claimant submitted insufficient evidence to sustain the claims.
5. Claimant's claims of wrongful termination, negligence, and intentional infliction of emotional distress are denied in their entirety.
6. Respondent Lehman Brothers Inc. is liable to and shall pay Claimant the sum of \$3,000.00 as reimbursement for expert witness fees.
7. Respondent Lehman Brothers Inc. is liable to and shall pay Claimant the sum of \$20,000.00 in attorney's fees, pursuant to FEHA.
8. Except for paragraphs 5. and 6., the parties shall bear their respective costs, including attorney's fees.
9. This Award shall bear interest at the rate of 10% per annum on any balance that remains unpaid thirty (30) days after receipt hereof, unless a motion to vacate has been filed with a court of competent jurisdiction. If this award is the subject of a motion to vacate that is subsequently denied, this award shall bear interest at the rate of 10% per annum on any balance that remains unpaid from date of the court's order denying said motion to vacate.
10. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 500.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Lehman Brothers Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00
<b>Total Member Fees</b>	<b>= \$ 8,550.00</b>

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: December 30, 2004 1 session	
Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: July 29, 2004 1 session	
December 21, 2004 1 session	
Six (6) Hearing sessions @ \$1,200.00/session	= \$ 7,200.00
Hearings: January 24, 2005 2 sessions	
January 25, 2005 2 sessions	
January 26, 2005 2 sessions	
<b>Total Forum Fees</b>	<b>= \$10,050.00</b>

The Panel assessed the entire balance of the forum fees, in the amount of \$10,050.00, to Respondent Lehman Brothers Inc.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimant requested 18 photocopies @ \$.50: = \$ 9.00

**Fee Summary**

1. Claimant Kevin Hobbs is charged with the following fees and costs:

Filing Fee pursuant to <i>Armendariz v. Foundation Health Psychcare Services, Inc.</i> 24 Cal.4 <sup>th</sup> 83	= \$ 200.00
<u>Administrative Costs</u>	= \$ 9.00
<u>Total Fees</u>	= \$ 209.00
<u>Less payments</u>	= \$ (1,800.00)
<b>Refund Due from NASD Dispute Resolution</b>	<b>= \$ (1,591.00)</b>

2. Respondent Lehman Brothers Inc. is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Balance due for Claimant's Filing Fee pursuant to <i>Armendariz</i>	= \$ 300.00
<u>Forum Fees</u>	= \$10,050.00
<u>Total Fees</u>	= \$18,900.00
<u>Less payments</u>	= \$ (8,850.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 10,050.00</b>

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

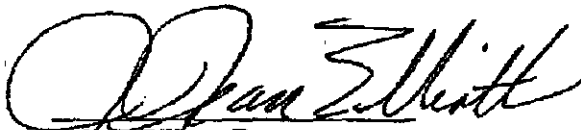
**ARBITRATION PANEL**

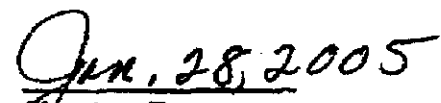
*J. Jean Elliott, Esq.*  
*Roland J. Davidson*  
*Eric M. Epstein, Esq.*

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*Public Arbitrator, Presiding Chair*  
*Public Arbitrator*  
*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

  
J. Jean Elliott, Esq.  
Chair, Public Arbitrator

  
Signature Date

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Roland J. Davidson  
Public Arbitrator

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Signature Date

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Eric M. Epstein, Esq.  
Non-Public Arbitrator

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Signature Date

  
Date of Service

ARBITRATION PANEL

*J. Jean Elliott, Esq.*  
*Roland J. Davidson*  
*Eric M. Epstein, Esq.*

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*Public Arbitrator, Presiding Chair*  
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*Non-Public Arbitrator*

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J. Jean Elliott, Esq.  
Chair, Public Arbitrator

Signature Date

*Roland J. Davidson*  
Roland J. Davidson  
Public Arbitrator

*Jan. 31, 2005*  
Signature Date

Eric M. Epstein, Esq.  
Non-Public Arbitrator

Signature Date

*January 31, 2005*  
Date of Service



ARBITRATION PANEL

<i>J. Jean Elliott, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Roland J. Davidson</i>	-	<i>Public Arbitrator</i>
<i>Eric M. Epstein, Esq.</i>	-	<i>Non-Public Arbitrator</i>

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Roland J. Davidson  
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Signature Date

  
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Eric M. Epstein, Esq.  
Non-Public Arbitrator

1/31/05  
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Signature Date

January 31, 2005  
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Date of Service