

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Monica Flanagan

92-02082

Name of Respondent

Kidder, Peabody & Co., Incorporated

REPRESENTATION

For Claimant: Joseph F. Keenan, Esq. of Bochat & Keenan, P.C.

For Respondent: Robert A.W. Boraks, Esq. of Boraks & Jamnback.

CASE INFORMATION

Statement of Claim filed: June 19, 1992.

Claimant's Submission Agreement signed on: June 19, 1992.

Statement of Answer filed by Respondent, Kidder Peabody & Co., Inc. October 1, 1992.

Respondent, Kidder Peabody & Co., Inc.'s Submission Agreement signed on: October 1, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: November 2, 1993 - Two Sessions
November 3, 1993 - Two Sessions

Hearing Location: NASD Offices - New York, New York

CASE SUMMARY

Claimant alleges that she was hired by Melvin Mullin at Respondent, Kidder Peabody & Co. Inc. ("Kidder") to work at Kidder's zero coupon treasury desk. Claimant alleges that she worked as a trader for Kidder and that her performance was favorable and that she received a promotion. Claimant alleges that despite her favorable performance, she was not compensated at the same level as her male colleagues.

Claimant alleges that one of the accounts she had handled, the G-Z account, was transferred to another Kidder trader. Claimant alleges that at this time, this account had a year to date gross profit of approximately \$695,000.00. Claimant alleges that after the account was transferred, it suffered substantial losses and that the new trader blamed the losses on her. Claimant alleges that an investigation by Kidder concluded that she did not mismark the positions in the G-Z account.

Claimant alleges that despite the favorable finding, she was advised that she was being transferred to the Treasury Bill trading desk, which was a substantial demotion for her. Claimant alleges that when she questioned the demotion, she was terminated and advised to immediately leave the office. Claimant alleges that Kidder noted on her U-5 termination notice that she voluntarily resigned from Kidder. Claimant alleges that Kidder advised third parties that she had been fired for misconduct and made other defamatory statements concerning her employment.

Respondent maintains that when the Claimant was moved to the zero-coupons section, she was assigned the responsibility of trading Refco zero-coupon bonds. Respondent asserts that because a small market exists for these illiquid bonds, Claimant's primary duty was to make a market for the bonds.

Respondent maintains that after Claimant assumed her duties, the sales force at Kidder began complaining that they could not sell the bonds at the value at which Claimant was making the market. Respondent maintains that the Claimant was not receptive to those concerns, and was indignant and hostile. Respondent maintains that there was very little volume in the Refco bonds and assigned another trader to the Refco desk. Respondent maintains that the Refco marks had been overstated by approximately \$700,000 to \$800,000 and that an audit revealed that Claimant's marks had been over-aggressive.

Respondent asserts that they decided that Claimant could no longer trade zero-coupon bonds, and informed the Claimant that she was being laterally transferred to the Treasury Bills trading desk. Respondent maintains that Claimant became upset and after spending two days out of the office, met with Melvin Mullin who informed her that the move was in her best interest and denied that she was the

subject of any unfair or discriminatory treatment. Respondents maintain that when Claimant was informed that the decision was irrevocable, she left the building and never returned to work.

RELIEF REQUESTED

Claimant requested the amount of \$169,500.00 for wrongful termination, \$250,000.00 for employment discrimination and \$250,000.00 for defamation and tortious interference with business relations. Claimant also requested punitive damages, in an unspecified amount, interest, costs and reasonable attorneys fees.

Respondent requested that the claim be dismissed in its entirety with all costs assessed against the Claimant. Respondent also requested that the request for punitive damages and attorneys fees should be denied.

OTHER ISSUES CONSIDERED & 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 originals remain on file with the NASD.

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) The Statement of Claim is hereby dismissed in its entirety. The claim for punitive damages is dismissed in its entirety.
- 2) Each party shall bear their respective costs of this action, including attorneys fees.

FORUM FEES

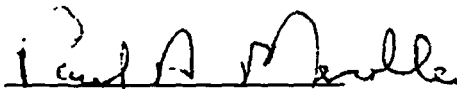
Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

\$500.00	Non-refundable filing fee
\$4,000.00	Hearing session fees (4 sessions x \$1,000.00)

- 1) Total forum fees in the amount of \$4,500.00 are hereby assessed equally between Claimant and Respondent.
- 2) Therefore, Claimant is assessed the amount of \$2,250.00. Claimant is entitled to offset this amount with the \$1,500.00 previously deposited with the NASD. Claimant is directed to pay the balance of \$750.00 to the NASD, Inc.
- 3) Respondent is hereby assessed the amount of \$2,250.00 and is directed to pay this amount to the NASD, Inc.

Concurring Arbitrator's Signature
Name

Industry Chairperson


Paul A. Merolla, Esq.

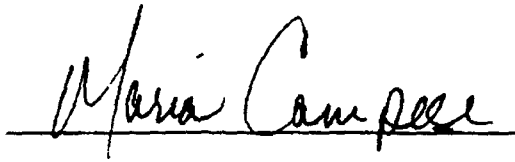
Date of Decision: December 6, 1993

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STATE OF NEW YORK
COUNTY OF

S.S.:

On this 2nd day of December 1993, before me personally appeared Paul A. Merolla known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

A handwritten signature in cursive script, reading "Maria Campese", written over a horizontal line.

MARIA A. CAMPESE
Notary Public, State of New York
No. 52-4985360
Qualified in Suffolk County
Commission Expires April 16, 1994


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- 3) Respondent is hereby assessed the amount of \$2,250.00 and is directed to pay this amount to the NASD, Inc.

Concurring Arbitrator's Signature
Name

Industry Arbitrator


James J. Noone

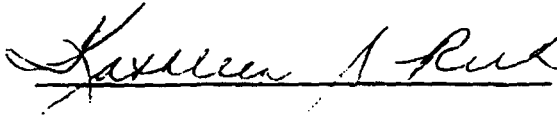
Date of Decision: December 6, 1993

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STATE OF NEW YORK
COUNTY OF

S.S.:

On this 20 day of Nov, 1993, before me personally appeared James J. Noone to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

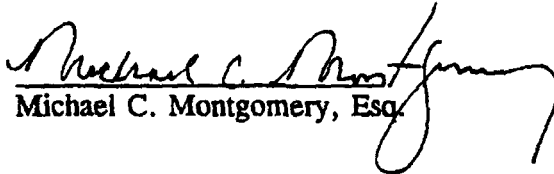
A handwritten signature in cursive script, appearing to read "Kathleen S. Ruh", is written over a horizontal line.

**KATHLEEN S. RUH
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES
JAN. 16 1996**

- 1) Total forum fees in the amount of \$4,500.00 are hereby assessed equally between Claimant and Respondent.
- 2) Therefore, Claimant is assessed the amount of \$2,250.00. Claimant is entitled to offset this amount with the \$1,500.00 previously deposited with the NASD. Claimant is directed to pay the balance of \$750.00 to the NASD, Inc.
- 3) Respondent is hereby assessed the amount of \$2,250.00 and is directed to pay this amount to the NASD, Inc.

Concurring Arbitrator's Signature
Name

Industry Arbitrator


Michael C. Montgomery, Esq.

Date of Decision: December 6, 1993

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STATE OF NEW YORK
COUNTY OF

S.S.:

On this 2nd day of December, 1993, before me personally appeared Michael C. Montgomery to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Maria Campese

MARIA A. CAMPESE
Notary Public, State of New York
No. 62-4865360
Qualified in Suffolk County 94
Commission Expires April 16, 1994