

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Elizabeth Sobol

vs

Case No.
92-04152

Name of Respondent

Kidder, Peabody & Co., Incorporated

REPRESENTATION

For Claimant Elizabeth Sobol ("Sobol") appeared Jeffrey L. Liddle, Esq., of the law offices of Liddle & Robinson located in New York, New York.

For Respondent Kidder, Peabody & Co., Incorporated ("Kidder Peabody") appeared Mark S. Dichter, Esq., of the law offices of Morgan, Lewis & Bockius located in Philadelphia, Pennsylvania.

CASE INFORMATION

Sobol's Statement of Claim was filed on December 9, 1992.
Sobol's Amended Statement of Claim was filed on September 23, 1994.
Sobol's Submission Agreement was signed on November 3, 1992.

Kidder Peabody's Statement of Answer was filed on February 5, 1993.
Kidder Peabody's Submission Agreement was signed on February 22, 1993.

HEARING INFORMATION

Pre-Hearing Conferences:	May 20, 1994	Two Sessions
	June 9, 1994	Two Sessions
	June 23, 1994	One Session
	February 9, 1995	One Session - Full Panel
Hearing Dates/Sessions:	October 24, 1994	One Session
	October 31, 1994	Two Sessions
	November 1, 1994	One Session
	November 2, 1994	Two Sessions
	November 7, 1994	One Session
	January 19, 1995	One Session

January 24, 1995	Two Sessions
January 25, 1995	Two Sessions
January 26, 1995	Two Sessions
April 13, 1995	Two Sessions
June 6, 1995	Two Sessions
July 10, 1995	Two Sessions
July 11, 1995	Two Sessions
December 6, 1995	Two Sessions
December 7, 1995	Two Sessions
December 19, 1995	Two Sessions
January 29, 1996	Two Sessions
January 30, 1996	One Session
February 1, 1996	Two Sessions
February 2, 1996	Two Sessions
February 13, 1996	One Session
March 21, 1996	Three Sessions
March 25, 1996	Two Sessions
April 29, 1996	One Session
May 17, 1996	Two Sessions
May 23, 1996	One Session
September 16, 1996	Two Sessions
September 30, 1996	Two Sessions
March 5, 1997	Three Sessions
March 6, 1997	Two Sessions
March 7, 1997	Two Sessions
April 15, 1997	One Session
May 27, 1997	One Session
March 3, 1998	One Session
April 27, 1998	One Session
May 27, 1998	Two Sessions

The pre-hearing conferences, on May 20, 1994 and June 9, 1994, were conducted at the offices of NASD Regulation, Inc. located in New York, New York. The hearings, on January 29 and 30, 1996, March 21, 1996, September 16 and 30, 1996, and May 27, 1997, were conducted at the offices of Lord, Abbett & Co. located in New York, New York. The hearing, on May 23, 1996, was conducted at the Marriott Financial Center Hotel located in New York, New York. The remaining hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Sobol alleged that Kidder Peabody discriminated against her because of her sex and her age. Sobol further alleged that Kidder Peabody paid her less than males who performed jobs involving equal levels of effort, skill and responsibility, which caused her to resign from Kidder

Peabody, in April 1991, after almost ten years of service. Sobol asserted that during her employment with Kidder Peabody, she was made a partner, promoted from a managing director to co-head of the Utility Finance Department and, finally, headed the Utility Finance Department. Sobol alleged that, throughout her employment, she brought in substantial revenues for Kidder Peabody and was told that her compensation would equal 10% to 15% of the revenues she generated.

Sobol contended that she participated in the Merchant Banking Investments Partnerships, but was granted only a minimum amount of participation, while males were offered between two and four times more units. Sobol alleged that she was given smaller interests in Kidder Peabody's stock purchase plan, while males were given more interests and received all redistributions of options. Further, Sobol alleged that some incentive plans were not even offered to her. Sobol contended that Kidder Peabody knew of the disparity between male and female pay and willfully maintained it, but that she was not aware of this disparity until April, 1991. Sobol alleged that Kidder Peabody reduced her responsibilities, undermined her as head of the Utilities Finance Department, and forced her to resign. Sobol asserted that Michael Carpenter, a superior, told her that it was necessary to hire a male co-head for the department because "business was dominated by males and was very male oriented." Sobol further asserted that Scott Newquist, her immediate supervisor, thwarted many of her business decisions and would not allow her to serve on the operation or compensation committees because she was a "gossiper", "had no vision for the future", "seemed to feel too god-damned entitled", and that he wanted to "bring in new blood" and wanted "all grey hair out of Kidder Peabody." Sobol alleged that she informed senior management of the negative and hostile actions against her, but nothing was done. Sobol further alleged that Kidder Peabody made her working conditions intolerable and reduced, and threatened to reduce, her job duties forcing her to resign. Sobol asserted that Kidder Peabody's actions violated Title VII of the Civil Rights Act of 1964 and New York City Age Discrimination in Employment Act.

Kidder Peabody maintained that Sobol voluntarily resigned from its employ on April 9, 1991, and that she was not discriminated against due to age or sex. Kidder Peabody denied that any derogatory remarks, in reference to age or sex, were made by Messrs. Carpenter or Newquist. Kidder Peabody contended that, in 1990, Sobol was the fourth highest paid of the ten managing directors. Kidder Peabody maintained that Sobol refused the consulting job offered to her after her resignation. Kidder Peabody further maintained that there is no evidence of paying comparable males more compensation than Sobol. Kidder Peabody contended that Sobol's management skills were lacking, although she performed satisfactorily as an investment banker. Kidder Peabody asserted that Sobol and Mr. Newquist had differences of opinion on management, but that these differences were not reasonable enough for her to resign or cause intolerable working conditions. Kidder Peabody maintained that Mr. Newquist determined that the hiring of a co-head would achieve better management and administration, while allowing Sobol to pursue her strengths in business development and financing areas.

Kidder Peabody argued that Sobol should have addressed her claim of uneven pay while on the job to mitigate her damages. Kidder Peabody also argued that reorganization resulting

in loss of supervisory responsibilities, without loss of pay or title, does not constitute a constructive discharge.

RELIEF REQUESTED

Sobol requested in excess of \$5 million for the damages detailed below:

- (a) Back pay for the years 1989, 1990, and 1991 in an amount equal to the differential between her total compensation and that of similarly situated males;
- (b) An order directing reinstatement or as an alternate to reinstatement, front pay reflecting future earnings which she has lost as a result of Kidder Peabody's disruption of her career;
- (c) Punitive damages;
- (d) An order enjoining Kidder Peabody from engaging in such unlawful employment practices;
- (e) The value of her retirement, medical and other benefits lost as a result of her constructive discharge;
- (f) Attorneys' fees;
- (g) Liquidated damages in an amount equal to 25% of the differential between the compensation paid to her and the compensation paid to similarly-situated males;
- (h) Interest; and
- (i) Such other and further relief as the panel deems appropriate.

Kidder Peabody requested that the Statement of Claim be dismissed with prejudice.

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 original remains on file with the NASD.

The panel granted the parties' requests, postponing the hearings that were scheduled for October 31, 1996, February 5, 1997, May 19, 1997, and August 18, 1997, and waived the postponement fees.

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. Sobol's claims are denied in their entirety.
- 2. All other requests for relief are denied in their entirety.

FORUM FEES

Pursuant to Rule 10205(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$250.00 non-refundable filing fee deposited by Sobol and have assessed the following Forum Fees equally between the parties:

5 Pre-hearing conferences x \$300.00	=	\$ 1,500.00
1 Pre-hearing conference (with panel) x \$1,000.00	=	\$ 1,000.00
62 Hearing sessions x \$1,000.00	=	\$62,000.00
 Total Forum Fees	=	 \$64,500.00
 Hearing Session Deposit - Kidder Peabody	=	 (\$ 7,500.00)
Hearing Session Deposit - Sobol	=	(\$ 6,600.00)
 Balance Due NASD Regulation, Inc.	=	 \$50,400.00

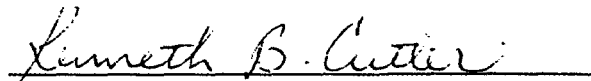
1. Sobol is assessed and shall pay NASD Regulation the remaining balance of \$25,650.00 in forum fees.
2. Kidder Peabody is assessed and shall pay NASD Regulation the remaining balance of \$24,750.00 in forum fees.
3. Sobol is hereby assessed and shall pay NASD Regulation \$3,800.00, representing the postponement fees for the hearings that were scheduled for January 8, 1996, March 5, 1996, June 2, and 6, 1997, and half of the fee for the postponement of the October 25, 1994 and March 31, 1997 hearings. Sobol previously deposited \$2,000.00 with NASD Regulation and shall remit the remaining balance of \$1,800.00.
4. Kidder Peabody is hereby assessed and shall pay NASD Regulation \$2,800.00, representing the postponement fees for the hearings that were scheduled for January 31, 1995, December 19, 1997, and half of the fees for the postponement of the October 25, 1994 and March 31, 1997 hearings. Kidder Peabody previously deposited \$1,000.00 with NASD Regulation, and shall remit the remaining balance of \$1,800.00.
5. Sobol is also assessed \$1,160.00 for award and tape duplication costs. Sobol previously paid these fees.
6. Kidder Peabody is also assessed \$200.00 for award and tape duplication costs. Kidder Peabody previously paid these fees.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

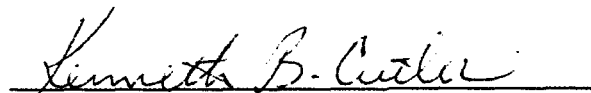
Kenneth B. Cutler, Esq.	-	Industry Chairperson
Jerome H. Levy	-	Industry Arbitrator
James R. Madan	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE


Kenneth B. Cutler, Esq.
Chairperson - Industry Arbitrator

Date of decision: July 7, 1998

I, **Kenneth B. Cutler, Esq.**, 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.


Kenneth B. Cutler, Esq.

ARBITRATION PANEL

Kenneth B. Cutler, Esq.	-	Industry Chairperson
Jerome H. Levy	-	Industry Arbitrator
James R. Madan	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



Jerome H. Levy
Industry Arbitrator

Date of decision: July 7, 1998

I, **Jerome H. Levy**, 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.



Jerome H. Levy

ARBITRATION PANEL

Kenneth B. Cutler, Esq.	-	Industry Chairperson
Jerome H. Levy	-	Industry Arbitrator
James R. Madan	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



James R. Madan
Industry Arbitrator

Date of decision: July 7, 1998

I, **James R. Madan**, 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.



James R. Madan