

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Linda E. LaPrade

vs.

Case No.  
93-04030

Name of Respondent

Kidder, Peabody & Co., Incorporated

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**REPRESENTATION**

For Claimant Linda E. LaPrade ("Claimant") appeared Jeffrey L. Liddle, Esq. of the firm Liddle & Robinson, located in New York, New York.

For Respondent Kidder, Peabody & Co., Incorporated ("Respondent") appeared Andrew J. Schaffran, Esq. of the firm Morgan Lewis & Bockius, located in New York, New York.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on September 30, 1993.  
Claimant's Submission Agreement was signed on August 30, 1993.

Respondent's Statement of Answer was filed on November 29, 1993.  
Respondent's Submission Agreement was signed on December 31, 1993.

**HEARING INFORMATION**

Pre-Hearing Conferences:	November 23, 1994	-	1 session
	November 30, 1994	-	1 session
	March 8, 1995	-	1 session
	May 5, 1995	-	1 session
	March 21, 1996	-	1 session
	June 27, 1996	-	1 session
	September 10, 1997	-	1 session
Hearing Dates/Sessions:	May 1, 1995	-	2 sessions
	May 17, 1995	-	2 sessions
	May 18, 1995	-	2 sessions
	May 22, 1995	-	2 sessions
	May 25, 1995	-	2 sessions

June 21, 1995	-	2 sessions
November 20, 1996	-	1 session
December 10, 1996	-	2 sessions
December 11, 1996	-	2 sessions
February 10, 1996	-	2 sessions
February 11, 1996	-	2 sessions
February 14, 1996	-	2 sessions
April 9, 1997	-	2 sessions
April 10, 1997	-	2 sessions
April 11, 1997	-	2 sessions
May 13, 1997	-	2 sessions
May 28, 1997	-	2 sessions
May 29, 1997	-	2 sessions
May 30, 1997	-	2 sessions
August 1, 1997	-	2 sessions
September 5, 1997	-	3 sessions
November 5, 1997	-	1 session
November 11, 1997	-	1 session
November 14, 1997	-	2 sessions
November 17, 1997	-	2 sessions
November 18, 1997	-	1 session
November 19, 1997	-	1 session
November 21, 1997	-	2 sessions
December 1, 1997	-	2 sessions
January 20, 1998	-	1 session
January 21, 1998	-	1 session
February 3, 1998	-	1 session
February 6, 1998	-	2 sessions
March 24, 1998	-	1 session
January 21, 1999	-	1 session
January 26, 1999	-	1 session
January 27, 1999	-	2 sessions
February 10, 1999	-	1 session
May 14, 1999	-	2 sessions

The pre-hearing conferences were conducted telephonically. The December 11, 1996 hearings were conducted at the Midday Club, located in New York, New York. The January 21, 1998, January 21, 1999 and January 27, 1999 hearings were conducted at the offices of NASD, Inc., located in New York, New York. All other hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

#### **CASE SUMMARY**

Claimant alleges that she was hired by Respondent in January, 1989 as an Assistant Vice-

President and the Manager of the New Issue Agency Syndicate. Claimant alleges that, at the time of her hire, Respondent promised her that her bonus would constitute the largest component of her compensation, and several times the amount of her base salary if she succeeded in increasing Respondent's market share in new issue Agency debt securities. Claimant alleges that, in July, 1989, she was promoted to Vice-President, Product Manager-Agency Bond Trading. Claimant alleges that she performed her job with excellence, including successfully increasing Respondent's allotment of new Agency issues. Claimant alleges that, although she performed her duties well, her supervisors demanded more. Claimant alleges that her supervisors knew that, in order for her to achieve additional allotments commensurate with their demands, she would be required to inflate pre-sale order indications to the Fiscal Agents, and that they directed her to inflate those indications. Claimant further alleges that her supervisors were well aware of the securities industry practice of inflating pre-sale order indications, and that her supervisors wanted to "level the playing field" between Respondent and other firms. Claimant alleges that her supervisors threatened her job if she did not comply with their direction. Claimant states that, although she initially resisted her supervisor's instructions, she eventually caved to their pressures.

Claimant alleges that, during the summer of 1991, the Securities and Exchange Commission ("SEC") launched an investigation into securities firms' operations with respect to new issues of Agency securities, resulting in Respondent's internal investigation. Claimant alleges that, as a result of these investigations, Respondent discriminated against her when it scapegoated her for inflating pre-sale order indications, despite the fact that (1) her male counterparts at the firm had engaged in the same conduct, and (2) she had informed Respondent's in-house lawyers that her male superiors threatened to terminate her if she did not inflate pre-sale order indications. She alleges that Respondent wrongly and discriminatorily forced her to resign, singled her out, and put her in a false light in its communications with the SEC and the Fiscal Agents, placing inappropriate and damaging information on her Form U-5. Claimant further alleges that Respondent wrongfully discriminated against her by paying her less than males whose jobs involved comparable skills, effort, and responsibilities.

Respondent contends that Claimant's discrimination claims are without merit. Respondent also contends that all employment decisions affecting Claimant were made for legitimate business reasons. Respondent states that Claimant was suspended with pay on September 20, 1991 because Respondent wanted Claimant to focus her full energies on providing her cooperation and information to the firm's legal, compliance, and audit personnel as quickly as possible so that it could (1) correct the false information it had given to the SEC in August, 1991 in reliance upon the false information that Claimant had provided its legal and compliance personnel in connection with the SEC's inquiry at the time, and (2) respond truthfully to inquiries from several fiscal agents. Respondent also states that Claimant was suspended without pay on October 9, 1991 because, notwithstanding multiple requests for her immediate cooperation and information so that it could respond timely to inquiries from the SEC and several fiscal agents, Claimant had refused to cooperate and had not answered even a single question or provided any

information for 20 days. Respondent contends that finally, Claimant was "permitted to resign" because on October 11, 1991, her counsel proposed to the firm that Claimant would finally provide her cooperation and information, but only if the firm agreed that she would be "permitted to resign". Respondent also contends that by this time, Claimant had not only refused to cooperate in the investigation for 20 days, during which it was racing to meet deadlines for responding to inquiries from the SEC and several fiscal agents, she had deliberately lied to the firm's legal, compliance, and audit personnel as well as senior management in connection with an inquiry from FNMA, and she had recommended orally and in writing that the firm give a response to the FNMA inquiry that she knew was false.

Respondent argues that Claimant was not paid less than any male employee who performed equal work on a job requiring equal skill, effort, and responsibility. Respondent states that Claimant had a unique position which did not exist before or after her employment with the firm. Respondent states that Claimant's work was not equal to the work performed by the agency traders and did not require equal skill, effort, and responsibility. Respondent also states that Claimant's principal function was the coordination of the primary distribution of new issue agency securities, while the principal function of the agency traders was trading in the secondary market. Respondent argues that Claimant's work was not equal to the work performed by the corporate syndicate manager, and did not require equal skill, effort, and responsibility. Respondent states that the work of the corporate syndicate manager included pricing corporate debt securities, something Claimant never did at the firm. Respondent also argues that a corporate syndicate manager's work also included pricing corporate debt securities and understanding the credit worthiness of more than 500 companies with a wide spectrum of credit ratings, including BB and lower, while Claimant dealt with only five fiscal agents, all of whom had an implied rating of AAA. In addition, Respondent states that the corporate syndicate manager was in a different division than Claimant (Investment Banking versus Fixed Income), and compensation for the two positions was determined by different managers based on different standards.

Respondent contends that Claimant's defamation claims are also without merit. Respondent also contends that all of the statements on Claimant's Form U-5 and DRP-5 and in the firm's letters and reports to the SEC and various fiscal agents were true, and is an absolute defense to defamation claims. Respondent further contends that Claimant's defamation claims should also be dismissed because Claimant did not carry her burden of proving that these statements were made with malice or that they resulted in actual harm to her. Moreover, Respondents states that under New York law, the statements to the SEC and on the Form U-5 and DRP-5 are protected by an absolute privilege, regardless of truth or falsity, and regardless of malice or harm because they were made in quasi-judicial proceedings and were material and pertinent to the questions involved. Respondent argues that even if only a qualified privilege were applied, the qualified privilege would shield it from liability, regardless of truth or falsity, regardless of harm, because the statements were made in furtherance of the firm's regulatory disclosure of obligations to the NASD and NYSE (with respect to the Form U-5 and DRP-5) and in response to inquiries from the SEC and the fiscal agents.

### **RELIEF REQUESTED**

Claimant requested an award of approximately \$1,147,000.00 in compensatory damages under the federal Equal Pay Act ("FEPA") and the New York State Equal Pay Act ("NYEPA") in an amount equal to the differential between her total compensation and that of similarly-situated males from 1989-1991; liquidated damages under FEPA in an amount equal to her back pay award; liquidated damages under NYEPA in an amount equal to 25% of her back pay award; back pay, front pay, and liquidated damages in an amount equal to her back pay award under Title VII of the Civil Rights Act of 1964 ("Title VII"); back pay, front pay, costs and interest under the New York Executive Law; her attorneys' fees, costs and interest under FEPA, NYEPA, and Title VII; damages for defamation, including false light defamation; the reformation of her Form U-5 to eliminate the DRP-5; and, such other and further relief as the arbitrators may deem appropriate.

Respondent requested an award in its favor dismissing the Statement of Claim, including costs and reasonable attorneys' fees.

### **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 NASD Regulation, Inc.

The parties made numerous requests for adjournment of hearings dates, individually and jointly, and the panel waived the fees. Claimant is assessed \$5.00 in copying costs which has been paid.

### **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 arbitrators have reviewed and understand the statutory and other requirements for the claims of discrimination, and arguments by Claimant and Respondent with respect to all statutory claims raised by Claimant, including but not necessarily limited to, Title VII of the Civil Rights of 1964 ("Title VII"), the New York State Executive Law Section 296, the Federal Equal Pay Act, and the New York State Labor Law Section 194. The arbitrators find that the totality of the evidence does not support a finding for Claimant under any of the statutory claims of discrimination, and therefore all claims under these or related statutes are dismissed in their entirety.
2. Having determined that other relief is deemed appropriate, the arbitrators make the following rulings:

- a. The arbitrators determined that the language on Claimant's current Form U-5 and DRP-5 is not consistent with the evidence presented during the hearings, and order Respondent to amend Section 12 of the U-5 by replacing the current language after "Provide an Explanation" with the following: "During the course of an inquiry by firm personnel, Ms. LaPrade offered to provide her cooperation and information if the firm agreed to permit her to resign, and the firm agreed."
  - b. The arbitrators determined that the asterisk should be removed from item 14 of the U-5 and the attached DRP-5 should be expunged from the record.
  - c. The arbitrators determined that the Respondent is hereby liable and shall pay Claimant \$65,000.00 inclusive of interest.
3. All other claims not specifically addressed above are denied in their entirety, including defamation and fraud.
  4. Each party shall be responsible for its own attorneys' fees and other costs related to this arbitration.

#### **FORUM FEES**

Pursuant to Rule 10205(c) of the *Code*, the arbitrators have determined that NASD Regulation, Inc. will retain the \$250.00 non-refundable filing fee paid by Claimant and have assessed all Forum Fees to Respondent less 12% to be paid by Claimant:

6 pre-hearing conferences x \$300.00	=	\$ 1,800.00
1 pre-hearing conference (with full panel) x \$1,000.00	=	\$ 1,000.00
67 hearing sessions x \$1,000.00	=	\$67,000.00
<b>Total Forum Fees</b>	<b>=</b>	<b>\$69,800.00</b>

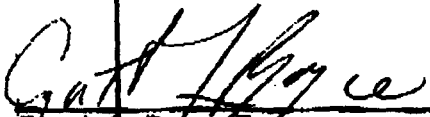
Claimant is liable and shall pay NASD Regulation, Inc. the sum of \$8,376.00, representing 12% percent of the forum fees assessed. Claimant previously deposited \$1,600.00 with NASD Regulation and, therefore, is liable for and shall remit the balance of \$6,776.00 to NASD Regulation, Inc.

Respondent is liable and shall pay NASD Regulation, Inc. the sum of \$61,424.00, representing 88% percent of the forum fees assessed. Respondent previously deposited \$10,600.00 with NASD Regulation and, therefore, is liable for and shall remit the balance of \$50,824.00 to NASD Regulation, Inc.

NASD Regulation, Inc. Office of Dispute Resolution  
Arbitration No. 93-04030  
Award 7 of 7

**CONCURRING ARBITRATOR'S SIGNATURE**

I 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.

  
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Cynthia L. Boyce, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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William H. Malloy, Jr., Esq.  
Public Arbitrator

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Signature Date

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Fred Shingel  
Industry Arbitrator

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Signature Date

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October 8, 1999  
Date of Service (For NASD Office use only)

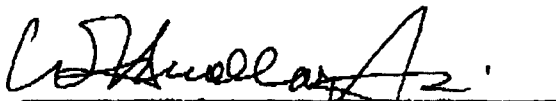
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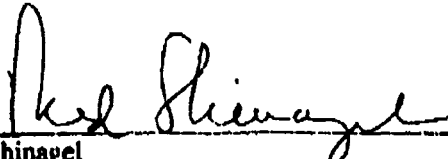
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