

NASD REGULATION, INC. AWARD

NASD REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Victoria L. Holmes

95-02084

Name of Respondents

S.G. Warburg & Co.
Stephen Berthold Feid

REPRESENTATION

For Claimant, Victoria L. Holmes ("Claimant") appeared Clinton W. Calhoun, III, Esq. of the law firm Bircetti & Calhoun located in White Plains, New York.

For Respondents, S.G. Warburg & Co. ("Warburg") and Stephen Berthold Feid ("Feid"), appeared Mary A. Gambardella, Esq. of the law firm Epstein Becker & Green located in Stamford, Connecticut.

CASE INFORMATION

Statement of Claim filed: May 1, 1995

Claimant's Submission Agreement signed on: April 26, 1995

Respondents' Joint Statement of Answer filed on: June 5, 1995

Respondent Feid's Submission Agreement signed on: June 7, 1995

Respondent Warburg did not execute a Submission Agreement as required by Rule 10314(b) of the Code of Arbitration Procedure

Respondents' Warburg and Feid's Counter Claim filed: September 13, 1996

Claimant's Response to Counter Claim filed on: September 30, 1996

HEARING INFORMATION

Pre-Hearing Conference:

March 15, 1996

One Session

June 3, 1996

One Session

Hearing Dates/Sessions:	October 14, 1996	Two Sessions
	November 14, 1996	Two Sessions
	November 19, 1996	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc., located in New York, New York.

CASE SUMMARY

Claimant alleged that she was an employee of Warburg from August 3, 1992, to April 28, 1994, and was initially hired as an analyst. Claimant further alleged that from August 3, 1992, until October, 1993 she was supervised by Feid. Claimant asserted Feid directed loud, abusive and profane language at her in the presence of her co-workers; however, she never saw Feid engage in such behavior toward her male colleagues. Claimant contended that Feid's behavior continued up until he left the company in October 1993. Claimant further contended that she complained to Warburg about Feid's behavior but they did nothing about it.

Claimant alleged that she was told by Feid and Warburg's recruiter, Jay Goldstein, ("Goldstein") that she would receive a guaranteed minimum bonus of \$25,000 as part of her compensation package. Claimant alleged she relied on this promise in her acceptance of employment and was told by Feid and Goldstein that it was Warburg's policy not to write the guaranteed minimum bonus provision into the contract. Claimant further alleged that in November 1992, she told Feid she was concerned that she was not being compensated as well as her male colleagues in sales. Claimant asserted that Feid told her not to worry as she would be getting a substantial bonus; however, on April 29, 1993, she was told she would not receive a bonus. Claimant asserted that her male colleagues had their bonus promises written into their contracts and that they did receive their bonuses. Claimant contended that her job performance merited a bonus.

Claimant alleged that after six months as a research analyst, without warning, she was placed in sales. Claimant contended that she was not aware of any male colleagues that were treated this way. Claimant also contended that although her work in sales was satisfactory, she received far less compensation for her sales work than her male colleagues. Claimant maintained that on August 16, 1993, she filed a complaint with the Equal Employment Opportunity Commission ("E.E.O.C.") based on the allegations previously stated.

Claimant alleged that in April 1994, she received a generally favorable evaluation. Claimant alleged that due to a difficult pregnancy she applied to go on disability leave commencing May 1994. Claimant further alleged that on April 28, 1994, the day before the bonuses were to be announced, she was asked for her resignation. Claimant contended that she had no forewarning of the request that she leave the company. Claimant contended that she was offered a severance package that would have kept her on the payroll for two months provided she sign a release, releasing Warburg from all claims including Claimant's E.E.O.C. claim. Claimant asserted that she did not accept the severance package and was removed from Warburg's payroll after two months without receiving a bonus or disability leave.

Respondents maintained that in July 1992 Warburg offered Claimant a position as a Convertible Analyst. Respondents further maintained that the offer letter provided that Claimant would be "eligible" to participate in the "discretionary bonus plan". Respondents further maintained that Claimant was at no time guaranteed any bonus by Warburg or Goldstein. Respondents contended that bonuses, guaranteed or discretionary, were offered totally irrespective of gender. Respondents also contended that the offer letter did not create a contract of employment for any specified duration and that Claimant was an "employee-at-will."

Respondents maintained that Claimant started working at Warburg in August of 1992 under the supervision of Feid. Respondents further maintained that Claimant was the only Convertible Analyst in the department and that everyone else in Claimant's department held sales positions. Respondents contended that Claimant's work as an analyst was initially good, but later became unsatisfactory. Respondents asserted that if Feid was profane or loud with Claimant it was because of her inadequate performance and was in no way related to her gender.

Respondents contended that Claimant had expressed an interest in sales and that she was transferred to sales in February of 1993 to help place her in a job for which she would be better suited. Respondents contended that Claimant's salary was comparable to those of her male colleagues in sales. Respondents maintained that Claimant's performance in sales was unsatisfactory. Respondents alleged that Claimant was terminated on April 28, 1994 because of poor sales production. Respondents maintained that a male sales person was also terminated on April 28, 1994 because of poor sales production. Respondents also maintained that Claimant's termination was not motivated by her request for pregnancy leave or her E.E.O.C. complaint.

Respondents alleged in their Counter-Claim and Offset that Claimant was presented with a severance package dated April 28, 1994, that provide for the continuation of her salary and certain benefits through June 30, 1994, on the express condition that Claimant sign a release and waiver. Respondents alleged that Stephanie Flack ("Flack"), Warburg's Director of Human Resources met with Claimant and explained the terms and conditions of the severance package to her. Respondents further alleged that they issued a total of \$29,454.06 in payments to Claimant pursuant to the severance package. Respondents maintained that Claimant received and retained these payments without ever signing the release and waiver.

In her Answer to the Counter-Claim Claimant stated that after her resignation, she did receive funds through electronic bank transfers from Warburg; however, she was never informed that these funds constituted severance payments. Claimant maintained she never gave Warburg any reason to believe she would execute the severance agreement.

In addition, Claimant maintained that she was owed money by Warburg for accumulated leave and maternity leave.

RELIEF REQUESTED

Claimant requested:

1. Not less than \$2,684,098.00 for compensation due from Respondents;
2. Punitive damages in an amount sufficient to punish the Respondents for their misconduct;
3. Costs, interest and attorney's fees;
4. Such other relief as the arbitration panel deems appropriate.
5. Respondents' Counterclaim be denied in its entirety.

Respondents requested that Claimant's claims be dismissed in their entirety and that an award be entered in their favor, together with their costs and attorneys' fees. Respondents, in their Counterclaim, requested that Claimant be ordered to return the severance payments made to her by Warburg and that in the event any money is awarded to Claimant that the amount awarded be offset by severance payments received and retained by Claimant.

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.

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. All claims asserted by Claimant, Victoria L. Holmes, against Respondents S.G. Warburg & Co. and Stephen Berthold Feid, are dismissed in their entirety.
2. Respondent S.G. Warburg's Counter Claim is granted to the extent of \$29,454.06 without interest.
3. All other relief requests are denied.

FORUM FEES

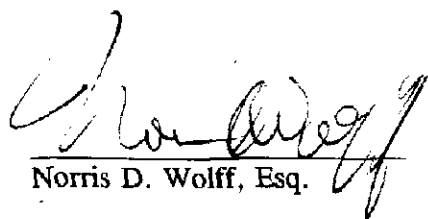
Pursuant to Section 10332 of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

Pre-Hearing Conference Fees:	\$ 600.00	(2 Sessions x \$ 300)
Hearing Session Fees:	\$ 9,000.00	(6 sessions x \$1,500)
less Claimant's deposit	\$(1,000.00)	
less Respondent's deposit	\$(600.00)	
Total Forum Fees Due	\$ 8,000.00	

Claimant, Victoria L. Holmes, is assessed the sum of \$8,000.00 representing the total forum fees due. Claimant, Victoria L. Holmes, is liable and shall pay to NASD Regulation, Inc., the sum of \$8,000.00.

Fees are payable to the NASD, Regulation, Inc.

ARBITRATORS' SIGNATURES

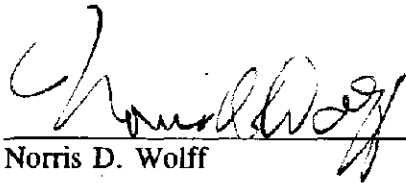

Norris D. Wolff, Esq.

Samuel H. Freeman, Esq.

James H. Madan

Date of Decision: March 31, 1997

I, **Norris D. Wolff, Esq.**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.


Norris D. Wolff

I, **Samuel H. Freeman, Esq.**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

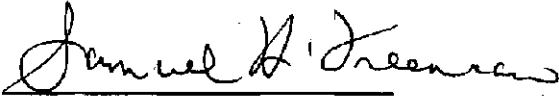
Samuel H. Freeman, Esq.

I, **James H. Madan**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

James H. Madan

ARBITRATORS' SIGNATURES

Norris D. Wolff, Esq.



Samuel H. Freeman, Esq.

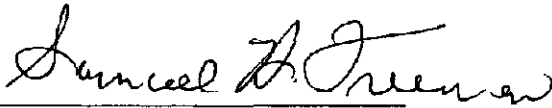
James H. Madan

Date of Decision: March 31, 1997

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Norris D. Wolff

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Samuel H. Freeman, Esq.

I, **James H. Madan**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

James H. Madan

ARBITRATORS' SIGNATURES

Norris D. Wolff, Esq.

Samuel H. Freeman, Esq.

A handwritten signature in cursive script, appearing to read "James R. Madan", written over a horizontal line.

James R. Madan

Date of Decision: March 31, 1997

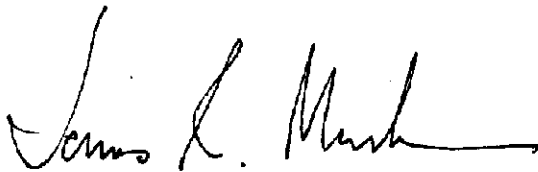
I, **Norris D. Wolff, Esq.**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

Norris D. Wolff

I, **Samuel H. Freeman, Esq.**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

Samuel H. Freeman, Esq.

I, **James R. Madan**, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rules, that this is my decision in the above captioned matter.

A handwritten signature in black ink, appearing to read "James R. Madan", written over a horizontal line.

James R. Madan