

NASD REGULATION, INC. AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Lise Burkard

Case No.  
95-03639

vs.

Name of Respondents

PaineWebber, Inc.  
Donough McDonough  
Michael Crooks  
John Succo

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**REPRESENTATION**

For Claimant Lise Burkard ("Claimant") appeared John D. Rapoport, Esq., a sole practitioner with offices located in White Plains, New York.

For Respondents PaineWebber, Inc. ("PaineWebber"), Donough McDonough ("McDonough"), Michael Crooks ("Crooks"), and John Succo ("Succo"), collectively referred to as "Respondents", appeared Frederic L. Lieberman, Esq., of the firm Jackson, Lewis, Schnitzler & Krupman located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed on: June 30, 1995.

Claimant's Submission Agreement signed on: June 08, 1995.

Respondents filed a Joint Statement of Answer on: October 27, 1995.

Respondents filed an Amended Joint Statement of Answer on: November 06, 1995.

Respondent PaineWebber's Submission Agreement signed on: October 26, 1995.

Respondent McDonough's Submission Agreement signed on: October 27, 1995.

Respondent Crooks' Submission Agreement signed on: October 30, 1995.

Respondent Succo's Submission Agreement signed on: October 27, 1995.

**HEARING INFORMATION**

Pre-Hearing Conference:	January 16, 1997	One Session
Hearing Dates/Sessions:	August 14, 1997	Two Sessions
	August 15, 1997	Two Sessions

November 18, 1997	Two Sessions
November 19, 1997	Two Sessions
December 15, 1997	One Session
December 16, 1997	Two Sessions

The pre-hearing conference was held telephonically. The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

#### CASE SUMMARY

Claimant alleged that during her employment with PaineWebber she was subjected to a pattern of conduct by Respondents in violation of Title VII of the Civil Rights Act of 1964, New York Human Rights Law, and New York City Charter and administrative code concerning sexual discrimination and harassment. Claimant also alleged that she was compensated inequitably compared to the males in similar positions and was denied promotions, increased compensation, increased bonuses and access to more lucrative accounts because of her sex. Claimant further alleged that she had to perform administrative and secretarial tasks that men in her position were not required to perform. Claimant contended that PaineWebber paid Bob Wagner and Steven McCormick, two men in comparable positions to Claimant, more than three times the salary that PaineWebber paid Claimant. Claimant also contended that PaineWebber paid a secretary \$7,000.00 more than it paid Claimant.

Claimant asserted that in February 1995, she spoke to Annie Staudt of Human Resources about her concerns of sexual harassment and discrimination. Claimant alleged that on the advice of Ms. Staudt, Claimant spoke to Respondent McDonough who angrily told her that she was lying and that she should look for another job. Claimant also alleged that throughout her employment, the atmosphere was both hostile and offensive to women, that she informed Respondent PaineWebber, that the work environment had caused her significant distress and created an unpleasant work situation, and that Respondent PaineWebber ignored its obligation to provide a working environment free from harassment and discrimination. Claimant also maintained that Respondents terminated her employment because she filed the discrimination and harassment claim.

Respondents denied the allegations of wrongdoing and denied liability. Respondents maintained that Claimant's position was that of a sales assistant, and therefore, Claimant cannot compare herself to the traders and salespersons who worked in her group. Respondents also maintained that Steven McCormick had more than eight years experience and that Bob Wagner had over twenty-five years experience, and therefore, for Claimant, who had less than two years experience, to demand the same rate of pay is ridiculous. Respondents further maintained that they terminate Claimant due to the restructuring of PaineWebber after it acquired Kidder Peabody. Respondents stated that Claimant was an employee-at-will and could be terminated at anytime with or without notice and cause.

Respondents maintained that when Claimant raised her concerns in regards to sexual harassment and discrimination prompt action was taken to end any inappropriate conduct or language in her work area. Respondents further maintained that Claimant does not allege that she was the subject of any unwelcome sexual advances, and that Claimant's allegations as a matter of law are insufficient to support a claim of

sexual discrimination or harassment. Respondents also maintained that when Claimant complained of the language used on the floor and the circulation of a nude photograph, PaineWebber investigated the incidents and took steps to ensure that it did not happen again. Respondents asserted that it took all *required and relevant actions under the law in response to Claimant's complaints*. Respondents further asserted that when Claimant contacted Ms. Staudt's, the matter was looked into and the staff in Claimant's area was told that such behavior, if it occurred, would not be tolerated.

#### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$5,000,000.00, together with the costs and disbursements of this action, counsel fees and all other and further relief that the panel deems appropriate.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety with prejudice, award Respondents reasonable attorneys' fees, assess arbitration costs against Claimant, grant Respondents and all other relief that the Panel deems just and proper.

#### **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. Claimant's claims are hereby dismissed in their entirety.
2. Each party is responsible for its attorneys' fees and costs of this action.
3. Respondent PaineWebber is responsible for all forum fees and shall reimburse to Claimant the \$1,500.00 deposit which Claimant made.
4. All other requests for relief are hereby denied.

#### **FORUM FEES**

Pursuant to Section 10332 of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$500.00 non-refundable filing fee deposited by Claimant and the \$500.00 Member Surcharge deposited by Respondent and have assessed the following Forum Fees:

1 Pre-hearing conference x \$300.00	=	\$ 300.00
11 Hearing Sessions x \$1,000.00	=	\$11,000.00
Total Forum Fees	=	\$11,300.00

Hearing Session Deposit = (\$ 1,500.00)

Balance Due NASD Regulation, Inc. = \$ 9,800.00

1. Respondent PaineWebber is hereby liable and shall pay to NASD Regulation, Inc. the sum of \$9,800.00 representing the balance due of the total forum fees assessed.
2. Respondent PaineWebber is also assessed \$1,000.00 for the postponement of the April 21, 1997 hearings. This fee has been paid.
3. Claimant is assessed \$15.00 in administrative costs. This fee has been paid.

Fees are payable to NASD Regulation, Inc.

**ARBITRATORS' SIGNATURES**

I, Cynthia L. Boyce, 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.

  
\_\_\_\_\_  
Cynthia L. Boyce, Esq.  
Public Chairperson

I, James Newton Nash, 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.

\_\_\_\_\_  
James Newton Nash, Esq.  
Public Panelist

I, Walter A. Kapuscinski, 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.

\_\_\_\_\_  
Walter A. Kapuscinski  
Industry Panelist

Date of Decision: February 17, 1998

ARBITRATORS' SIGNATURES

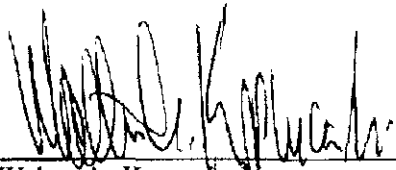
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Public Chairperson

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Public Panelist

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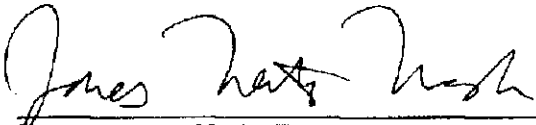
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Cynthia L. Boyce, Esq.  
Public Chairperson

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James Newton Nash, Esq.  
Public Panelist

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