

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Michael Henry

96-01783

Name of Respondents

PaineWebber, Inc.  
James M. Skyrn

**REPRESENTATION**

For Claimant Michael Henry ("Claimant") appeared William J. Rold, Esq. and Peggy Brady, Esq., of Silverstein Langer Lipner & Newburgh, located in New York City, New York.

For Respondent PaineWebber, Inc. ("PaineWebber") and Respondent James M. Skyrn ("Skyrn") appeared James R. Williams, Esq. Mary Smith of Jackson Lewis Schnitzler & Krupman, located in New York City, New York.

**CASE INFORMATION**

The Statement of Claim was filed on April 23, 1996.

Amended Statement of Claim, February 21, 1997.

Claimant's Submission Agreement was signed on April 22, 1996.

A Joint Statement of Answer was filed by Respondents' on July 9, 1996.

Respondent PaineWebber, Inc.'s Submission Agreement was signed on August 20, 1996.

Respondent James M. Skyrn's Submission Agreement was signed on November 21, 1996.

**HEARING INFORMATION**

Hearing Dates/Sessions:	March 03, 1997	Two Sessions
	March 04, 1997	Two Sessions
	March 05, 1997	Two Sessions
	March 06, 1997	Two Sessions
	March 07, 1997	Two Sessions
	April 07, 1997	Two Sessions
	April 08, 1997	Three Sessions
	April 28, 1997	Two Sessions

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

### CASE SUMMARY

Claimant alleged that Respondent PaineWebber, Inc. engaged in unlawful termination, discrimination, defamation, retaliation for whistleblowing, and intentional infliction of emotional distress. Claimant stated that Respondent James M. Skyrn was the former Senior Vice President and Manager of the Municipal Bond Department for PaineWebber. Claimant alleged that ostensibly he reported to Harry Waltman, but in practical terms he reported to Skyrn. Claimant alleged that he was unlawfully terminated on August 25, 1994.

Claimant alleged that Skyrn wanted him to approve bonds that were not consistent with the rules of the SEC. Claimant alleged that when he refused Skyrn began a campaign of harassment and retaliation against him involving both his professional and personal life, which eventually resulted in Claimant going on Short Term Disability, on April 20, 1994, for stress and depression. Claimant alleged that these remarks were made maliciously and with the intent to defame him and inflict emotional distress. Claimant stated that in August his return to work was authorized by his doctor with the condition that he did not return to work under Skyrn. Claimant stated that he attempted to transfer to another division, as per the instructions of his doctor, to no avail. Claimant alleged that Skyrn interfered with his attempts to transfer. Claimant alleged that prior to his August 31, 1994 expiration of disability he was attempting to return to PaineWebber, with the above accommodation, when Skyrn terminated his employment on August 22, 1994 due to job abandonment.

Respondents' denied each and every allegation set forth in the Statement of Claim and offered the following affirmative defenses: 1) the Statement of Claim fails in whole or in part, to state a claim upon which relief can be granted or for which damages may be awarded; 2) the employment decisions of which Claimant complains were based on reasonable factors other than disability; 3) upon information and belief, Claimant has failed to exercise reasonable efforts to mitigate his alleged damages; 4) the Statement of Claim fails to state a cause of action for the defamation because Claimant has failed to set forth the particular words of which he complains; 5) the Statement of Claim fails to state a cause of action for defamation because Claimant has failed to describe the time, place and manner of the alleged defamation; 6) the Statement of Claim fails to state a cause of action for defamation because any alleged statement made about Claimant's disability, if made at all, are true; 7) the Statement of Claim fails to state a cause of action for defamation because of the alleged statements, if made at all, were privileged and were made without malice; and 8) the Statement of Claim fails to state a cause of action because Claimant has neither been damaged nor suffered any injury from the alleged defamatory statements and failed to allege damages with specificity.

### RELIEF REQUESTED

Claimant requested \$2,181,370.35 in damages, broken down as follows and attorneys' fees and cost of \$158,591.26:

Salary Loss	\$ 198,592.11
Bonus Loss	\$ 282,500.00
Benefit Loss	\$ 78,398.96
Other Damages	\$ 25,837.99
Emotional Distress	\$ 750,000.00
Punitive Damages	\$ 500,000.00
Interest on Back Pay and Bonus	\$ 46,613.79

Front Pay	\$ 300,000.00
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Total Damages	\$2,181,370.35
Attorneys' Fees & Cost	\$ 158,591.26

Claimant also requested reinstatement, compensatory damages, reasonable attorney fees and cost, and other such relief as the panel deems appropriate. Claimant requested expungement of references to "Job Abandonment" from PaineWebber's Personnel records.

Respondents' requested that the Statement of Claim be dismissed in its entirety with prejudice, each request for relief by Claimant be denied, reasonable attorney fees and cost, arbitration costs assessed against Claimant, and other such relief that the panel deems appropriate.

#### **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.

Claimant requested leave to amend the Statement of Claim. The arbitrators considered and decided the Motion granting Claimant Michael Henry permission to amend the Statement of Claim.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, a majority of the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent PaineWebber, Inc. is hereby liable and shall pay to Claimant Michael Henry the amount of \$214,000.00 broken down as follows:

Compensatory Damages	\$160,000.00
Attorney's Fees	\$ 54,000.00
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Total Damages	\$214,000.00
- 2) Respondent PaineWebber, Inc. is hereby liable and shall pay Claimant Michael Henry 7% post judgement interest, on the above stated amount, from the date Respondent receives the award until full payment of the award is made.
- 3) Respondent PaineWebber, Inc. is liable for the above stated attorney's fees pursuant to Statutory Law 42 USC paragraph 12117.
- 4) Respondent PaineWebber, Inc. is directed by this panel to expunge from Claimant Michael Henry's personnel file and amend Claimant's Form U-5 deleting any reference to "job abandonment".

**FORUM FEES**

Pursuant to Rule 10332 of the NASD Regulation, Inc. Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. will retain the \$500.00 non-refundable filing fee previously paid by the Claimant and have assessed the following Forum Fees:

17 Hearing Sessions x \$1,000.00	=	\$17,000.00
Hearing Session Deposit	=	(\$ 1,000.00)
Total Forum Fees	=	\$16,000.00

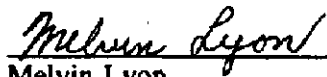
A majority of the arbitrators have determined the following:

- 1) Respondent PaineWebber, Inc. shall pay 100% of the total forum fees assessed. Therefore, PaineWebber, Inc. is hereby liable and shall pay to NASD Regulation, Inc. the amount of \$16,000.00.
- 2) Respondent PaineWebber, Inc. shall pay Claimant \$1,000.00 as reimbursement of the hearing session deposit previously paid to NASD Regulation, Inc., therefore, PaineWebber, Inc. is hereby liable and shall pay Claimant the amount of \$1,000.00.

Fees are payable to the National Association of Securities Dealers, Inc.

**ARBITRATORS' SIGNATURES**

I, **Melvin Lyon**, 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.

  
\_\_\_\_\_  
Melvin Lyon  
Public Chairperson

Date of Decision September 18, 1997

I, **Steven Weinberger, 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.

\_\_\_\_\_  
Steven Weinberger, Esq.  
Industry Panelist

**DISSENTING ARBITRATOR'S SIGNATURE**

I, **Anthony P. Connolly**, 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.

\_\_\_\_\_  
Anthony P. Connolly  
Public Panelist

Date of Decision: September 12, 1997

**ARBITRATORS' SIGNATURES**

I, **Melvin Lyon**, 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.

\_\_\_\_\_  
**Melvin Lyon**  
Public Chairperson

I, **Steven Weinberger, 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.

  
\_\_\_\_\_  
**Steven Weinberger, Esq.**  
Industry Panelist

  
Date of Decision September 18, 1997

**DISSENTING ARBITRATOR'S SIGNATURE**

I, **Anthony P. Connolly**, 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.

\_\_\_\_\_  
**Anthony P. Connolly**  
Public Panelist

**ARBITRATORS' SIGNATURES**

I, **Melvin Lyon**, 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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**Melvin Lyon**  
Public Chairperson

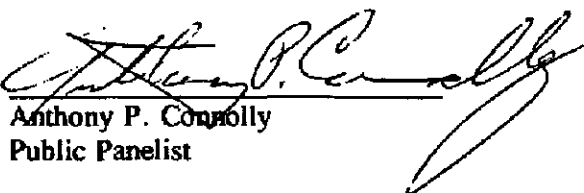
I, **Steven Weinberger, Esq.**, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

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**Steven Weinberger, Esq.**  
Industry Panelist

**DISSENTING ARBITRATOR'S SIGNATURE**

I, **Anthony P. Connolly**, 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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**Anthony P. Connolly**  
Public Panelist

Date of Decision September 18, 1997