

NASD AWARD

NASD REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Christian Schaub

96-03393

Name of Respondent

PaineWebber, Inc.

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**REPRESENTATION**

For Claimant, Christian Schaub ("Claimant"), appeared Walter M. Phillips, Esq. of the law firm Hoyle, Morris & Kerr located in Philadelphia, Pennsylvania.

For Respondent, PaineWebber, Inc. ("Respondent"), appeared James Williams, Esq. and Mary Smith, Esq. of the law firm Jackson, Lewis, located in New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on August 29, 1996.

Claimant's Submission Agreement was signed on July 24, 1996.

A Statement of Answer was filed by Respondent on October 18, 1996.

Respondent's Submission Agreement was signed on October 26, 1996.

**HEARING INFORMATION**

Hearing dates/sessions:	March 17, 1997	-	Two Sessions
	March 18, 1997	-	Two Sessions
	March 19, 1997	-	One Session

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

**CASE SUMMARY**

Claimant alleged that he is a Resident of Switzerland and that Respondent is a brokerage firm incorporated in Delaware. Claimant further alleged that he was hired by Kidder Peabody in 1978 and in 1990 he was promoted to branch manager of its Zurich, Switzerland office. Claimant also alleged that, in November 1994, Kidder Peabody merged with the Respondent and, pursuant to a written agreement dated November 30, 1994 (the "Agreement"), Claimant was retained by the Respondent as its Managing

Director of the Zurich office. Claimant asserted that, pursuant to the Agreement, Respondent agreed to extend all benefits to him that were available to similarly situated employees based in Zurich and that he would be "given credit for his years of service with Kidder Peabody for determining his eligibility to participate in all benefit plans." Claimant further asserted that, while he was employed at Kidder Peabody, he was entitled to severance pay amounting to two weeks pay for each year he was employed. Claimant also asserted that, in a memorandum from a Mr. Bertier dated December 16, 1994, he was advised that the benefits he enjoyed as an employee of Kidder Peabody would continue to be covered by PaineWebber and that his years of employment with Kidder Peabody would be fully recognized by the Respondent. Claimant contended that, in December of 1995, he was again advised in writing that he would continue to be employed by PaineWebber with his employee benefits unchanged. Claimant further contended that, in January 1996, he received a memorandum from Mike McFadden ("McFadden"), Director of Equities for PaineWebber International, advising him that his base salary for 1996 would be 160,000 Swiss francs. Claimant also contended that, on March 18, 1996, he was told by McFadden that he was being terminated effective June 30, 1996. Claimant maintained that no reason was given for the termination. Claimant further maintained that his average total compensation for 1993 through 1995 was 406,667 Swiss francs (\$338,889.00). Claimant also maintained that based on his 18 years of continuous service with Kidder Peabody and PaineWebber he was entitled to 281,413 Swiss francs (\$234,511.00). Claimant alleged that he was given no severance pay. Claimant further alleged that Respondent violated the Federal Age Discrimination in Employment Act ("ADEA") because, despite the fact he was performing his duties in a highly competent and satisfactory manner, he was replaced by a substantially younger person.

Respondent maintained that the Claimant was never employed by PaineWebber Incorporated but rather by PaineWebber International, Inc. and in 1995, PaineWebber International became PaineWebber International (U.K.) Ltd. Respondent further maintained that, during the course of his employment with PaineWebber, Claimant had no contractual or other entitlement to severance pay. Respondent also maintained that, neither PaineWebber International, Inc. nor PaineWebber International (U.K.) Ltd., had severance programs for their employees in Zurich or any other European localities. Respondent contended that, neither his employment agreement of November 30, 1994 employing him as Managing Director in Zurich, nor the subsequent December 15, 1995 Employment Agreement with PaineWebber International (U.K.) Ltd., provided for any severance packages. Respondent further contended that, if Claimant is entitled to severance pay based on his status as a former employee of Kidder Peabody, Claimant would be eligible only for the severance provided by his particular PaineWebber unit. Respondent also contended that, when it purchased Kidder Peabody in 1994, it agreed to maintain the Kidder Peabody severance program for one year and after one year employees would only be entitled to the severance program available to employees in their respective PaineWebber unit. Respondent alleged that Claimant, at the time of his termination, had been employed by Respondent for over a year and therefore, since PaineWebber International (U.K.) Ltd. did not have a severance program, the Respondent is not entitled to severance. Respondent further alleged that, because Claimant is a non-citizen employed outside the United States, he is not entitled to protection under the ADEA. Respondent also alleged that Claimant's employment was terminated for the legitimate nondiscriminatory reason of poor job performance and Claimant's duties were assumed by two current employees of the Respondent, one over the age of 40 and one under the age of 40.

Respondent maintained that Claimant's claim should fail because: It does not state a claim upon which relief can be granted; Claimant had no contractual entitlement to an award of severance; and all actions taken by Respondent in dismissing Claimant were taken in good faith and based upon legitimate, non-discriminatory business reasons.

### RELIEF REQUESTED

Claimant requested he be awarded: Back pay; reinstatement or front pay in lieu thereof; liquidated damages; attorneys' fees; costs; and pre-judgment interest or, in the alternative, severance pay in the amount of 281,413 Swiss francs (\$234,511.00) plus interest, attorneys' fees and costs.

Respondent requested: The statement of claim be dismissed in its entirety; costs and reasonable attorneys fees; costs of the arbitration; and such other and further relief as is just and proper.

### OTHER ISSUES CONSIDERED AND 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.

### 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. Respondent PaineWebber, Inc. be and hereby is liable and shall pay to the Claimant Christian Schaub \$285,000.00 U.S. dollars.
2. All requests for attorney fees are denied.
3. All other requests for relief are denied.

### FORUM FEES

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

5 Hearing Sessions x \$750	= \$3,750.00
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Respondent, PaineWebber, Inc., is hereby liable and shall pay to NASD Regulation Inc. \$3,750.00 representing the total amount of forum fees assessed. Claimant previously deposited \$750.00 dollars with NASD Regulation, Inc. Therefore, Respondent, shall pay to NASD Regulation, Inc. the sum of \$3,000.00 and shall reimburse the Claimant \$750.00.

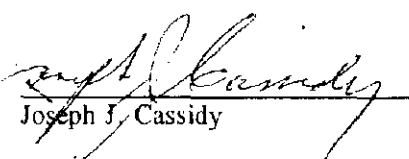
Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES

I, Kinchen C. Bizzell, 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.

\_\_\_\_\_  
Kinchen C. Bizzell, Esq.

I, Joseph J. Cassidy, 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.

  
\_\_\_\_\_  
Joseph J. Cassidy

I, Neil J. Carey, 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.

\_\_\_\_\_  
Neil J. Carey

Date of Decision: April 29, 1997

ARBITRATORS' SIGNATURES

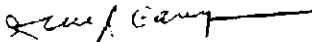
I, Kinchen C. Bizzell, Esq., do hereby affirm, pursuant to article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

\_\_\_\_\_  
Kinchen C. Bizzell, Esq.

I, Joseph J. Cassidy, 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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Joseph J. Cassidy

I, Neil J. Carey, 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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Neil J. Carey

Date of Decision: April 29, 1997