

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Tracey L. Dahlkamp

96-04228

Name of Respondents

Smith Barney Inc.  
John Kuklenski

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 23, 1996, claimant Tracey L. Dahlkamp, who appeared Pro Se, alleged that as a former employee of respondent Smith Barney, Inc., she is entitled to compensation for the time and effort contributed on the job. Claimant alleged that from September 3, 1986 (employment date), she has consistently gone above and beyond the call of duty, worked long hours of overtime and completed projects which required that she work many hours and weekends. Claimant also alleged that as of May 1996 her duties were expanded, without training, to include the duties of first one, then two missing employees. Claimant further alleged that her Branch Manager, respondent Brian Kuklenski ("Kuklenski") promised her a part of his second and third quarter bonuses, as reimbursement for her efforts.

Claimant alleged that in June 1996, she informed Kuklenski that the workload was overwhelming and that she would quit unless some assistance was provided to her. Claimant further alleged that her requests were ignored and that Kuklenski treated her poorly. Claimant also alleged that while she was away from the office, due to illness, Kuklenski called and indicated that he would accept her resignation, effective immediately. Claimant contended that when she broached the subject about the promised bonus, Kuklenski indicated that he would discuss the bonus when she picked up her personal items. Claimant further contended that at their meeting, Kuklenski made inappropriate statements and offered her a \$300.00 bonus which she found unacceptable.

Respondents Smith Barney, Inc. and John Kuklenski ("respondents"), through their representative and in-house counsel, Eric L. Adler, Esq., maintained that claimant's allegations are without merit as she was fully compensated for all hours worked and received more money than she was entitled. Respondents further maintained that despite resigning prior to the February 1997 bonus payment date, claimant nevertheless received a bonus. Respondents also maintained that in or about April 1996, John Kuklenski's Administrative Assistant commenced maternity leave and claimant indicated interest in performing the Administrative Assistant's duties.

Respondent asserted that Smith Barney, Inc. complied with all relevant federal, state and local laws governing payment of wages and overtime, and that its policies prohibits an employee from working longer than his regularly scheduled workweek, without prior authorization. Respondent further asserted that claimant is not entitled to additional compensation since she did not submit evidence to support her allegation of working long hours and weekends. Respondent also asserted that Kuklenski, in an attempt to be generous, paid a \$300.00 bonus to claimant. Respondent contended that even if claimant had remained in their employ until the date bonuses are paid, she would not have received more than the \$300.00, as claimant did not exhibit the patience, confidence and organizational skills necessary to perform the Administrative Assistant's duties. Respondent further contended that Kuklenski never indicated that she would receive compensation according to the second and third quarter bonuses paid to previous Administrative Assistants.

#### **RELIEF REQUESTED**

Claimant Tracey L. Dahlkamp requested compensation of \$5,000.00.

Respondents Smith Barney, Inc. and John Kuklenski requested that (a) all claims made by claimant with respect to John Kuklenski, in his official capacity and as an individual, be dismissed for lack of subject matter jurisdiction; and (2) that any relief be denied or reduced due to claimant's failure to mitigate her alleged damages.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator reviewed and considered respondent's request for dismissal of the claims against John Kuklenski. The request was denied.

#### **AWARD**

Pursuant to Section 10203 of the NASD Code of Arbitration Procedure, a single Industry Arbitrator, Susan K. Franz, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Tracey L. Dahlkamp on September 17, 1996, by respondent Smith Barney, Inc. on October 23, 1996 and not by respondent John Kuklenski as is required by the NASD Code of Arbitration Procedure.


And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Smith Barney, Inc. and John Kuklenski are jointly and severally liable and shall pay to claimant Tracey L. Dahlkamp \$2,873.06 as compensation.
2. All other relief requests are denied.
3. The parties shall bear their respective costs.

4. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by the claimant Tracey L. Dahlkamp shall be retained by NASD Regulation, Inc. Respondents Smith Barney, Inc. and John Kuklenski are jointly and severally liable and shall pay to the claimant Tracey L. Dahlkamp \$575.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, **SUSAN K. FRANZ** do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

DATE OF DECISION:     **January 29, 1997**