

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

William Shea

vs.

Case No.  
98-00374

Name of Respondent

Nikko Securities Co., International

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**REPRESENTATION**

For Claimant William Shea ("Claimant") appeared David Crystal, II, Esq. of the firm Gilbridge, Tusa, Last & Spellane, LLC, located in New York, New York.

For Respondent Nikko Securities Co., International ("Respondent") appeared C. Evan Stewart of Nikko Securities Co., International, located in New York, New York.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on January 29, 1998.  
Claimant's Submission Agreement was signed on January 20, 1998.

Respondent's Statement of Answer was filed on March 16, 1998.  
Respondent's Submission Agreement was signed on March 31, 1998.

**HEARING INFORMATION**

Pre-Hearing Conference:	July 22, 1998	-	1 session
Hearing Dates/Sessions:	December 3, 1998	-	2 sessions
	December 4, 1998	-	2 sessions
	January 11, 1999	-	2 sessions
	January 13, 1999	-	2 sessions

The pre-hearing conference was conducted telephonically. The hearings were conducted at the

offices of NASD Regulation, Inc., located in New York, New York.

### CASE SUMMARY

Claimant alleged that, in 1993, before he accepted the position of propriety trading with Respondent, he requested that he be given opportunity to trade both currency options and fixed income investments. Claimant further alleged that a co-manager falsely represented to him that this opportunity was available at the time he commenced employment. Claimant asserted that, after he commenced employment, his requests to trade currency options were repeatedly refused. Claimant also maintained that, on several occasions, he undertook additional responsibilities, for which he was uncompensated. Claimant asserted that, when he was finally compensated for additional work performed in July of 1993, the compensation arrangement did not include work undertaken in the last half of 1993, nor did it take into account his inability to generate profits from trading currency options as a result of Respondent's refusals of his requests.

Claimant maintained that his compensation was repeatedly undercut by Respondent, not only for work compensation, but also for bonuses. Claimant alleged that, throughout 1994, profits which he had actually generated were covered up to undercut losses incurred in the fixed income department. Claimant contended that Respondent also began to limit and interfere with his positions, causing his profits to be reduced. Claimant stated that, on January 10, 1997, he was terminated. Claimant further stated that the reasons given for his termination were due to four sick days, two days of unauthorized leave, and for his early departure time. Claimant alleged that, following his termination, Respondent instituted new regulations concerning sick days and departure times. Claimant contended that these new regulations had been enforced *ex post facto* against him. Claimant asserted that Respondent discriminated against him, either because of his ethnic background or age, by advancing other individuals whose performances were not on par with his.

Respondent maintained that, despite Claimant's performance, in which he actually lost money for the firm, he was generously paid. Respondent alleged that Claimant was paid bonuses, although bonuses were discretionary. Respondent asserted that the additional duties which Claimant undertook did not constitute managerial positions and, therefore, his salary adjustment reflected this fact. Respondent asserted that, at no time during his employment, did Claimant raise or suggest a lost wage claim. Respondent contended that Claimant is attempting to create after-the-fact lost economic opportunities from non-existent roles and performances. Respondent further contended that Claimant's allegations of discrimination are unfounded and unsupported. Respondent maintained that Claimant's request for punitive damages are also unfounded and unsupported pursuant to New York case law. Respondent additionally maintained that Claimant's requests for attorney's fees are barred by statute.

### RELIEF REQUESTED

Claimant requested an award for:

1. the loss of bonuses on gross profits from trading in 1994, in an amount to be determined, but believed to be in the amount of \$595,000.00;
2. the loss of bonus on gross profits generated in 1995, in an amount to be determined, but believed to be approximately \$1,000,000.00;
3. the loss of base wages for 1995 and 1996 in the amount of \$100,000.00;
4. damages for discrimination against Shea on account of his race and age in the amount of \$500,000.00;
5. punitive damages in the amount of \$500,000.00;
6. attorney's fees;
7. and that all forum fees be charged to Nikko.

Respondent requested that Claimant's Statement of Claim be dismissed in its entirety, as well as any such further relief as 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 NASD Regulation, Inc.

### 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. The panel determined that the evidence does not support Claimant's claim that he did not receive all of the compensation he was entitled to in the years of 1994, 1995, and 1996. The claims based on profits that Claimant argues he would have made but for the interference of others are speculative and not supported by any theory of liability. The evidence supports Respondent's interpretation of the memorandum relating to Claimant's 1994 compensation. The evidence also supports Respondent's allegations that once the new Assistant General Manager began to function in early 1995, Claimant had no further managerial

responsibilities;

2. The panel determined that there was no evidence to support Claimant's claim that he was the victim of race or age discrimination;
3. The panel determined that the abrupt firing of Claimant, based upon an ex post facto application of the rules, as to which Claimant received no prior notice, was unfair and improper;
4. Respondent is hereby liable for and shall pay to Claimant compensatory damages in the amount of \$20,000.00;
5. Respondent is responsible for all forum fees;
6. Respondent shall pay to Claimant the sum of \$1,000.00 to reimburse Claimant for the hearing session deposit previously paid to NASD Regulation, Inc.;
7. All other claims are denied.

#### OTHER COSTS

Pursuant to Rule 10333 of the *Code of Arbitration Procedure* ("Code"), Respondent has paid NASD Regulation, Inc. the \$2,500.00 member surcharge previously invoiced.

#### FORUM FEES

Pursuant to Rule 10332(c) of the *Code*, the arbitrators have determined that the NASD will retain the \$500.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:

1 Pre-Hearing Conference x \$1,000.00	-	\$1,000.00
8 Hearing Sessions x \$1,000.00	-	\$8,000.00
Total Forum Fees	=	\$9,000.00

Respondent is hereby liable for the sum of \$9,000.00, representing the total amount of forum fees assessed. Claimant previously paid \$1,000.00 to NASD Regulation, Inc. and therefore, Respondent shall pay the balance of \$8,000.00 to NASD Regulation, Inc. and shall reimburse \$ 1,000.00 to Claimant as provided in the "Award" section above.

ARBITRATION PANEL

Donald J. Zoeller, Esq.	-	Public Chairperson
Roy W. Romberger	-	Public Arbitrator
Salvatore Saladini	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

  
Salvatore Saladini

Date of decision: May 4, 1999

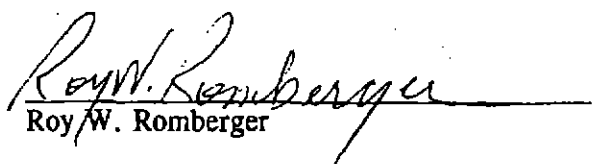
I, **Salvatore Saladini**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
Salvatore Saladini

ARBITRATION PANEL

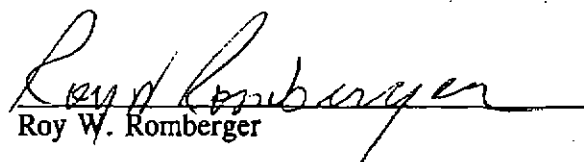
Donald J. Zoeller, Esq.	-	Public Chairperson
Roy W. Romberger	-	Public Arbitrator
Salvatore Saladini	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

  
Roy W. Romberger

Date of decision: May 4, 1999

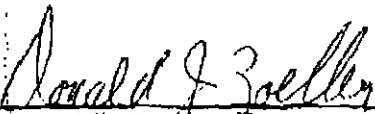
I, Roy W. Romberger, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
Roy W. Romberger

**ARBITRATION PANEL**

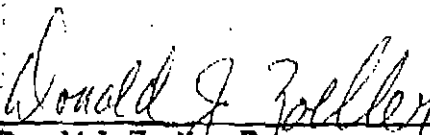
Donald J. Zoeller, Esq.	-	Public Chairperson
Roy W. Romberger	-	Public Arbitrator
Salvatore Saladini	-	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
Donald J. Zoeller, Esq.

Date of decision: May 4, 1999

I, Donald J. Zoeller, 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.

  
Donald J. Zoeller, Esq.