

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

9004093

In the Matter of the Arbitration Between

Kathleen Mary O'Brien

Claimant

vs.

CASE NO. 88-02339

Sears Roebuck;
Dean Witter Financial Services;
Dean Witter Reynolds, Inc.;
Douglas M. McCombs;
Larry M. Phillips; Robert C. Honey;
Jerry Boerner, and Jolyn Gissell,

Respondents

SUMMARY OF ISSUES

Claimant filed this claim with the NASD on July 21, 1988 and alleged that while employed as an account executive she was discriminated against based on her gender and was sexually harassed and slandered by the branch manager. Claimant further alleged that she was wrongfully terminated and that the other individually named Respondents, who were manager of the various Los Angeles DWR Branch offices, refused to rehire her thus wrongfully interfering with her right to contract, her business relationship, and her prospective economic advantage. Claimant further alleged that all of the Respondents participated in and conspired to breach her employment contract and implied covenant of good faith and fair dealing, and that the intentional and negligent acts of Respondents caused her to suffer emotional distress.

Respondents denied the allegations and maintained that Claimant's employment as an account executive was terminable at will and that no employment contract existed between the parties. Respondents further maintained that Claimant was terminated and was not rehired due to her failure to open a sufficient number of accounts, failure to generate sufficient gross commissions to meet her salary draw in thirteen out of fourteen months of production, and failure to follow her branch manager's instructions. Respondents further maintained that no misrepresentations or slanderous statements concerning Claimant were made to any other Respondent or to any prospective employers. Respondents further maintained that Claimant's allegations concerning sexual harassment and gender discrimination are refuted by her failure to report such purported actions to DWR Management, by her attempts to be rehired, and by her letter written while employed at DWR praising her branch manager.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages as amended at the hearing, in the amount of \$3,450,285.00 (net value of lost earnings to date and net present value of earnings to year 2006 after deduction for actual projected earnings); attorneys' fees and costs in the amount of \$50,381.42; and punitive damages sufficient to punish Respondents.

Respondents requested dismissal of the claim and costs.

DAMAGES AND RELIEF AWARDED

On September 12 and 13, 1989 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on November 5, 1988, and by Respondents Sears on December 13, 1988, Dean Witter Financial Services on January 26, 1989, McCombs on December 13, 1988, Phillips on December 13, 1988, Honey on December 14, 1988, Boerner on December 14, 1988, and Gezelle on December 27, 1988. Respondent Dean Witter Reynolds, Inc. represented its submission to arbitration before the arbitration panel on September 12, 1989. The hearing was held in Los Angeles, California and lasted four sessions. The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing, and the post-hearing submissions filed, has determined in full and final resolution of the issues submitted for determination as follows:

1. Each and every claim is hereby dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.
3. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure:
 - a. The NASD shall retain the \$1,000.00 filing fee previously deposited by the Claimant.
 - b. Claimant is further assessed the sum of \$3,000.00 representing forum fees to be paid to the NASD directly.

OTHER ISSUES

Claimant originally filed a civil action against all respondents in Los Angeles Superior Court on April 14, 1987. Respondents' motion to compel arbitration of the civil action was granted by the Superior Court, and the parties stipulated to arbitration in February 1988.

Claimant and Respondents filed a stipulation to amend the caption of the pleadings filed to reflect the true names of the entities and persons.

The parties filed post-hearing submissions with the NASD in this matter, which were transmitted to the arbitrators on October 16, 1989.

The parties stipulated to the execution and service of the award in counterpart copies.

LAX 11/29/09

NOTICE:

This copy of this award was retrieved from another source. FINRA does not have a copy of the original award in this case, so cannot confirm the accuracy of this document.