

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Janeice Hunt-Schmidt, (Claimant) vs. David Lerner and David Lerner Associates, Inc.
(Respondents)

Case Number: 01-02764

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Janeice Hunt-Schmidt, hereinafter referred to as "Claimant": Jenice L. Malecki, Esq., Law Offices of Jenice L. Malecki, New York, NY.

Respondents, David Lerner and David Lerner Associates, Inc., hereinafter collectively referred to as "Respondents": Ruthann G. Niosi, Esq., Law Offices of Ruthann G. Niosi, PC, New York, NY, and Mark S. Mancher, Esq., Jackson Lewis Schnitzler & Krupman, Woodbury, NY.

CASE INFORMATION

Statement of Claim filed on or about: May 24, 2001.

Claimant signed the Uniform Submission Agreement: March 2, 2001.

First Amended Statement of Claim filed on or about: October 25, 2001.

Claimant's Opposition to Respondent's Motion to Dismiss filed on or about: May 23, 2002.

Statement of Answer filed by Respondents on or about: August 24, 2001.

Respondents did not sign the Uniform Submission Agreement.

Respondents' Answer to Claimant's First Amended Statement of Claim and Motion to Dismiss filed on or about: November 12, 2001.

Respondents' Reply in Support of their Motion to Dismiss filed on or about: May 31, 2002.

CASE SUMMARY

Claimant asserted the following causes of action: pregnancy and gender discrimination under Title VII of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act, as amended in 1978; violation of the Family Medical Leave Act; violation of the Americans With Disabilities Act; violation of Article 15 of the New York Executive, Civil Rights and Human Rights Law; violation of New York Workers' Compensation Law; breach of implied contract; implied covenant of good faith and fair dealing; and promissory estoppel; intentional and negligent infliction of emotional distress; prima facie tort; and defamation.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; legal authority cited by Claimant does not support her claims; New York does not recognize an implied covenant of good faith and fair dealing; Claimant's factual recitations do not support her claim that she was discriminated against because of her pregnancy, gender or marital status; and failure to mitigate damages.

RELIEF REQUESTED

Claimant requested damages in an amount in excess of \$10,000,000.00, consisting of back pay, front pay, compensatory damages for emotional distress resulting from Respondents' discrimination, defamation, tort and breach of contract, punitive damages pursuant to Title VII and the Americans With Disabilities Act, attorneys' fees and expert witness fees, and interest accruing at the rate of 10% annum. In addition, Claimant requested injunctive relief, seeking to have her Form U-5 amended to reflect her voluntary termination.

Respondents requested Claimant's claims be dismissed in their entirety; reimbursement for all costs, fees and expenses of these proceedings; and such other relief as the Panel deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, and by decision of June 3, 2002, the Panel denied Respondents' Motion to Dismiss.

Respondents did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents be and hereby are jointly and severally liable for and shall pay to Claimant compensatory damages in the sum of \$80,000.00, plus interest at the rate of 5% per annum, accruing from October 1, 1999 to date of payment of the Award.
2. The Panel recommends expungement of the words "conflict of interest" from Form U-5 of Claimant's registration records maintained by the NASD Central Registration Depository ("CRD"), and recommends substitution of the following language: "potential conflict of interest" or "spouse joined competing firm". The Panel is ordering expungement relief based on the defamatory nature of the information in the CRD system.
3. Respondents be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$600.00 to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
4. All other requests for relief are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 600.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, David Lerner Associates, Inc. is a party.

Member surcharge	= \$ 3,600.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 5,000.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00
Pre-hearing conference: May 13, 2002 1 session

Three (3) Pre-hearing sessions with Panel x \$1,200.00 = \$ 3,600.00
Pre-hearing conferences: January 17, 2002 1 session
April 30, 2002 1 session
June 3, 2002 1 session

Eight (8) Hearing sessions x \$1,200.00 = \$ 9,600.00
Hearing Dates: June 17, 2002 2 sessions
June 18, 2002 2 sessions
June 20, 2002 2 sessions
June 21, 2002 2 sessions

Total Forum Fees = \$ 13,650.00

The Panel has assessed the entire amount of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 1,800.00
<u>Refund Due Claimant</u>	= \$ 1,200.00

As stated in the "Award" section above, Respondents are jointly and severally liable for and shall reimburse Claimant for the \$600.00 filing fee.

2. Respondent David Lerner Associates, Inc. be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 9,200.00
<u>Total Fees</u>	= \$ 9,200.00
<u>Less payments</u>	= \$ 5,600.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 3,600.00

3. Respondents David Lerner Associates, Inc. and David Lerner be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 13,650.00
<u>Total Fees</u>	= \$ 13,650.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 13,650.00

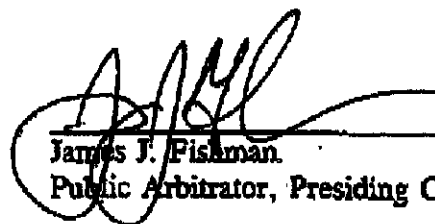
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

James J. Fishman	-	Public Arbitrator, Presiding Chair
Stanley M. Ulanoff	-	Public Arbitrator
Robert Pincus, Esq.	-	Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, 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.



James J. Fishman
Public Arbitrator, Presiding Chair

7/10/2002

Signature Date

Stanley M. Ulanoff
Public Arbitrator

Signature Date

Robert Pincus, Esq.
Public Arbitrator

Signature Date

July 11, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL

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Stanley M. Ulanoff	-	Public Arbitrator
Robert Pincus, Esq.	-	Public Arbitrator

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James J. Fishman
Public Arbitrator, Presiding Chair

Signature Date

Stanley M. Ulanoff
Stanley M. Ulanoff
Public Arbitrator

10 July 02
Signature Date

Robert Pincus, Esq.
Public Arbitrator

Signature Date

July 11, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

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Stanley M. Ulanoff	-	Public Arbitrator
Robert Pincus, Esq.	-	Public Arbitrator

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James J. Fishman
Public Arbitrator; Presiding Chair

Signature Date : _____

Stanley M. Ulanoff
Public Arbitrator

Signature Date _____


Robert Pincus, Esq.
Public Arbitrator

Signature Date _____

July 11, 2002
Date of Service (For NASD office use only)