New York Stock Exchange
In the Matter of Arbitration Between

Case: Rita M. Reid v Goldman, Sachs & Co. and Goldman Sachs Group, L.P.

Attorneys:
For Claimant(s):
Stephen E. Tisman Esq. - New York, NY

For Respondent(s):
Stanley Arkin Esq. - New York, NY
Theodore O. Rogers, Jr. Esq. - New York, NY

Date Filed: 08/31/93
First Scheduled: 03/08/94
Decided: 03/31/95

Case Summary: Claimant alleged in her Statement of Claim that the conduct of Goldman Sachs concerning: 1) its failure in 1990 to elect her to partnership; 2) its termination of her employment in 1991; 3) the annual, total compensation paid claimant, during the years she was a vice president and 4) the size of the severance package she received upon termination; each constituted sex discrimination under federal, New York State and New York City statutes and codes (respectively, 42 U.S.C. sec. 2000e et seq.; N.Y. Exec. Law sec. 290 et seq., (McKinney's 1993); and N.Y.C. Admin. Code, title VIII, ch. 1), and that Goldman's conduct violated the Federal and New York State Equal Pay Acts (respectively, 29 U.S.C. sec. 206(d) and N.Y. Lab. sec. 194 (McKinney's 1966)). Claimant seeks compensatory, punitive, and statutory damages (including double and liquidated damages), and attorneys' fees. During the course of the hearing, claimant decided not to pursue her claim that the severance package she received was discriminatory (Tr. at 1480-81). Respondents seek an award of costs and attorneys' fees in their favor.

Claim Data

Claim: $12,000,000.00
Punitive: Uns
Atty Fees: Uns
Deposit: $1,500.00

Award Data

Award: $0.00
Punitive: $0.00
Atty Fees: $0.00
Costs: $0.00

Decision: The undersigned arbitrators have decided and determined in full and final settlement of all claims between the parties that:
See attached decision.

Remarks:

Arbitrators: (D = Dissents)

Robert M. Flanagan
Robin R. Henry
Robert B. Weintraub

Signatures:

City: New York
State: NY
Date: 03/31/95
Docket #: 1993-003412
The Panel has considered each and every claim asserted by claimant, whether or not the Panel has specifically listed a particular claim above. The Panel finds that under any standard of proof, whether it be a preponderance of the evidence standard which claimant must meet or an even lower threshold of proof more favorable to claimant, on each and every claim asserted the claimant has failed to sustain her burden of proof. The Statement of Claim is dismissed. All claims asserted and evidence proffered by claimant have been considered by the Panel and rejected on the merits, even if not specifically discussed in this opinion. Respondents' request for costs and attorneys' fees is denied. All outstanding costs still due the Stock Exchange are assessed against respondents.

This arbitration concerned the time period during 1987 through 1991 when claimant was a vice president in Goldman Sachs' ("Goldman") Investment Banking Division ("IBD"). Although the Panel ruled it would permit claimant to present testimony from other IBD vice presidents during the time period 1987 to 1991 (Tr. at 677), claimant presented no witnesses (putting claimant herself aside for the moment) who testified to acts of discrimination in the IBD.

As to claimant herself, none of her testimony presented "direct" evidence demonstrating gender discrimination, such as a partner stating that claimant, another particular woman or women generally, should not be elected to the partnership because of their sex. All of claimant's own testimony concerned actions and events within Goldman which either only indirectly
touched on the claims at issue herein or which did not at all involve conduct even suggesting sex discrimination and which therefore required that inferences of discrimination be drawn by the Panel from acts which on their face appeared neutral and nondiscriminatory. Additionally, Goldman presented overwhelming evidence (indeed, undisputed evidence concerning many of the events) that there was a valid business reason for each of its actions. Thus, claimant has failed to show that Goldman's stated reasons for taking its actions were mere "pretexts."

I. The 1990 Partnership Election

In order to be voted upon for admission to partnership at Goldman, an individual must be nominated by an existing partner. Not one of the 130 partners at Goldman nominated Ms. Reid for partnership in 1990 (Tr 783-85). Claimant asserted that each of the partners who knew her well enough and should have been responsible for her development and for sponsoring her for partner failed to do so because she is a woman. Id.

Ms. Reid presented evidence which attempted to equate her abilities with at least one male vice president in the IBD, Robert Kaplan, who was considered a "superstar" and who was elected to partnership in 1990 (Tr. 1147-55, 1610, 1924). The evidence showed that as "associates" Ms. Reid and Mr. Kaplan worked together on the R.H. Macy leveraged buy out, a transaction which was very important and profitable to Goldman. On the Macy deal, the evidence was that Ms. Reid and Mr. Kaplan performed essentially the same work at a very high level of ability, were
considered interchangeable as part of Goldman's team, and that the equivalence of their professional skills was recognized because at a dinner held after the successful closing of the transaction they were jointly presented an award entitled the "Dynamic Duo" award (Tr. 73).

However, the Macy's deal took place in 1985, five years before both Mr. Kaplan and Ms. Reid were up for partnership consideration. The undisputed testimony by the partners who supervised claimant was that over the ensuing years Mr. Kaplan consistently grew in his professional skills while Ms. Reid reached a plateau and progressed no further (Tr. 1541-42; see Tr. 127-28, 136-38, 149-51, 166-67, 170-71); by 1990 her work was adequate but unspectacular, in the middle of the pack, and in some respects was on a downward course.

A number of Goldman partners who had worked with claimant testified that she had certain weaknesses in her professional skills including that she lacked certain client and marketing skills and maintained too narrow a focus (Tr., e.g., 173-74; 1138-41; 1698-99; 2067-68).

Most importantly, in her testimony during the arbitration hearing, claimant admitted that the written comments in her performance reviews were not gender based (Tr. 1040-45, 1052-58). These comments (consistent with the testimony of the live witnesses) included criticisms that her focus was narrow and thus lacked a view able to see both the forest and the trees necessary to be a first rate investment banker; that she lacked
certain client and marketing skills, and that she had become difficult to work with. Id.

Claimant made this concession (that the reviews were not gender based) with respect to all the annual performance reviews which she received -- both those prior to 1990 when she received substantial increases in compensation and the 1990 review which contained the current criticisms of her abilities and for which she received a substantial decrease in compensation (Tr. 105, 208, 1029-30, 1077-78, 1081-83).

In that light, there was no evidence that even one partner viewed claimant as a "star." Claimant presented no evidence of direct statements or conduct supporting the conclusion that any individual partner did not want Ms. Reid or other female vice presidents elected to the partnership because of their gender.

As to the partnership selection process, it can not be denied that on the eve of the October, 1990 partnership election, Goldman had only one woman partner (who was the only woman partner in the history of the firm). Even assuming that such a result was not the result of happenstance, it is clear that by 1990, the relevant year here, the firm recognized that it must ensure that women receive the same ultimate recognition as men of equal calibre -- an offer of partnership. The nomination letters written in 1990 by a number of partners indicated their awareness that, without lowering partnership election standards, the firm recognized that women must be considered for partnership based on
individual merit and that there should be no artificial impediments to their election. No nomination letters contained any language directly or indirectly indicating discrimination against women generally, let alone against Ms. Reid. In 1990, three additional women were elected to partnership. There is no indication that Goldman's stated reasons for not electing claimant were a pretext.

The claim for failing to elect Ms. Reid to partnership is in reality based solely on the fact that until the 1990 election Goldman had in its history elected only one woman to the partnership. However, Ms. Reid pursued an individual claim, not an EEOC or other "class action" type proceeding, and evidence of discrimination against Ms. Reid or against women generally in the election process itself must be demonstrated. It is insufficient to demonstrate merely that there are few women in the partnership. Even if a showing based merely on numbers were sufficient, as discussed below the statistical evidence presented by claimant was inherently flawed.

As to the 1990 Investment Banking Division Winter Conference, one part of the conference included a panel discussion by Goldman partners and employees (including IBD vice presidents). The panel discussion, one part of which concerned sex discrimination, was at one and the same time hypothetical role-playing in which the participants gave their honest answers as to what they would do if confronted with a certain situation.

Hank Paulson, a Goldman senior partner (who after the
relevant time period became co-head of the firm), participated in the panel discussion. In response to a question, Mr. Paulson stated his truthful opinion about what he would do if a potential new client of the firm did not want a woman put on the "pitch team" which Goldman was assembling to make a sales pitch to the potential new client. Mr. Paulson stated that if the team had not yet been put together, he would not put a woman on the team (although if the team already had been put together and included a woman, he would not take the woman off the team).

Contrary to Goldman's assertion and that of Professor Charles Nesson who moderated the panel discussion (see Tr. 2102) that such conduct is in a "grey" area and would not be a violation of law, if Goldman acceded to the request of a potential new client and did not put on the team a woman who otherwise would have been made a team member, such conduct by Goldman probably would violate the law. See, e.g., Diaz v. Pan Am World Airways, Inc., 442 F.2d 385 (5th Cir.), cert. denied, 404 U.S. 950 (1971). Although not necessarily a collateral matter, for a number of reasons, Mr. Paulson's stated opinion does not advance Ms. Reid's claims herein.

First and foremost, claimant has not asserted and cannot assert a claim that Goldman's staffing of matters constituted sex discrimination against her. This is so because claimant's case is based on precisely the opposite contention: that she routinely worked on high profile transactions which were important and profitable to Goldman and yet she still did not
make partner. Claimant testified that she could not identify any particular teams to which she was not invited because she was a woman (Tr. at 813, 816). E.g., Flynn v. Goldman Sachs & Co., 836 F. Supp. 152, 163 (S.D.N.Y. 1993), citing Price Waterhouse v. Hopkins, 490 U.S. 228, 277, 109 S. Ct. 1775, 1805 (1988) (statements unrelated to the decisional process at issue are as a matter of law insufficient to prove discrimination).

Further, since Paulson was a senior partner, although his statement "does tend to add 'color' to the employer's decision-making process and to the influences behind the actions taken with respect to" claimant, Ezold v. Wolf, Block, Schorr and Solis-Cohen, 983 F.2d 509, 546 (3d Cir. 1992) ("Ezold"), there is no evidence whatsoever that his view represented corporate policy as opposed to merely his personal view. At the Winter Conference, both opinions supporting and opposing Mr. Paulson's view were voiced by other panel members.

Moreover, his view concerned the initial staffing of a pitch team for a potential new client and not the criteria and process for partnership selection. The evidence presented on this latter issue demonstrated that Mr. Paulson recognized that women should be evaluated and promoted to partner on the same basis as men. Beyond Paulson's tangential view expressed in the Winter Conference hypothetical, no evidence was presented that the Goldman annual performance reviews or partnership selection process was discriminatory. Consequently, there is no evidence whatsoever that Mr. Paulson's view was other than his own view
and, even if his view of initial staffing actually played a role in the Goldman partnership selection process, that it "sufficiently pervaded" the corporate structure to have had "a determinative influence on the" decision not to elect claimant to the partnership. E.g., Hazen Paper Co. v. Biggins, 113 S. Ct. 1701, 1706 (1993); Ezold, 983 F.2d at 547; Flynn, 836 F. Supp. at 158-60.

Finally, it must be noted that Goldman has a document retention policy routinely requiring immediate destruction after each partnership election of documents concerning the election process. As a consequence, many of the documents concerning the 1990 partnership election process were routinely destroyed shortly after the election and were not produced in discovery herein. Nevertheless, some materials concerning the 1990 partnership election were inadvertently not destroyed and were produced in discovery. None of the documents produced contained any evidence of discrimination against women investment bankers generally or Ms. Reid specifically in consideration for partnership.

Although Goldman's document destruction policy may well violate federal law (EEOC regulations require retention of materials relating to promotion decisions for one year, 29 C.F.R. sec. 1602.14), the existence of Goldman's policy does not mean the existence of discrimination and does not require that an inference be drawn that discrimination existed in the 1990 partnership selection process. The documents not destroyed which
were produced in discovery contained no evidence of discrimination. Claimant presented no evidence whatsoever that she or any other female vice president was discriminated against in the 1990 partnership election process. We also note that this claim was first raised in a court lawsuit filed in November, 1991. That Verified Complaint stated that the action was brought thirteen months after the partnership election in question. Hence, even if the documents were improperly destroyed in late 1990, they apparently could have been destroyed in accordance with law in late 1991 prior to the filing of the lawsuit.

II. The Goldman Decision to Terminate Ms. Reid's Employment in 1991

Claimant presented no evidence that her termination was the result of sex discrimination other than the fact that she, a woman, was the only investment banker in the Merchant Bank to be terminated and that the other, more logical, candidate for termination (in claimant's personal belief) who was not dismissed at that time was male. Given that the Goldman partners in charge of the Merchant Bank were leaving the firm at the same time, however, the male investment banker who was not terminated was the remaining individual most knowledgeable about the Water Street Fund (Tr. 1202, 1697, 1804-06). Absent evidence of discrimination in the decision-making process against an individual, the fact that a claimant disagrees with the business judgment of the employer does not as a matter of law constitute evidence of discrimination. Even if independent observers think the employer terminated the wrong individual, it is legally
permissible for an employer's business judgment to be incorrect. An employer's decision need not be the best or even a well-considered decision to be wholly lawful, it must only be nondiscriminatory. E.g., Dister v. The Continental Group, Inc., 859 F.2d 1108, 1116 (2d Cir. 1988), quoting Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 259 (1991).

As to claimant herself, Goldman presented testimony from a number of claimant's superiors that her performance by 1990 had declined. (See Tr. 1698-99). Even putting aside this Goldman testimony, claimant admitted in her testimony during the arbitration hearing that people may have found her "abrasive" (Tr. 799), that she may have been "difficult about taking on assignments" (Tr. 792) and that she may have told Beth Cogan, who made assignments within the Merchant Bank that she intended to work less in response to her 1990 pay cut (Tr. 1081-83).

Claimant also admitted in her testimony that the written comments in her performance reviews -- which (consistent with the testimony of the live witnesses) included criticisms that her focus was narrow; that she lacked certain client and marketing skills, and that she had become difficult to work with -- were not gender based (Tr. 1040-45, 1052-58).

There was also undisputed testimony that in 1991, as a result of layoffs required by a poor investment climate, the IBD as a whole was paring its professional staff (see Ex. O, Tr. 794, 1529, 1790) and the partners previously in charge of the Merchant Bank had decided to leave the firm (Tr. 1571, 1782, 1876). As a
result, the Merchant Bank had to be restructured, with a different primary focus going forward, and the newly-retitled Principal Investment Area, in line with the IBD, had to cut expenses (Tr. 869). Thus, although Ms. Reid was the only vice president investment banker terminated from the Merchant Bank at that time, other investment bankers (who were male) in the IBD were terminated as a result of the general business slowdown (Tr., e.g., 794, 953, 1529).

Given the lack of evidence even suggesting sex discrimination, and given the uncontradicted testimony concerning the contraction in the securities industry and at Goldman and the changes at the Merchant Bank, claimant has failed to prove Goldman's articulated reasons for her dismissal were a pretext.

III. Total Annual Compensation

Claimant did not have an MBA and she began her employment at Goldman many years before being placed on its professional track. To the extent that Goldman thought of individuals as being part of a "class" (whether that being the year of the MBA degree or becoming a vice president), claimant apparently was between "classes" for purposes of compensation. Until the award of 1990 total compensation (when claimant's compensation was substantially decreased), claimant received compensation in the middle of the pack. For these reasons and for the other reasons stated by respondents, the compensation data provided by claimant is ambiguous and does not support this element of claim.
Respondents presented extensive and undisputed evidence that its compensation system was based on an analysis of many factors including how well the firm and that particular area of business was doing; time at the firm and as a vice president; and individual performance including performance over time (Tr. at 1143-45, 1236-40). Given the merit compensation system; claimant's concession that her performance reviews and the criticisms therein were not gender based; and that the yearly compensation decisions were based in large part on the performance reviews, claimant has failed to prove that the total annual compensation paid her constituted sex discrimination and she has also failed to prove that Goldman's reasons for the compensation paid her were a pretext.

IV. Collateral Matters Irrelevant as a Matter of Law

All of the remaining, many particularized events which claimant asserts demonstrate sex discrimination against her on their fact contain no words or actions which show discrimination based on gender but require that an inference of discrimination be drawn from conduct which on its face was neutral and nondiscriminatory.

Matters unrelated to the decision-making process to promote, terminate or compensate are considered collateral and are irrelevant as a matter of law. E.g., Donaldson v. Merrill Lynch & Co., Inc., 794 F. Supp. 498, 505 (S.D.N.Y. 1992). All of the examples cited by claimant fail to lend support to her case because they are facially neutral or (even if an attenuated
argument could be made that they were not facially neutral, such as a male attended a particular meeting instead of Ms. Reid) the evidence clearly demonstrates that the reasons given by Goldman for its decisions were not a pretext. Just two of the examples are discussed below.

**Domino's Pizza**

Claimant asserts that the decision of a Goldman partner to exclude her from a meeting with the Chairman of Domino's Pizza "reflected a bad gender-based judgment" and at least at the outset affected her ability to deal with the client (Tr. 2491).

Goldman partner Arthur Reimers testified that the owner of Domino's was Tom Monaghan, whom Reimers described as a very unusual and unique "entrepreneur... [who] created his own rules" (Tr. 2034, 2037). Goldman had attempted to find potential buyers for Domino's, but the potential buyers assessed Domino's value at less than Mr. Monaghan's own estimate.

Concerning the meeting in question, Mr. Reimers made a "business judgment" (Tr. at 2056-57) that since he was going to give Mr. Monaghan the "bad" news concerning the reaction of the potential buyers, and since the meeting would include investment bankers from J.P. Morgan (which was co-banker on the project) as well as Goldman, it was unwise to have all of the Goldman team attend such a meeting with a CEO who was somewhat outside of the traditional mold of CEOs in large institutionalized companies (Tr. 2044-46). In addition, having the whole Goldman team attend the meeting would necessarily mean the whole Morgan team would
attend the meeting as well, since the teams were similarly staffed and generally had the same counterparts attend any given meeting. Mr. Reimers testified that in his experience CEOs usually prefer smaller gatherings and that when delivering bad news, "you try to keep it somewhat concentrated" (Tr. 2045). Reimers decided that only the two most senior Goldman bankers who had been most involved in the project up to that point would attend the meeting (which would also mean two Morgan bankers would attend (Tr. 2038, 2045-46). As a result of Reimers' decision, Ms. Reid did not attend the meeting and the second Goldman investment banker who did attend the meeting was male.

There was no indication that Mr. Monaghan was unwilling to deal with a woman and nothing, other than the mere fact of exclusion, was said or done to indicate the decision to exclude Ms. Reid from the meeting was gender based. Mr. Reimers testified that Goldman and J.P. Morgan always made sure that if one firm sent two bankers to a meeting then the other firm also sent the same number of bankers to that meeting (with the same respective levels of experience). Except for this practice, he would have preferred to limit this meeting to two bankers in total, himself and one banker from Morgan (but not Reimers' counterpart as the most senior Morgan team member) who knew Mr. Monaghan best. That Morgan banker happened to be a woman. (Tr. 2039, 2045-46). Even if it were to be concluded that an inference of discrimination could be drawn solely because the second Goldman banker to attend the meeting was not a member of
claimant's protected class, the evidence (essentially undisputed) clearly demonstrates that the business reasons proffered by Goldman were not a pretext.

Tape Watch

Claimant testified that in the middle of 1990 her boss, Mr. Salovaara, told her that he wanted her to take over his role in Tape Watch. Tape Watch was a project in which the news wires were followed for any announcement which might have resulted in a business opportunity. Henceforth, instead of reporting to Mr. Salovaara, Muneer Satter, a more junior professional (an associate), would report directly to Ms. Reid with the more focused material which had been culled from the news wires (Tr. 393-95).

Ms. Reid testified that in his manner and tone, Mr. Satter "made it very clear to [her] that he wasn't happy reporting to" her; he "was extremely confrontational, argued with everything" she said; he "always had difficulty finding a time to meet;" and he suggested that perhaps the analyst meet directly with her (Tr. 395-96). Ultimately, Mr. Satter went to Mr. Salovaara and told him that he did not think there was sufficient new business being generated from this project to merit its continuance and the Tape Watch project was disbanded (Tr. 396-97). Ms. Reid testified that it was her "perception" that Mr. Satter did not want to report to a woman, although Ms. Reid conceded that he did not say that to her (Tr. 396-98). Ms. Reid described Tape Watch as a "gender related" incident in which she
was personally involved (Tr. 396).

No evidence, direct or inferential, supports claimant's conclusion that Tape Watch was a gender based incident.

V. The Statistical Evidence

Claimant presented statistical evidence in an attempt to demonstrate that Goldman discriminated against women vice presidents in the IBD. Goldman argued that the statistical evidence was irrelevant as a matter of law. Although we reject that argument, respondent is correct that the statistical evidence presented by claimant is inherently flawed and proves nothing. This is so for a number of reasons, some of which are briefly set forth below.

Concerning promotion to partner, claimant's evidence assumed that every person who joined the firm on the traditional professional track and who was not made a partner approximately eight years later was qualified to be a partner. In addition, no account was taken of those who voluntarily left the firm before being considered for partner (Tr. 542). Finally, claimant's statistical expert used the raw data in ways which created numerical flaws.

Concerning termination, claimant presented statistical evidence on termination of male and female employees. The evidence was compiled by claimant from, among other sources, Goldman telephone directories. When the employee's first name was ambiguous as to that person's gender, claimant unilaterally
decided whether to include that termination in the male or female category.

Even assuming that the telephone directories and claimant’s gender interpretation of certain names is correct, the termination evidence presented was inherently flawed. For example, all exits for each calendar year were treated the same and did not distinguish whether an exit was voluntary or involuntary (Tr. at 1384-85). Thus the evidence (in the form of a chart) did not distinguish between, on the one hand, Goldman employees who voluntarily quit for whatever reason and, on the other hand, Goldman employees who left involuntarily, such as because the firm laid off employees or the employee was fired as a result of a performance review. Indeed, the original title of exhibit 53 was "Summary Termination Rates By Class" and the parties agreed to change the title of that chart to "Summary, End of Employment Rates by Class," to reflect the fact that the chart did not distinguish between voluntary and involuntary exits (Tr. 700-02, 719, 1348).

The panel takes arbitral notice that during the latter months of this arbitration shortly before the end of hearing sessions, Goldman announced the names of the individuals it had just elected to partnership. Shortly after this public announcement, newspaper articles were published stating that for the first time in its over a century of existence, one of its newly elected partners was turning down a Goldman offer of partnership and was leaving Goldman to pursue other business
endeavors. Although the 1994 partnership election and its results are not relevant to claimant's case before us, we note that under the analysis which claimant used to compile the statistical evidence concerning termination, even the vice president who turned down his offer of partnership and voluntarily left the firm would have fallen within the "termination" category of claimant's analysis. All other voluntary terminations were similarly clumped with the involuntary terminations, making the data meaningless.

Similarly, concerning yearly compensation by gender, claimant's expert assumed that compensation for individuals was for each year "statistically independent" (See Tr. at 1425-27), meaning that yearly compensation was the equivalent of a random coin flip every year. The testimony, essentially undisputed, was that many factors went into determining compensation for vice presidents, including how well the firm and that particular area of business was doing; time at the firm and as a vice president; and individual performance including performance over time (Tr. at 1143-45, 1236-40). Claimant's expert did not take these factors into account (Tr. at 1396-98).

Conclusion

For all of the above stated reasons, the Panel unanimously dismisses the Statement of Claim.