

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Claudia Cosgrove

93-01255

Name of Respondent

Shearson Lehman Brothers, Inc.

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**REPRESENTATION**

For Claimant: Sharon Sobers, Esq. of Tobias, Kraus & Torchia.

For Respondent: David K. Montgomery, Esq. of Keating, Muething & Klekamp.

**CASE INFORMATION**

Statement of Claim filed: March 30, 1993.

Claimant's Submission Agreement signed on: March 23, 1993.

Statement of Answer filed by Respondent, Shearson Lehman Brothers, Inc. on:  
June 10, 1993.

Respondent, Shearson Lehman Brothers, Inc.'s Submission Agreement signed on:  
June 4, 1993.

**HEARING INFORMATION**

Pre-Hearing Conference: December 2, 1993

Hearing Dates/Sessions: December 6, 1993 - Two Sessions.  
December 7, 1993 - Two Sessions.

Hearing Location: Terrace Hotel - Cincinnati, Ohio.

CASE SUMMARY

Claimant alleges that she was employed by Respondent, Shearson Lehman Brothers, Inc. ("Shearson") as a sales assistant for two brokers, Joseph Evelo and Scott Randall. Claimant alleges that she was sexually assaulted by another broker and immediately reported the incident. Claimant alleges that the offending broker was reassigned to another branch, but was eventually returned to the branch where the Claimant was employed.

Claimant alleges that the offending broker was given an office near her desk, and was part of her phone pool. This meant that, at times, Claimant would have to answer his phones. Claimant alleges that she complained to the Branch Manager, Jack Whalen ("Mr. Whalen") and that she spoke to the Human Resources Director. Claimant alleges that in 1991, Respondent refused to give her an annual raise. Claimant alleges that this refusal to give her a raise resulted in a conference call among her, the broker she reported to, Mr. Whalen, the local administrative manager and the Human Resources Director. During the call, she was given the option of staying where she was or having her desk moved. Claimant alleges that she chose to have her desk moved.

Claimant alleges that this move created many problems for her. The desk was in an area of the office some distance away from the broker for whom she worked, there was no one close who could cover her phones while she was away from her desk, the desk was too small to accommodate her computer, files and phone and her files were in a different part of the office. Claimant alleges that she was asked to move her files which were still in her former area to her new area. Claimant alleges that she was unable to do this because files in her new area needed to be removed to make room for her files. Claimant alleges that she requested that the files be removed, without success. Finally, Claimant alleges that she discovered that her files had been removed from her former area without telling her and that she broke down and accepted a constructive discharge by offering to resign as soon as she could find a job. Claimant alleges that she accepted another position and officially severed her relationship with the Respondent.

Respondent maintains that Claimant was employed as a sales assistant in its downtown Cincinnati branch. Respondents maintains that when Claimant complained that a Shearson Financial Consultant had touched her in an offensive manner, they immediately investigated the allegations. Respondent maintains that the Financial Consultant denied the allegations and maintained that there were no witnesses to the incident and that the Branch Manager, Jack Whalen ordered the Financial Consultant to avoid close contact with the Claimant. Respondent maintains that the Financial Consultant was transferred to another office for unrelated reasons.

Respondent maintains that several months later, the Financial Consultant was transferred back to the branch where the Claimant was employed. Respondent maintains that in response to a letter from the Claimant's attorney complaining of the planned location of the Financial Consultant's office, Mr. Whalen spoke to the Financial Consultant who promised to avoid close contact with the Claimant. Respondent maintains that Mr. Whalen spoke to the Claimant and she indicated that she was satisfied with the Financial Consultant's response, and declined to be moved to another desk.

Respondent maintains that as part of her responsibilities, the Claimant was required to serve as a back-up receptionist for other sales assistants and that she refused to perform this function, since it meant occasionally answering the phone for the Financial Consultant. Respondent maintains that at a meeting to discuss this situation, it was agreed that the Claimant's desk would be moved to another location where she would not have to answer his phone. Claimant indicated that she was comfortable with that.

Respondent maintains that when the Claimant received her annual review, she was informed that any raise was delayed for six months because the Financial Consultants who she supported expressed dissatisfaction with her job performance. Respondent denies that the Claimant was the subject of any retaliation. Respondent maintains that the Claimant expressed satisfaction with her new desk location, except for her desk size. Respondent maintains that they gave the Claimant a larger desk. Respondent maintains that several months later, Claimant announced that as soon as she could find another job, she would resign.

#### **RELIEF REQUESTED**

Claimant requested damages for back pay, lost fringe benefits, compensatory, emotional and punitive damages, and attorney's fees.

Respondent requested that the arbitration panel find no sexual harassment, no retaliation and no constructive discharge and that the Claimant's claim be dismissed.

#### **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 Statement of Claim is hereby dismissed in its entirety.
- 2) Each party shall bear their respective costs of this action, including attorney's fees.

**FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

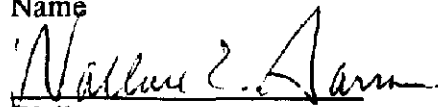
\$500.00	Non-refundable filing fee
\$300.00	Pre-hearing conference fee
\$2,400.00	Hearing session fees (4 sessions x \$600.00)

- 1) Total forum fees in the amount of \$3,200.00 are hereby assessed equally between the Claimant and the Respondent.
- 2) Claimant is therefore assessed the amount of \$1,600.00. Claimant is entitled to offset this amount with the \$1,400.00 previously paid to the NASD, Inc. Claimant is directed to pay the balance of \$200.00 to the NASD, Inc.
- 3) Respondent is hereby assessed the amount of \$1,600.00 and is hereby directed to pay that amount to the NASD, Inc.

Concurring Arbitrator's Signature

Name

Industry Chairperson

  
Wallace E. Sarran, Jr.

Date of Decision: January 18, 1994

- 1) The Statement of Claim is hereby dismissed in its entirety.
- 2) Each party shall bear their respective costs of this action, including attorney's fees.

**FORUM FEES**

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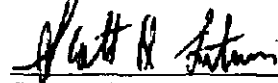
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- 3) Respondent is hereby assessed the amount of \$1,600.00 and is hereby directed to pay that amount to the NASD, Inc.

Concurring Arbitrator's Signature

Name

Industry Chairperson

  
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Scott Litwin

Date of Decision: January 28, 1994

- 1) The Statement of Claim is hereby dismissed in its entirety.
- 2) Each party shall bear their respective costs of this action, including attorney's fees.

**FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

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\$300.00	Pre-hearing conference fee
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- 3) Respondent is hereby assessed the amount of \$1,600.00 and is hereby directed to pay that amount to the NASD, Inc.

Concurring Arbitrator's Signature

Name

Industry Chairperson

  
Jerome A. Stricker

Date of Decision: January 28, 1994