

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Susan Desiderio

93-01568

Name of Respondent

Great Western Financial Securities

REPRESENTATION

For Claimant Susan Desiderio ("Desiderio"): William R. Amlong, Esq. and Robyn S. Hankins, Esq., of Amlong & Amlong, P.A., Fort Lauderdale, Florida.

For Respondent Great Western Financial Securities ("Great Western"): Mark E. Zelek, Esq., of Morgan, Lewis & Bockius, Miami, Florida.

CASE INFORMATION

Statement of Claim filed: August 25, 1993. Claimant's Submission Agreement signed on: June 15, 1993.

Statement of Answer filed by Respondent, Great Western: October 1, 1993. Respondent, Submission Agreement signed by Laura J. Hartt, Vice President-Compliance of Great Western Financial Securities on September 14, 1993 on behalf of Great Western.

HEARING INFORMATION

On February 1, 14, 15, and 17, 1995, in Fort Lauderdale, Florida, hearings lasting 7 sessions were conducted.

CASE SUMMARY

Claimant alleged that she is a top-producing financial consultant who was terminated without cause by Great Western when she was 44 years old and replaced by a younger woman; that her termination violated the Age Discrimination in Employment Act ("ADEA"), and the implied covenant of good faith; that the manner in which she was fired constituted defamation;

intentional infliction of emotional distress; and, that Great Western violated Claimant's employment contract by denying her one month's severance pay as prescribed in her employment contract in cases of no-cause termination.

Respondent denied all allegations of wrongdoing and maintained that it had cause for termination and thus was not required to pay the thirty days of wages for termination without cause under Claimant's employment agreement; that any statements made by Great Western were truthful, privileged, and without malice, and that there was no harm to Desiderio's reputation; that Claimant cannot show that age discrimination was the real reason for her termination and, indeed was hired by Great Western at age 41 and terminated at age 44; that Desiderio failed to mitigate her damages; that Desiderio's claim for emotional distress is preempted by the California Worker's Compensation law; and, that the alleged conduct by Respondent was not "outrageous."

RELIEF REQUESTED

Claimant requested damages of \$269,411.00 in lost wages; an additional \$269,411.00 of lost wages as liquidated damages for Great Western's alleged violation of Desiderio's rights under the ADEA; costs of additional therapy in the amount of \$3,900.00; past medical bills totaling \$7,850.00; \$500,000.00 in damages for emotional distress; and \$500,000.00 in punitive damages.

Respondent requested dismissal of the Claim.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter 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 originals remain on file with the NASD.

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. Respondent, Great Western, is found liable and shall pay to the Claimant the amount of \$7,850.00 for medical damages.
2. Claimant's request for punitive damages is denied.

OTHER COSTS

None.

FORUM FEES

1. Pursuant to Section 44(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$7,000 (7 sessions x \$1,000.00 per session).
2. Claimant is hereby assessed \$1,000.00, for which the NASD shall retain \$1,000.00 of the \$2,472.00 previously deposited in full satisfaction thereof, leaving a remaining credit balance of \$1,472.00. The NASD, Inc. shall retain the \$1,472.00 for which the Claimant shall be reimbursed by the Respondent, as set forth below.
3. Respondent is hereby assessed \$6,000.00, for which the NASD shall retain the \$2,500.00 previously deposited in partial satisfaction thereof, leaving a balance due to the NASD, Inc. in the amount of \$3,500.00. Of that amount, Respondent shall pay \$1,472.00 directly to the Claimant and the remaining \$2,028.00 to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the postponement fee of \$600.00, the non-refundable filing fee of \$500.00, and costs of \$28.00 paid by the Claimant. The NASD shall also retain the award fees of \$140.00 paid by the Respondent.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Public/Industry

15/
Stan West

Public

15/
Earl Fleisig

Public

15/
Ted Abers

Industry

Date of Decision:

4/27/95