

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
AWARD**

In the Matter of the Arbitration Between

VALERIE McFADDEN,

Claimant,

v.

NASD No. 93-1584

BEAR STEARNS & CO., INC.,

Respondent.

Representation

For Claimant: Steven Kaplan, Esq. and Marvin Krakow of Krakow & Kaplan, Los Angeles, California

For Respondent: John Loftus, Esq. and Jill Olofson, Esq., of Keesal, Young & Logan, Long Beach, California

Case Information

Statement of Claim filed: April 13, 1993

Claimant's Submission Agreement signed: April 8, 1993

Statement of Answer filed on: June 25, 1993

Respondents' Submission Agreement signed on: Andrew Haas, June 24, 1993, Bear Stearns & Co., June 24, 1993

Hearing Information

Prehearing Conference Date/Sessions: None

Hearing Date/Sessions: April 11, 1994/two, April 12, 1994/two, April 13, 1994/two, April

21, 1994/two, April 22, 1994/two, May 16, 1994/two, June 2, 1994/two, June 8, 1994/two, June 9, 1994/one, July 11, 1994/two, July 13, 1994/three, July 15, 1994/one, July 29, 1994/one (24 sessions total)

Hearing Location: Los Angeles, California

Case Summary

Claimant alleged:

Sexual discrimination and harassment, breach of contract, wrongful discharge in violation of public policy and interference with prospective economic advantage in the wrongful termination of claimant's employment. Respondent Bear Stearns & Co. (BSC) hired claimant on June 4, 1979 as a sales assistant, in which capacity she worked continuously until terminated on November 6, 1992. McFadden was always an exemplary employee, as reflected in her personal evaluations and compensation.

Respondents discriminated against claimant based on her sex and in the terms and conditions of her employment. She was subjected to jokes and innuendos that were degrading and embarrassing to women. She complained to respondents about the objectionable conduct but to no avail. On or about November 6, 1992, less than 36 days after McFadden had complained in writing about having been sexually harassed by Paul Berman, managing director of respondents' Los Angeles Office, respondents terminated McFadden. The termination was in retaliation for claimant's assertion of her right to be free of discrimination at work.

Respondents generally and specifically denied all allegations of wrongful conduct contained in the Statement of Claim and alleged:

Claimant was originally hired as a secretary, did not sign an employment agreement and was an "at-will" employee under controlling law. She therefore could be terminated at any time with or without cause, but was terminated for sufficient cause. Claimant's termination of employment was a result of her numerous psychological, emotional and financial problems.

Beginning in 1991, McFadden's performance and attitude markedly changed. She began to deliberately violate firm policies, display an insubordinate attitude toward management and create a miserable work environment for everyone around her, all documented in her personnel file long before her complaints of sexual harassment. Respondents suggested that claimant take advantage of the Employee Assistance Program but she discarded the card identifying the service without reviewing it. Claimant engaged in an unauthorized withdrawal of funds, and violated the respondents' smoking, time clock and 40-hour week policy.

Relief Requested

Claimant requested the following against respondent BSC:

1. Lost earnings of approximately \$50,000 a year for four years, approximately \$250,000;
2. Loss of future business and accounts, in excess of \$800,000;
3. Compensatory damages of greater than \$250,000 to compensate for damages caused by emotional distress;
4. Punitive damages in excess of \$500,000;
5. Attorney's fees according to proof.

At the arbitration hearing, in her closing brief, claimant amended her request against BSC as follows:

1. Economic damages of between \$3,724,247.08 and \$10,594,276.08;
2. Emotional distress damages of \$500,000;
3. Punitive damages in the amount of at least three times compensatory damages, but not to exceed \$5,000,000.

Other Issues Considered and Decided

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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Respondents made a motion to dismiss at the close of claimant's case. The panel denied the motion.

Award

After considering the pleadings, testimony, evidence presented at the hearing, closing brief in support of claimant Valerie McFadden and closing arbitration brief of Bear Stearns & Co., the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant dismissed Andrew Haas as a party respondent at the hearing. The panel accepts the dismissal with prejudice;
2. Each and every claim of claimant Valerie McFadden is dismissed;
3. The claim for punitive damages is dismissed;
4. The parties shall each bear their respective attorney's fees;
5. The parties shall each bear their respective costs.

Other Costs

None.

Forum Fees

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall retain the \$1,000 hearing session deposit previously paid by the claimant. Forum fees are assessed against:

Claimant for \$12,000, minus \$1,000 paid as a hearing deposit, leaving a balance of \$11,000, and

Respondent BSC for \$12,000,

calculated as follows: 24 hearing sessions at \$1,000/hearing session, equals \$24,000, divided equally between claimant and respondent BSC, minus \$1,000 already paid by the claimant as a hearing deposit.

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

Arbitration Panel

<i>Name</i>	<i>Public/Industry</i>
Diana Davis, Esq.	Public
Philip Burge	Public
Jeffrey Skogsbergh	Industry

Concurring Arbitrators' Signatures

Diana Davis

Philip Burge

J. Skogsbergh
Jeffrey Skogsbergh

Date of Decision: