

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ann T. Kilbride

vs.

Award
93-01615

Name of Respondent

Fidelity Investments

REPRESENTATION

For Claimant, Ann T. Kilbride ("Claimant"), Paul Murphy, Esq., located in Chelsea, Massachusetts.

For Respondent, Fidelity Investment ("Respondent"), Richelle S. Kennedy, Esq., from the law firm of Bingham, Dana & Gould, located in Boston, Massachusetts.

CASE INFORMATION

Statement of Claim was filed on April 19, 1993.

Claimant's Submission Agreement was signed on April 19, 1993.

Respondent's Statement of Answer was filed on October 1, 1993.

Respondent's Submission Agreement was signed on October 15, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: May 11, 1994 - 2 sessions
 May 14, 1994 - 2 sessions

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 260 Franklin Street, Boston, Massachusetts

CASE SUMMARY

Claimant alleges that Respondent induced her to withdraw her Equal Employment Opportunity

Commission (EEOC) discrimination charge by offering her a settlement which included a report by Respondent on the Form U-5 filed with the NASD that Claimant's employment was "terminated voluntarily for personal reasons".

Claimant also alleges that Respondent instead refused to confirm with prospective employer that Claimant voluntarily resigned and failed to amend the Form U-5. Claimant further alleges that Respondent impeded to EEOC investigation by providing false testimony.

Respondent denies liability and asserts eight affirmative defenses. Respondent state that Claimant is now seeking to re-open and renegotiate the parties' settlement agreement because she is dissatisfied with the outcome.

Respondent maintains that Claimant was terminated by Fidelity and that Fidelity, in compliance with industry practice, filed with the NASD Form U-5 which disclosed that Claimant was "Discharged" for failure to meet job expectations. Respondent also maintains that after the termination, Claimant commenced a discrimination and retaliatory discharge case against Fidelity which the parties settled. As part of the settlement, Fidelity agreed to modify the employment records to show that Claimant was "Permitted to Resign". Respondent contends that it did not agree to sanitize the Form U-5 and erase the previous disclosure.

RELIEF REQUESTED

Claimant requests an award of \$900,000.00 for damages that she would have been awarded under the Civil Rights Act of 1991 as well as an order that Respondent correct the Form U-5 to show that Claimant's employment was "Voluntarily terminated for personal reasons".

Respondent requests that the panel dismiss the Statement of Claim in its entirety and award Fidelity costs and fees pursuant to the terms of the Settlement Agreement.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive conformed copies of the Award while the original remain on file with the NASD.

1. Respondent Request for Order Concerning the Order of Evidence was allowed in part. The arbitrators determined that they would hear evidence on the accord and release between the parties before hearing the case in chief.
2. Claimant's Motion to Compel Discovery was deferred pending resolution of affirmative defenses.

3. Claimant's Motion to Preclude Respondent's Answer was denied.

AWARD

After considering the pleadings, the testimony and the evidence solely on the issues of the affirmative defenses of Release and Accord and Satisfaction presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The arbitrators find for Respondent expect as follows:
2. Both parties shall bear their own legal fees and cost;
3. The arbitrators order the NASD shall change the CRD U-5 of Claimant to expunge "Discharge.....Failure to Meet Job Expectations", and substitute "Permitted to Resign". The parties shall cooperate with the NASD in complying with this order. In the event NASD shall be unable to comply with this order within sixty days, the filing fees and hearing session deposit shall be refunded to the Claimant. In the event the expungement occurs within sixty days, the NASD shall retain the forum fees.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed against the Claimant.

Non-refundable Filing Fee: \$500.00

Hearing Session Fees: \$1,000.00 x 4 sessions = \$4,000.00

Total Fees: \$4,500.00

1. Claimant deposited \$1,500.00 and owes a balance of \$3,000.00.

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

ARBITRATION PANEL

| | | |
|-----------------------------|---|--------------------|
| Lawrence R. Bowers, Esq. | - | Public Chairperson |
| Peter M. Bizinkauskas, Esq. | - | Industry Panelist |
| Arnold M. Marrow, Esq. | - | Public Panelist |

Concurring Arbitrator's Signature

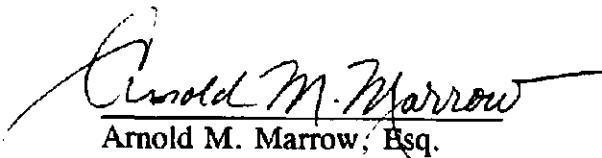
Lawrence R. Bowers
Lawrence R. Bowers, Esq.

Date of Decision: July 14, 1994

ARBITRATION PANEL

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| Lawrence R. Bowers, Esq. | - | Public Chairperson |
| Peter M. Bizinkauskas, Esq. | - | Industry Panelist |
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Concurring Arbitrator's Signature

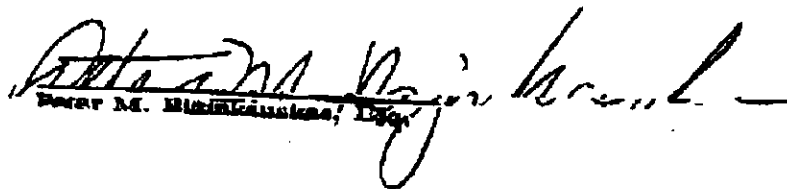

Arnold M. Marrow, Esq.

Date of Decision: July 14, 1994

ARBITRATION PANEL

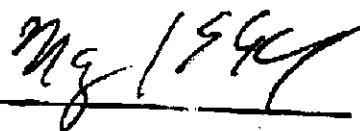
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| Peter M. Bizinkauskas, Esq. | - | Industry Panelist |
| Arnold M. Marrow, Esq. | - | Public Panelist |

Concurring Arbitrator's Signature


Peter M. Bizinkauskas, Esq.

Executed on:

~~Date of Decision:~~



Date of Decision: July 14, 1994