

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Sharon Lockhart,

Claimant,

v.

No. 95-00869

A. G. Edwards & Sons, Inc., and

Steven B. Vecchio,

Respondents.

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### **REPRESENTATION OF PARTIES**

Sharon Lockhart ("Claimant") was represented by Jean Lamfers, Esq., of Lamfers & Maneke, Kansas City, Missouri.

A. G. Edwards & Sons, Inc. ("AGE") was represented by Phyllis A. Hartrich, Esq., A. G. Edwards & Sons, Inc., St. Louis, Missouri.

Steven B. Vecchio ("Vecchio") was represented by Phyllis A. Hartrich, Esq., A. G. Edwards & Sons, Inc., St. Louis, Missouri.

### **CASE INFORMATION**

Claimant's Statement of Claim was filed on or about February 17, 1995. Claimant's Submission Agreement Sharon Lockhart was signed on February 15, 1995.

Respondents' joint Answer was filed on or about April 20, 1995. AGE's Submission Agreement was signed on April 19, 1995 by Stephen G. Sneeringer, Vice president and General Counsel of AGE. Vecchio's Submission Agreement was signed on April 12, 1995.

### **HEARING INFORMATION**

A pre-hearing conference was held on April 2, 1996 for one (1) session.

The hearing was held on:

- April 10, 1996 for two (2) sessions.
- April 11, 1996 for two (2) sessions.
- April 12, 1996 for two (2) sessions.
- July 15, 1996 for two (2) sessions.
- July 16, 1996 for two (2) sessions.
- July 17, 1996 for two (2) sessions.

July 18, 1996 for two (2) sessions.  
July 19, 1996 for two (2) sessions.  
July 22, 1996 for two (2) sessions.  
October 23, 1996 for three (3) sessions.  
October 24, 1996 for three (3) sessions.  
October 25, 1996 for three (3) sessions.  
October 26, 1996 for two (2) sessions.

The hearing was held in Kansas City, Missouri and Overland Park, Kansas.

### **CASE SUMMARY**

In her Statement of Claim, Claimant alleged that Respondents AGE and Vecchio (referred to jointly as "Respondents") violated her employee rights by subjecting her to a hostile work atmosphere and by subjecting her to disparate treatment with regard to her terms and conditions of employment, by reason of gender discriminatory considerations. Claimant further contended that Respondents violated her employee rights through their failure to conduct a prompt, thorough internal investigation of her allegations. Claimants specifically have alleged that Respondents have committed: Gender discrimination in violation of 42 U.S.C. § 2000e et seq. and in violation of K.S.A. §§44-1001 et seq.; retaliatory actions in violation of 42 U.S.C. § 2000e-3, et seq. and in violation of K.S.A. §§ 44-1001 et seq.; and negligently retained Vecchio after Claimant had filed reports of what she felt was discriminatory treatment by Vecchio.

In their joint Answer, except as specifically admitted therein, Respondents denied each and every allegations contained in the Statement of Claim. Respondents specifically denied that they had engaged in gender discrimination, gender harassment or retaliation against the Claimant. AGE specifically denied that by retaining Vecchio in its employment, it has breached a duty owed to Claimant and further denied that it failed to follow its own policy in investigating Claimant's complaint. Respondents also asserted that the Statement of Claim failed to allege sufficient facts and information for the relief requested under any of the theories which have been alleged and is barred by the applicable periods of limitation.

### **RELIEF REQUESTED**

Claimant requested a joint and several award against the Respondents of the following: Enter a declaratory judgement that the practices complained of were unlawful and violative of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 1981 (a) and 42 U.S.C. § 2000e et seq. for both gender discrimination and retaliation; enter a declaratory judgement that the practices complained of were unlawful and violative of the Kansas Act Against Discrimination, as amended, K.S.A. § 44-1001 et seq. for both gender discrimination and retaliation; permanently enjoin the Respondents, their agents, successors, employees, attorneys, and those acting in concert with them from engaging in each of the unlawful practices, policies, customs and usages set forth in the

Statement of Claim and from continuing any and all other practices shown to be in violation of applicable law; order modification or elimination of practices, policies, customs and usages set forth in the Statement of Claim and all other such practices shown to be in violation of applicable law so that they do not discriminate on the basis of sex; compensate and make whole Claimant for all earnings and other benefits she would have received but for the discriminatory practices of Respondents; award Claimant compensatory damages and punitive damages in the amount of \$300,000, costs and disbursements of this action, including reasonable attorneys fees, and grant such other and further relief as may be just and proper.

Claimant also requested a separate award against AGE only for the following: Enter a declaratory judgement that the retention of Vecchio was negligent; permanently enjoin AGE, its agents, successors, employees, attorneys, and those acting in concert with them from permitting Vecchio to supervise Claimant in any manner; compensate and make whole Claimant for all earnings and other benefits she would have received but for the negligent retention by AGE of Vecchio; award Claimant compensatory damages and punitive damages in such amounts as established at the hearing, costs and disbursements of this action, including reasonable attorneys fees; and grant such other relief as may be just and proper.

Respondents requested that the claims filed against them be dismissed in their entirety, that all costs of the proceeding be taxed against Claimant, and for such other relief as the arbitrators may deem appropriate.

#### **OTHER ISSUES CONSIDERED & DECIDED**

On April 10, 1996, Respondents moved for dismissal based upon Claimant's failure to fully and timely provide requested documents and information. The panel denied the motion, but further ruled that Respondents would be accorded reasonable further time for cross examination and case in defense upon making such requests as the hearing progressed.

Upon resumption of the hearing on July 15, 1996, Claimant made a motion for summary judgement based upon Respondents' failure to timely provide certain requested documents. The panel denied the motion, further ruling that Claimant would be accorded reasonable further time upon renewing request as the hearing progressed.

On July 19, 1996, Claimant moved for production of documents Respondents had furnished to their non-management witnesses, in the employ of AGE, during preparation of the latter to testify in the hearing. Respondents opposed the motion, asserting attorney-client and attorney work product privileges. The panel ruled that, as witnesses involved were non-management, and the documents were given to them in preparation for their testifying, the equities balanced in favor of Claimant and ordered production by Respondents to Claimant for purposes of cross examination of such witnesses. In consideration of Respondents' expressed concerns, Claimant was ordered to, and did,

execute a confidentiality stipulation. The stipulation limited the use of documents involved to cross examination of witnesses and then immediate return of the documents to the Respondents.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

At the outset of the hearing on April 10, 1996, Claimant withdrew her allegation that AGE was negligent in its retention of Vecchio. Further, Claimant, on July 19, 1996, withdrew her contentions that Respondents, with discriminatory motivation, failed to equitably route to Claimant "broker of the day" calls and failed to provide Claimant with adequate notice of staff sales meetings.

### **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) Claimant's claims are, and each of them, denied with prejudice.

(2) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were 29 regular sessions x \$750 and one 91) pre-hearing session x \$300 = \$22,050 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant Sharon Lockhart.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$350 previously paid by A. G. Edwards & Sons, Inc. The excess member surcharge payment of \$350 shall be allocated to the forum fees assessed against Respondent A. G. Edwards & Sons, Inc.

Additional forum fees in the amount of \$10,275 (\$11,025 - \$750) are assessed by the panel against Claimant Sharon Lockhart.

Additional forum fees in the amount of \$10,675 (\$11,025 - \$350) are assessed by the panel against Respondent A. G. Edwards & Sons, Inc.

**Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.**

**Concurring Arbitrators:**

Dated:

David A. Nixon  
David A. Nixon  
Public Arbitrator, Presiding Chair

/s/

November 18, 1996

Patricia W. Bottoms  
Patricia W. Bottoms  
Industry Arbitrator

/s/

November 19, 1996

**Dissenting Arbitrator:**

The dissent is based on the panel's findings of no merit with respect to the allegations of failure to assign Claimant a sales aid and failure to confer a \$50 gift certificate to Claimant for winning a 1991 sales contest. The dissent is due to a different view of the standard of proof required. Specifically, Arbitrator Hill does not believe that discriminatory motivation or intent of discrimination must be proved, and that the burden of proof under the Burdine and McDonnell Douglas cases was met by the Claimant.

Michael S. Hill  
Michael S. Hill  
Public Arbitrator

/s/

November 19, 1996