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N.A.S.D. AWARD

9607113

NATIONAL ASSOCIATION OF SECURITIES DEALERS


In the Matter of the Arbitration Between

Name of Claimant

Marcia A. McDonald

95-03669

Name of Respondent

 Hamilton Investments, Inc.

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Securities Dealers, Inc.

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REPRESENTATION

For claimant Marcia A. McDonald ("claimant") appeared Rayl L. Stepter, Esq., a sole practitioner, located in Columbus, Ohio.

For respondent Hamilton Investments, Inc. ("respondent") appeared Janet K. Cooper, Esq., of Pickrel, Schaeffer & Ebeling, L.P.A., located in Dayton, Ohio.

CASE INFORMATION

Statement of Claim filed: July 28, 1995

Claimant's Submission Agreement signed on: July 19, 1995

Statement of Answer filed by Respondent on: September 22, 1995

Respondent's Submission Agreement signed on: October 2, 1995

HEARING INFORMATION

Pre-Hearing Conference: May 9, 1996 - One Session

Hearing Dates/Sessions: May 20, 1996 - Three Sessions

The hearing was held at the Doubletree Guest Suite Hotel located in Columbus, Ohio.

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CASE SUMMARY

Claimant alleged that she responded to an advertisement placed by respondent seeking individuals with a Series 6 or 7 license to sell its services and that, on or about July 6, 1992, she entered into a written employment contract with respondent. Claimant also alleged that a Series 7 license was not required and that only a Series 6 license was required at the time was hired.

Claimant asserted that, in November 1992, a supervisor informed her that she had to sign an agreement to obtain a Series 7 license or else she would be terminated. Claimant also asserted that respondent induced her to believe that she had an employment agreement to sell respondent's services with a Series 6 license. Claimant contended that respondent breached the employment agreement which she had reasonably relied upon in good faith. Claimant alleged that she was willing to perform the terms of the contract and that any nonperformance has been excused by failure of consideration by respondent's waiver of performance.

Claimant alleged that, on January 7, 1993, she took an examination to obtain her Series 7 license, but that she did not pass and, therefore, she was forced to resign or else be terminated by respondent. Claimant further alleged that, a white female employee of respondent, had also taken the examination and did not pass, however, unlike claimant, this employee was not terminated. Claimant also alleged that respondent offered reasons for her forced resignation that were merely a pretext to discriminate against her on the basis of her race, in violation of O.R.C 4112.02(A), 4112.99, and Title VII, 42 U.S.C. section 2000e et seq.

Claimant asserted that, during the course of her employment, a supervisor made statements of a sexual nature toward her, that she refused all advances made by him and that, as a result of her refusal, she was forced to resign or else be terminated after failing her Series 7 examination.. Claimant further alleged that, while her male co-workers received their commission checks in a timely manner, she did not receive a check for commissions owed to her until approximately six months after she was forced to resign.

Respondent maintained that claimant's supervisor told claimant at the time she was hired that she would be required to have a Series 7 license within six months of her date of hire and that claimant was provided with training sessions, study materials, tutoring sessions and a seminar to prepare for the exam. Respondent further maintained that claimant's work performance was not satisfactory and she was, therefore, terminated on January 6, 1993, for lack of production, deficiencies in record keeping compliance, and failure to pass the Series 7 examination.

Respondent maintained that it did not discriminate against claimant on the basis of her race or her sex. Respondent further maintained that her supervisor did not engage in conduct that could be considered "of sexual nature" or as "an advance" towards claimant and that her supervisor refused to acquiesce to claimant's advances to him.

Respondent maintained that it did not owe commissions to claimant, but that the commissions were owed by Pacific Fidelity Life ("Pacific"). Respondent further maintained that claimant's supervisor informed her that she was due commissions and that it arranged for the commissions to be paid directly to claimant.

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RELIEF REQUESTED

Claimant requested \$1 10,000.00 in compensatory damages. Claimant further requested \$100,000.00 for emotional distress and punitive damages of \$100,000.00 and other relief as justice requires.

Respondent did not specifically request relief.

OTHER ISSUES CONSIDERED & 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.

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. All claims against respondent are dismissed in their entirety.
2. Claimant's request for punitive damages is hereby denied.
3. Claimant's request for attorneys' fees is hereby denied.
4. The parties shall bear their respective costs.
5. All other claims are denied.

FORUM FEE

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee previously deposited by claimant and have assessed the following forum fees:


1 pre-hearing conference	= \$ 300.00
3 hearing sessions x \$750.00	= \$2,250.00
total forum fees	= \$2,550.00

Claimant be and hereby liable is for the sum of \$1,275.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$750.00 with the NASD and, therefore, claimant is liable and shall pay the sum of \$525.00 to the NASD.

Respondent be and hereby is liable and shall pay to the NASD the sum of \$1,275.00, representing one-half of the total amount of forum fees assessed.

ARBITRATORS' SIGNATURES

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Benjamin B. Segel, Esq.
Chairperson-Public Arbitrator

Ahmed Seif Amragy
Public Arbitrator


Stephen Cartwright
Industry Arbitrator

Date of Decision: July 23, 1996

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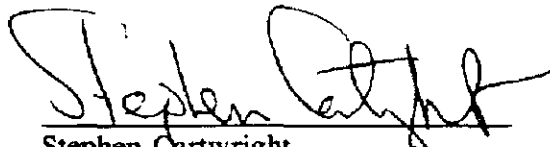
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