

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Edith M. Gunn

95-04782

Name of Respondents

Daniel R. Masiello
Arthur E. DeLorenzo
IDS Financial Services Inc.
a/k/a American Express Financial Advisors, Inc.

REPRESENTATION

Claimant Edith M. Gunn ("Gunn") appeared pro se.

Respondents Daniel R. Masiello ("Masiello"), Arthur E. DeLorenzo ("DeLorenzo") and IDS Financial Services, Inc. a/k/a American Express Financial Advisors, Inc., ("IDS") were represented by Kenneth A. Kirschner, Esq. and Eric G. Kussoy, Esq., Kelley, Drye & Warren, New York, NY.

CASE INFORMATION

Claimant's Statement of Claim was filed October 10, 1995.

Claimant's Uniform Submission Agreement was signed October 6, 1995.

The Joint Statement of Answer of Masiello, DeLorenzo and IDS (collectively "Respondents") was filed January 26, 1996.

Masiello's Uniform Submission Agreement was signed January 22, 1996.

DeLorenzo's Uniform Submission Agreement was signed December 4, 1995.

IDS's Uniform Submission Agreement was signed December 13, 1995.

HEARING INFORMATION

Prehearing Dates/Sessions: December 5, 1996/one session
December 6, 1996/one session

Hearing Dates/Sessions: December 11, 1996/two sessions
December 12, 1996/two sessions

Hearing Location: Club Quarters
New York, NY

CASE SUMMARY

Claimant alleged, among other things, that Respondents wrongfully terminated her and discriminated against her based on gender and her disability of obesity. Claimant alleged that Respondents defamed Claimant through libel and slander. Claimant alleged that Respondents committed common law fraud and misrepresented or omitted material facts. In addition, Claimant alleged that the actions of Respondents resulted in the intentional infliction of emotional distress. Claimant alleged that after attending a seminar sponsored by IDS, she was accepted into the pre-appointment program with IDS. Claimant alleged that upon completion of the ten week program Claimant obtained her Series 7, 63 and New York State Insurance licenses. Claimant alleged that even though she obtained the licenses, Respondents failed to appoint her until another eight months had passed and then Respondents informed her that she would be required to pay expenses for the first year even though she was an employee. Claimant alleged that every time she requested information from Respondents about the amount of the expenses, she was just informed that there would be some expenses. Claimant alleged that production goals were arbitrarily set by DeLorenzo and in October 1993 Claimant received a letter indicating that she had not met the production goals as set. Claimant alleged that she conferred with IDS home office and was informed that the company does not have production requirements. Claimant alleged that in March 1993, she had a meeting with DeLorenzo and Masiello regarding Production and was asked to resign if she did not meet her production goals within six months. Claimant alleged that she informed DeLorenzo and Masiello that she would never resign and Respondents then informed her that she would be terminated if she did not resign. Claimant alleged that Respondents knowingly, willfully and/or intentionally misrepresented or omitted material information to induce Claimant to assist in building a branch office for the benefit of Respondents and then to exclude Claimant also benefitting from that office. Claimant alleged that she reasonably relied upon the misrepresentations or omissions to her detriment. Claimant alleged that Respondents' oral and written statements in respect to Claimant constituted defamation of Claimant's character resulting in diminution in the value of Claimant's business and income. Claimant alleged that Respondents pursued a course of extreme and outrageous conduct intended to erode Claimant's independent decision-making ability which resulted in a crippling emotional and physical effect on Claimant.

Respondents denied all allegations of wrong-doing as asserted in the Statement of Claim. Respondents maintained that after completing a pre-appointment program, Claimant was appointed as a Financial Planner in April, 1988. Respondents maintained that Claimant was informed, during a career seminar, that she would be required to incur office operating expenses. Respondents maintained that all first-year Financial Planners were required to travel to monthly meetings and none were reimbursed for travel time, gas or toll expenses. Respondents maintained that first-year Financial Planners are expected to achieve a goal of 1,400,000 Total weighted production ("TWP"), the amount that would validate salary and expense allowance. Respondents maintained that after the first year is completed, Financial Planners are independent contractors and the contract may be terminated, by either party, for a variety of reasons. Respondents maintained that Financial Planners set their own production goals and that DeLorenzo does not establish goals for them. However, Respondents maintained that DeLorenzo does meet with Financial Planners to discuss their production goals and recommend methods for improved sales performance. Respondents maintained that the action plan submitted by DeLorenzo to Claimant set forth realistic client interview, marketing and sales goals for Claimant to utilize as well as a time management strategy. Respondents maintained that Masiello offered to meet weekly with Claimant to provide additional guidance and support and to meet monthly with DeLorenzo. Respondents maintained that New York law does not recognize a cause of action for wrongful termination and that Claimant's allegations of discrimination are without any supporting facts. Respondents maintained that Claimant also failed to plead with required particularity any libelous or slanderous statements published by Respondents.

Respondents maintained that no material misrepresentations or omissions were made to Claimant that Respondents knew to be false. Respondents raised the affirmative defenses of failing to state a claim upon which relief can be granted; as an independent contractor, not an employee, Claimant is not covered by federal, state or local employment discrimination laws; Claimant was terminated for legitimate, non-discriminatory reasons; the claims are barred by the applicable statutes of limitations; defamation claims are barred because they are not plead with sufficient particularity; intentional infliction of emotional distress is barred because the claim does not allege any extreme or outrageous conduct by Respondents; obesity is not a disability because it does not substantially limit one or more of her major life activities; and because Claimant failed to exhaust administrative remedies.

RELIEF REQUESTED

Claimant requested relief in the amount of \$250,000.00 in damages plus punitive damages of \$750,000.00, as well as the costs and expenses incurred in this arbitration.

Respondents requested that the Statement of Claim be denied in its entirety.

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. The panel considered Respondents' Motion To Dismiss and determined that Claimant had not had an opportunity to respond. Therefore, the Motion was denied and Claimant would be provided an opportunity to file a Memorandum of Law in support of Verbal Opposition to the Motion.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That the Statement of Claim is denied in its entirety.
2. That the claim for punitive damages is denied.
3. That each party shall bear its own costs and expenses except as specifically addressed in the forum fees section of the award.
4. That any and all relief not specifically addressed is denied.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 prehearing sessions x \$300.00 = \$ 600.00

4 hearing sessions x \$1,000.00 = \$4,000.00

Total Forum Fees \$4,600.00

Forum Fees are assessed at \$1,000.00 to Claimant and \$3,600.00 to Respondents jointly and severally. Claimant is to receive credit for the \$1,000.00 hearing session deposit previously submitted to the NASD Regulation. Respondents have a net assessment due of \$3,600.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

1/21/97

Allen Kilik

Allen Kilik, Chairman
Public Arbitrator

Andrew Berger
Public Arbitrator

Scott L. Fagin
Industry Arbitrator

Date Decision Served by NASD Regulation: *January 24, 1997*

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1/21/97

Allen Kilik, Chairman
Public Arbitrator

Andrew Berger
Public Arbitrator

Scott L. Fagin
Industry Arbitrator

Date Decision Served by NASD Regulation:

January 26, 1997

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