

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Tracey Herbranson,

Claimant,

and

No. 95-05730

Smith Barney Shearson, Inc. and
Jeffrey S. Stone

Respondents,

REPRESENTATION OF PARTIES

Claimant Tracey Herbranson was represented by Tailim Song, Esquire of Hill Gilstrap, located in Arlington, Texas.

Respondent Jeffrey S. Stone was pro se in correspondence, but was not represented and did not appear at the hearing in this matter.

CASE INFORMATION

Claimant Tracey Herbranson's Statement of Claim was filed on or about December 5, 1995. Claimant Tracey Herbranson's Submission Agreement was signed on October 5, 1995.

The NASD Regulation, Inc. Office of Dispute Resolution has no record of a Statement of Answer from Respondent Jeffrey S. Stone. The NASD Regulation, Inc. Office of Dispute Resolution has no record of a properly executed Submission Agreement from Respondent Jeffrey S. Stone.

HEARING INFORMATION

Pre-hearing conferences were held on: September 25, 1996 for one (1) session; and February 5, 1997 for one (1) session.

The hearing was held on March 26, 1997 for two (2) sessions.

The hearing was held in Dallas, Texas.

CASE SUMMARY

Claimant Tracey Herbranson ("Claimant") brought this action to recover lost wages and benefits, and damages for past and future mental anguish sustained by the alleged sexual harassment and related acts and violations inflicted upon her by Respondent Jeffrey S. Stone ("Respondent") while she worked as his sales assistant at Smith Barney Shearson, Inc.'s Dallas, Texas branch.

Claimant stated that on or about September 1991 she became employed with Smith Barney Shearson, Inc. ("Smith Barney"), and that on or about November 1991 she was promoted to a sales assistant position where she worked for Respondent. Claimant asserted that Respondent would comment on her clothing, comment on her legs, grab various parts of his own body and comment to her, use unreasonably abusive language as well as other derogatory written and verbal statements, gestures and actions. Claimant further asserted that these statements, gestures and actions by Respondent were known to management of Smith Barney who failed to take any action. According to Claimant, even though she was reassigned to another broker within the same offices of Smith Barney after May 4, 1993, Respondent continued his harassing and intimidating conduct. As of May 23, 1993, allegedly as a result of the foregoing circumstances, Claimant resigned from her employment with Smith Barney.

Claimant asserted claims for intentional infliction of emotional distress, wrongful termination, and violations of the Texas Labor Code. Her claim under violations of the Texas Labor Code included: (1) sexual harassment and constructive discharge due to the conduct exhibited by Respondent and tolerated, condoned or ratified by Smith Barney; (2) hostile environment sexual harassment as Respondent's conduct interfered with Claimant's work performance and created an intimidating, hostile or offensive work environment; and (3) unlawful job classification due to Respondent and Smith Barney limiting, segregating or classifying Claimant in a way that deprived or tended to deprive her of employment opportunities.

RELIEF REQUESTED

Claimant Tracey Herbranson requested an award for: lost wages in the amount of \$10,000.00; past and future mental anguish in the amount of \$60,000.00; pre-judgment interest; and attorney's fees totaling 40% of all amounts awarded. Claimant Tracey Herbranson limited her total claim to \$100,000.00.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of Claimant, the undersigned arbitrators have determined that Respondent Jeffrey S. Stone had been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Jeffrey S. Stone had received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondent Jeffrey S. Stone did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the Code and is bound by the determination of the arbitration panel on all issues submitted.

Originally Claimant Tracey Herbranson named Smith Barney Shearson, Inc. as a co-Respondent. Pursuant to Claimant Tracey Herbranson's letter dated February 21, 1997, her claims with Smith Barney Shearson, Inc. were settled.

AWARD

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

1. That Respondent Jeffrey Stone is liable for and shall pay the Claimant Tracey Herbranson \$50,000.00 in compensatory damages and interest at the Texas statutory rate from May 21, 1997;
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, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) pre-hearing conferences x \$300 = \$600, and there were two (2) hearing sessions x \$600 = \$1,200 in forum fees. Pursuant to §10332(b) of the NASD Code of Arbitration Procedure (the "Code") 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 Code, 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 \$600 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant Tracey Herbranson.

Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$300 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Respondent Smith Barney Shearson, Inc.

Respondent Jeffrey S. Stone is liable for and shall pay the NASD Regulation, Inc. Office of Dispute Resolution forum fees in the amount of \$1,200 (= \$1,200 total forum fees - hearing session deposit of \$600 + postponement fees of \$600 for July postponement).

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

Concurring Arbitrators' Signatures

/s/ Russell E. Rains

Russell E. Rains, Esquire
Chairperson
Public Arbitrator

June 6, 1997

Dated:

/s/ Jack K. Lovette

Jack K. Lovette
Panelist
Public Arbitrator

June 5, 1997

Dated:

/s/ W. D. Connally

William D. Connally
Panelist
Industry Arbitrator

June 5, 1997

Dated: