

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Michelle Talluto,

Claimant,

and

No. 95-05749

Charles Schwab & Co., Inc.

Respondent.

REPRESENTATION OF PARTIES

Claimant Michelle Talluto was represented by Charles A. Butler, Esquire, of Law Offices of Allen J. Counard P.C., located in Trenton, Michigan.

Respondent Charles Schwab & Co., Inc. was represented by Gary H. Glaser, Esquire and Philip K. Davidoff, Esquire, of Winston & Strawn, located in New York, New York.

Respondent Cheryl Spiva was dismissed without prejudice (*see infra* section "Other Issues Considered & Decided").

Respondent Madeline Mitchell was dismissed without prejudice (*see infra* section "Other Issues Considered & Decided").

CASE INFORMATION

Claimant Michelle Talluto's Statement of Claim was filed on or about December 6, 1995.

Claimant Michelle Talluto's Submission Agreement was signed on November 29, 1995.

Respondent Charles Schwab & Co., Inc.'s Statement of Answer was filed on or about March 11, 1996.

Respondent Charles Schwab & Co., Inc.'s Submission Agreement was signed on February 29, 1996, by Barrie Gross, Senior Corporate Counsel of Charles Schwab & Co., Inc.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on: December 19, 1996 for two (2) sessions; and
 December 20, 1996 for three (3) sessions.

The hearing was held in Southfield, Michigan.

CASE SUMMARY

Claimant Michelle Talluto ("Claimant") alleged that Respondent Charles Schwab & Co., Inc. ("Respondent") discriminated against Claimant on account of her race and marital status in violation of the Elliott-Larsen Civil Rights Act MCL 37.2101 et seq. Claimant also alleged that Respondent was liable for sexual harassment.

Claimant stated that she worked for Respondent from on or about February 10, 1992 until she was terminated on or about December 5, 1992. Claimant maintained that, upon becoming Claimant's supervisor, Cheryl Spiva ("Spiva") entered into a continuing course of discriminatory conduct against Claimant. Claimant asserted that, during this time, Spiva accused Claimant of being a racist, ordered that all Italian customers be given to Claimant, blamed Claimant for mistakes made by others, and assigned Claimant late appointments and overtime due to Claimant's single marital status. Claimant contended that, while employed with Respondent, Spiva harassed Claimant about tardiness when other similarly situated employees were not harassed, falsely accused Claimant of various wrongdoing, and put Claimant on probation based on these false accusations. Claimant also asserted that, while employed with Respondent, Claimant's regional supervisor, Madeline Mitchell ("Mitchell") made sexual advances towards Claimant and that Claimant's complaints with regard to Mitchell's sexual advances were not addressed by Respondent.

Respondent denied the allegations set forth in the Statement of Claim. Respondent stated that Claimant was terminated due to Claimant's habitual tardiness, Claimant's violations of Respondent's risk trading policies, Claimant's poor business judgment, and Claimant's failure to follow the directions of her supervisor. Respondent alleged that at no time during Claimant's employment did Claimant complain about or even suggest that she was discriminated against based on her race or marital status or that she had been sexually harassed. Respondent made the following affirmative defenses, including, but not limited to: (1) that Claimant failed to state a claim upon which relief can be granted; (2) that Claimant's claims are barred by the applicable statutes of limitation; (3) that at all relevant times Respondent acted lawfully, in good faith and without intent to deny Claimant any rights under the law; (4) that Claimant failed to complain about the alleged discrimination or harassment, thereby failing to put Respondent on notice of such acts; (5) that the employment decisions of which Claimant complains were based solely on lawful, non-discriminatory business related factors; (6) that Claimant has failed to mitigate her damages; and (7) that if any of the alleged

acts or omissions were engaged in by Respondent, which it denies, Respondent did not engage in such acts or omissions intentionally or with malice.

RELIEF REQUESTED

Claimant Michelle Talluto requested an award in the amount of \$100,000.

Respondent Charles Schwab & Co., Inc. requested that the claims asserted against it be dismissed and/or denied in their entirety and that it be awarded its costs and attorney fees.

OTHER ISSUES CONSIDERED & DECIDED

Pursuant to Claimant's letter dated April 15, 1996, Respondents Cheryl Spiva and Madeline Mitchell were dismissed from this matter without prejudice.

Prior to the hearing in this matter, Respondent Charles Schwab & Co., Inc. moved for dismissal of the claims. After careful consideration, the undersigned panel of arbitrators denied this motion without prejudice.

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.

ARBITRATOR FINDINGS

The undersigned panel of arbitrators hereby makes the following findings of fact in this matter: (1) that the Claimant Michelle Talluto did not commit a dischargeable offense; (2) that the Respondent Charles Schwab & Co., Inc. may have selectively enforced company employment policy with respect to the Claimant Michelle Talluto; and (3) that the Claimant Michelle Talluto failed to present corroborative evidence to substantiate charges of sexual harassment or discrimination because of marital status or race.

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. That Respondent Charles Schwab & Co., Inc. is liable for and shall pay to Claimant Michelle Talluto compensatory damages in the amount of Twenty Six Thousand Dollars and No Cents (\$26,000.00);
2. That Respondent Charles Schwab & Co., Inc. is liable for and shall pay to Claimant Michelle Talluto attorney fees in the amount of Three Thousand Dollars and No Cents (\$3,000.00);
3. That Respondent Charles Schwab & Co., Inc. shall correct Claimant Michelle Talluto's U-5 to read as follows: "Charles Schwab & Co., Inc. and Michelle Talluto agreed to terminate their association because of irreconcilable differences of policy;" and
4. 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 no pre-hearing conferences and there were five (5) hearing sessions x \$600 = \$3,000 in forum fees. Pursuant to §10205(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 §10205(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 **refund** as forum fees the hearing session deposit in the amount of \$600 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant Michelle Talluto.

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 Charles Schwab & Co., Inc.

Respondent Charles Schwab & Co., Inc. is liable for and shall pay all forum fees incurred in this matter in the amount of \$3,000. Respondent Charles Schwab & Co., Inc. is also liable for and shall pay postponement fees in the amount of \$600.

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

Concurring Arbitrators' Signatures

\s\ George P. Doom

George P. Doom

Chairperson

Public Arbitrator

January 21, 1997

Dated:

\s\ Stephen K. Woods

Stephen K. Woods, Esquire

Panelist

Public Arbitrator

January 23, 1997

Dated:

\s\ Eugene F. Leich

Eugene F. Leich

Panelist

Industry Arbitrator

January 22, 1997

Dated:

For NASD Regulation use only:

Date Award served on the parties: January 24, 1997