

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Deborah Werrlein

96-01235

Name of Respondents

Raymond James & Associates, Inc.
William L. Specht

REPRESENTATION

For Claimant: Michael H. Alden, Esq. of the law firm of Fisher & Sauls, P.A., St. Petersburg, FL.

For Respondents: Michael R. Alford, Esq., in-house counsel at Raymond James & Associates, Inc. ("Raymond James").

CASE INFORMATION

Statement of Claim filed: March 13, 1996.

Claimant's Submission Agreement signed on: March 13, 1996.

Joint Statement of Answer of Respondents dated: June 11, 1996.

Respondents' Submission Agreements signed on: June 10, 1996.

HEARING INFORMATION

Eleven sessions were conducted in this matter on January 16, 17 and 18, 1997 and February 21 and 22, 1997 in Tampa, Florida.

CASE SUMMARY

Claimant Deborah Werrlein brought a three count claim in arbitration against Respondent Raymond James. Count I seeks damages for sex discrimination under Title VII of the Civil

Rights Act of 1964, as amended by the Civil Rights Act 1991, based upon the discriminatory manner in which the manager of the TFI Department, William Specht, misapplied Company policy, invented new Department policy which was applied solely to Claimant, and caused the Human Resources Department of the Company to apply the Family and Medical Leave Act ("FMLA") to her in a discriminatory manner based on her sex. Count II of the claim relates to Respondents' failure to accommodate Claimant's short-term disability relating to her successive knee surgeries by refusing Claimant's request to install a computer and a facsimile machine in her residence to permit her to be in daily and consistent contact with her Department and her Sales Assistant. Count III of the claim relates to the manner in which William Specht intentionally misapplied Company and department policy so as to prevent her from receiving commissions due to her: (1) in her partnership with Robert DeConnick as to certain trades involving Piper Capital; and (2) with respect to her own account involving Aid to Lutherans. Claimant alleged that the discriminatory misapplication of existing policy as to the entitlement to commissions was unlawful in its own right and further evidence of sex discrimination in Count I.

Claimant alleged that based on the evidence presented to the Panel, she proved by a preponderance of the evidence that she was discriminated against on the basis of her sex. In particular, Claimant alleged that she proved that: (1) a hostile work environment based upon sexual language and jokes demeaning to women consistently existed throughout her employment in the TFI Department; (2) William Specht applied Company policy and newly invented Department rules to Deborah Werrlein, one of only two females of approximately twenty sales representatives throughout most of her tenure in the TFI Department; (3) William Specht refused to apply the Family and Medical Leave Act on an intermittent or part-time basis to Claimant because of his desire to terminate her in June, 1994 when she was one of only two females of twenty representatives in the TFI Department; and (4) notwithstanding Claimant's numerous absences from work between March, 1993 and March, 1994, she nevertheless ranked in the middle or slightly above her peers in sales production and earned \$236,000 in calendar year 1993.

Respondents denied all liability in connection with Deborah Werrlein's claims. Specifically, Respondents maintained that Deborah Werrlein was properly disciplined for failure to abide by firm policies regarding attendance and tardiness. Respondents next maintained following verbal and written warnings, Claimant was placed on probation for unexcused absences and she was advised that her probation would preclude the receipt of commissions on future trades which occurred while she was out the office. Respondents maintained the disciplinary measures were unrelated to Claimant's gender or physical problems.

In addition, Respondents maintained that Claimant was terminated after she informed Respondents that she would be unable to return to work following the expiration of her FMLA leave and Claimant was provided with proper notice and received all benefits mandated by the FMLA. Respondents next maintained there was no failure to accommodate as Respondents were notified by Claimant's physician that Claimant was unable to work.

RELIEF REQUESTED

For violation of Title VII of the Civil Rights Act of 1964, Claimant requested back pay in the amount of \$587,379.03, compensatory damages in the amount of \$300,000.00 and the costs of this action in the amount of \$2,282.23. In refusing to accommodate Claimant's short-term medical disability Claimant alleged the Respondent violated the Americans with Disabilities Act, and alleged that Claimant's damages are identical to those set forth with respect to the Title VII claim of sex discrimination. Next, Claimant requested commissions on the trades for which she was either not paid at all or paid reduced amounts in the aggregate sum of \$59,656.04. Next, Claimant requested interest at the statutory rate of 10% on \$59,656.04 for three years totalling \$17,896.80. Next, Claimant requested attorney's fees in the amount of \$76,666.50. Claimant requested a total award of \$1,041,598.37.

Respondents requested a dismissal of the claim in its entirety plus costs of the proceeding.

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 original(s) remain on file with the NASD.

Prior to the commencement of the first hearing session, the arbitration panel was informed that the Claimant was dismissing with prejudice all claims against the Respondent William Specht.

AWARD

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

1. All claims by the Claimant against the Respondent Raymond James be and hereby are denied in all respects.
2. Each party shall bear their respective costs including attorneys' fees.

FORUM FEES

Pursuant to Section 10205 of the Code of Arbitration Procedure, the arbitration panel has assessed Forum Fees in the sum of \$11,000.00 (\$1,000.00 x 11 sessions).

Claimant is hereby assessed \$5,500.00 for which the NASD shall retain the \$600.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD in the sum of \$4,900.00.

Respondent Raymond James is hereby assessed the sum of \$5,500.00.

The NASD shall retain the \$500.00 non-refundable filing fee previously paid by the Claimant to the NASD.

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

Concurring Arbitrators' Signatures

/S/
G. Fellios

Industry

Andrew

/S/
Joseph I. Amonette

Industry

/S/
Clyde E. Renfroe

Industry

Date of Decision: March 24, 1997