

# **NASD REGULATION AWARD**

**In the Matter of the Arbitration Between**

**Name of Claimant**

Donna L. Brennan

96-01593

**Name of Respondents**

\*First Albany Corporation  
Northeast Brokerage Services Corporation  
Bruce Heines

**REPRESENTATION**

For claimant Donna L. Brennan ("claimant") appeared Frances Farber-Walter, Esq. of the law firm of Deutsch Resnick Savits Green & Kiernan located in Hackensack, New Jersey.

For respondents First Albany Corporation ("First Albany"), Northeast Brokerage Services Corporation ("Northeast") and Bruce Heines ("Heines") appeared James M. Reilly, Esq. of the law firm of Herzog, Engstrom & Koplovitz, P.C. located in Albany, New York.

**CASE INFORMATION**

Statement of Claim was filed on April 11, 1996. Claimant's Submission Agreement was signed on April 4, 1996.

Joint Statement of Answer was filed by respondents on June 20, 1996. Respondent Heines' Submission Agreement was signed on July 19, 1996. Respondents First Albany and Northeast did not file properly executed Submission Agreement in this matter.

**HEARING INFORMATION**

Hearing Dates/Sessions:	February 26, 1997	-	Two Sessions
	February 28, 1997	-	Two Sessions
	May 13, 1997	-	Two Sessions
	May 14, 1997	-	Two Sessions
	May 15, 1997	-	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York.

New York.

### CASE SUMMARY

Claimant alleged that she was employed at Northeast as a registered representative from December 5, 1994 through August 22, 1995. Claimant further alleged that Bruce Heines was the President and branch manager of Northeast and that First Albany owns all the shares of stock in Northeast and provided various services to Northeast, including employee benefits.

Claimant alleged that she was interviewed and hired by Heines on a salary plus commission basis. Claimant further alleged that, at the time she was hired, she indicated that she would be bringing various out-of-state accounts with her from her former employer and that Heines assured her that Northeast would see to it that she was licensed in any state in which she did business. Claimant maintained that, in spite of these promises, Heines refused to license her in states which she requested and gave her accounts with the expectation that they would be solicited in other states in which she was not licensed. Claimant further maintained that, after some investigation with First Albany, Northeast's Compliance person, the NASD and State of Maryland officials, she complained to Heines about the fact that she was not properly licensed in states in which she was actively soliciting business.

Claimant alleged that, on behalf of Northeast, Heines terminated her employment and, following her termination, Northeast filed a U-5 indicating that the reasons for her termination were insubordination and low productivity. Claimant asserted that these reasons were false and malicious in retaliation for complaining about illegal activities. Furthermore, claimant asserted that her productivity was superior to that of the male broker hired at the same time as she who was not fired and that this broker was also unlicensed in the state in which his major client resided and in which he transacted business, but about which he did not complain.

Claimant alleged that, in addition to the differential treatment accorded her based on her alleged "low productivity," she was otherwise discriminated against on account of sex by being subjected to a sexually hostile and abusive work environment in terms of vulgar language, sexual remarks and jokes based upon sexuality and homosexuality in what was described as a "locker room" atmosphere. Claimant further alleged that, despite the lack of a clearly articulated and prominently displayed sexual harassment policy, she complained to Heines and to the Compliance person and that her complaints were ignored. Furthermore, claimant contended that a personal letter addressed to her was allowed by Heines to be circulated throughout Northeast, damaging her reputation and invading her privacy. Claimant also asserted that she was given permission for the taping of a video calling card by Heines at the time she was hired and that, in any case, this infraction was not alleged to be the cause for her termination.

Claimant asserted that respondents were unable to refute her contentions that, despite Heines assurances to the contrary, she remained unlicensed in states in which she was conducting business, and that she was terminated for protesting that illegal behavior. Claimant also asserted that, in further retaliation for her complaints, she was maliciously defamed on her U-5 in a manner which effectively ended her career as a registered representative, and subjected to ridicule and further damage to her reputation by an invasion of her privacy.

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Claimant also contended that she was a victim of sexual discrimination in that she endured a sexually hostile and abusive work environment which effectively interfered with her ability to perform her duties, that she complained about this and was ignored, and that Northeast and its parent First Albany had no effective sexual harassment policy to remediate these conditions.

Respondents denied all allegations of wrongdoing. First Albany also responded that it was but the owner of Northeast and not legally liable for any of its conduct. Respondents maintained that Northeast was created out of a bank brokerage, and at the time claimant began to work there had operated separately from the bank, a wholly-owned subsidiary of First Albany, for a couple of years. Respondents further maintained that Northeast had numerous accounts for which no broker was responsible and that Northeast assigned several accounts to claimant with a value of approximately \$2,000,000.00. Respondents maintained that by nature of the bank brokerage business, most of those accounts had been started by persons who resided in the states of New Jersey, New York and Connecticut and that some had changed residences in the meantime. Respondents contended that, at the start of her employment, claimant was licensed in Connecticut, New York and New Jersey and Northeast was registered in those states and several others. Respondents alleged that Northeast's understanding with claimant was that it would consider licensing in additional states purely on an economic basis.

Respondents further claimed that claimant was a low producer, on target to do gross commissions of only between \$50,000.00 and \$60,000 per year, and with a negative trend toward the end. Respondents asserted that claimant acted in direct and knowing violation of Northeast's policies and securities industry rules in general by using Northeast's offices on a weekend, without prior notice of authorization from Heines, for the purpose of video taping a video calling card, to be used in promoting her in the business. Respondents also asserted that claimant's low productivity was attributable in part to poor work habits, sticking to a 9-to-5 day.

Respondents expressly denied that claimant was the victim of sex discrimination, a sexually abusive environment, wrongful discharge, invasion of privacy, intentional infliction of emotional distress, or interference with advantageous relationships. Respondents also asserted that neither such claims, nor claimant's formulation of them in her statement of claim, nor her proof of them, were sufficient to create a legally cognizable right for her to recover.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$150,000.00, punitive damages in the amount of \$150,000.00, back pay, front pay in the projected amount of \$120,000.00, the value of lost benefits in the projected amount of \$12,000.00, an amendment to her U-5, and reasonable attorneys' fees and costs.

Respondents requested dismissal of all claims, the assessment of all costs against claimant, and an award reimbursing them for their reasonable attorneys' fees.

#### **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 NASD Regulation, Inc.

The panel made the following determinations concerning respondents, First Albany and Northeast, who did not file properly executed Submission Agreements in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that First Albany and Northeast were members of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over First Albany and Northeast pursuant to Rule 10201 of the Code.
3. The panel found that First Albany and Northeast were required to file Submission Agreements with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon First Albany and Northeast pursuant to Rule 10314(a) of the Code.

#### **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. Respondents First Albany, Northeast and Heines be and hereby are jointly and severally liable and shall pay claimant the sum of \$70,000.00 plus interest at the rate of 9% per annum from May 15, 1997 until the date of payment.
2. Based upon the merits of this case, the panel hereby orders that the Form U-5 dated August 23, 1995 be expunged from claimant Donna L. Brennan's permanent CRD record by NASD Regulation, Inc. Respondents are hereby ordered to file a new Form U-5 as of August 23, 1995 to state in item 12 "Permitted to Resign."
3. For the purpose of preserving claimant's registrations, respondent First Albany is hereby ordered to immediately reinstate claimant's employment. Any forms necessary to preserve claimant's registrations must be filed by respondents no later than August 15, 1997.
4. Claimant's request for punitive damages is hereby denied.
5. Each party shall bear their respective costs, including attorneys' fees, except that respondents First Albany, Northeast and Heines be and hereby are jointly and severally liable and shall pay claimant the sum of \$750.00 to reimburse her for a portion of the fees she previously paid to NASD Regulation, Inc.

### **FORUM FEES**

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 filing fee previously paid by claimant and the \$350.00 member surcharge previously paid by First Albany and have assessed the following forum fees:

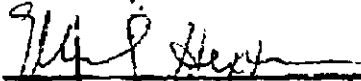
10 hearing sessions x \$750.00	= \$7,500.00
member surcharge (Northeast)	= \$ 350.00
postponement fee	= \$ 750.00

Forum fees assessed against:

1. Respondents First Albany, Northeast and Heines be and hereby are jointly and severally liable for the sum of \$8,250.00, representing the postponement fee and the fees assessed for the hearings conducted in this matter. Claimant previously deposited \$750.00 and respondents previously deposited \$350.00 with NASD Regulation, Inc. Therefore, respondents First Albany, Northeast and Heines shall pay the balance of \$7,150.00 to NASD Regulation, Inc. and shall pay claimant \$750.00 as provided in the "Award" section above.
2. Respondent Northeast is hereby liable and shall pay NASD Regulation, Inc. the sum of \$350.00 representing the member surcharge.

Fees are payable to the NASD Regulation, Inc.

Arbitration Signatures



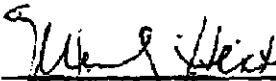
Ellen S. Hexter  
Chairperson-Public Arbitrator

Michael Norman Proulx, Esq.  
Public Arbitrator

Robert Seaman, Esq.  
Industry Arbitrator

Date of Decision: August 8, 1997

I, Ellen S. Hexter, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Ellen S. Hexter

**Arbitrators' Signatures**

\_\_\_\_\_  
Ellen S. Hexter  
Chairperson-Public Arbitrator

  
\_\_\_\_\_  
Michael Forster Pisapia, Esq.  
Public Arbitrator

\_\_\_\_\_  
Robert Seaman, Esq.  
Industry Arbitrator

Date of Decision: August 8, 1997


I, Michael Forster Pisapia, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
\_\_\_\_\_  
Michael Forster Pisapia, Esq.

Arbitrators' Signature:

\_\_\_\_\_  
Ellen S. Hexter  
Chairperson-Public Arbitrator

\_\_\_\_\_  
Michael Forster Plampon, Esq.  
Public Arbitrator

  
\_\_\_\_\_  
Robert Seaman, Esq.  
Industrial Arbitrator

Date of Decision: August 8, 1997

I, Robert Seaman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
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Robert Seaman, Esq.