

NASD REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimant

Diana Yuen

96-02097

Name of Respondents

Fidelity Brokerage Services, Inc.
Leonard Stecklow

REPRESENTATION

For claimant Diana Yuen ("claimant") appeared Robert K. Walsh, Esq., of the law offices of Bashwiner and Woods, located in Cedar Grove, New Jersey.

For respondents Fidelity Brokerage Services, Inc. ("Fidelity") and Leonard Stecklow ("Stecklow") (collectively "respondents"), appeared John M. Nolan, Esq., of the law offices of Jackson Lewis Schnitzler & Krupman, located in Morristown, New Jersey.

CASE INFORMATION

The Statement of Claim was filed on: May 10, 1996.

Claimant's Submission Agreement was signed on: July 19, 1996.

A Joint Statement of Answer was filed by respondents on September 23, 1996.

Fidelity's Submission Agreement was signed on: August 6, 1996.

Stecklow's Submission Agreement was signed on: August 9, 1996.

HEARING INFORMATION

Hearing Dates/Sessions:

June 16, 1997

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Two Sessions

June 17, 1997

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Two Sessions

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

RELIEF REQUESTED

Claimant requested an order:

- (a) preliminarily enjoining respondents, its officers, employees, agents, and legal representatives from further implication of race and/or sex biased corporate policies and practices;
- (b) reinstating claimant to a position of employment with Fidelity, comparable in compensation, benefits, and responsibilities to the position she held immediately prior to her termination, along with retroactive salary and/or bonus increases that accrue to comparable positions based on performance;
- (c) granting back-pay and other pecuniary damages with pre-judgement interest at the highest legal rate, from the date of her termination to the date of judgement;
- (d) awarding damages for pain, humiliation, and mental anxiety directly caused by the discriminatory practices of the respondents;
- (e) awarding compensatory damages for the loss of claimant's Series 7 license and Series 8 license in the event that the two year dormant period expires;
- (f) awarding reimbursement of litigation expenses, reasonable attorney's fees, expert fees and any additional costs of suit; and
- (g) awarding punitive damages.

Respondents requested that the Statement of Claim be dismissed in its entirety and that they be awarded reasonable attorneys' fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterparts 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 remains on file with the NASD.

Respondents asserted a Motion to Dismiss in their Statement of Answer. After due deliberation, the arbitrators determined to deny this motion.

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. Claimant's request for an order preliminarily enjoining respondents, its officers,

employees and legal representation from further implementation of race and/or sex based corporate policies and practices is hereby denied.

2. Claimant's request for reinstatement, with Fidelity, in a position comparable to the one she held prior to her termination, with retroactive back pay and accrued bonus increases is hereby denied.
3. Claimant's request for back pay and pecuniary damages with pre-judgement interest is hereby denied.
4. Claimant's request for damages for pain, humiliation and mental anxiety is hereby denied.
5. Claimant's request for compensatory damages regarding her Series 7 and Series 8 licenses is hereby denied.
6. Claimant's requests for litigation expenses, attorneys' fees and expert fees are hereby denied.

7. Claimant's request for punitive damages is hereby denied.

8. Fidelity be and hereby is liable for and shall pay to claimant the sum of \$600.00 to reimburse claimant for a portion of the filing fees previously deposited with NASD Regulation.

9. All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee previously paid by claimant and the \$350.00 member surcharge previously paid by Fidelity, and have assessed the following forum fees:

4 Hearing Sessions x \$600.00 = \$2,400.00

1. Fidelity be and hereby is liable for the sum of \$2,400.00 representing the total amount of forum fees assessed. Claimant previously deposited \$600.00 with NASD Regulation and, therefore, Fidelity shall pay the balance of \$1,800.00 to NASD Regulation.
2. Fidelity shall pay claimant the sum of \$600.00 as provided in the "Award" section above.

Fees are payable to NASD Regulation, Inc.

CASE SUMMARY

Claimant stated that she was a Chinese-American female, who began working for Fidelity in September 1983 and who, in 1987, was promoted to Branch Manager. Claimant contended that, during the entire term of her employment with Fidelity, she fulfilled her responsibilities to and performed work for Fidelity in an exemplary manner. Claimant also contended that this was reflected in both her own performance record and that of the branch which she managed.

Claimant alleged that, prior to November 13, 1993, she had never received either a verbal or written performance warning. Claimant maintained that, as a result of an incident that took place on or about November 23, 1993, she received a written warning which provided that she handled a customer inquiry using extremely poor skills. Claimant contended that she was not provided with an opportunity to present her version of this incident and, therefore, Stecklow unfairly drew a one-sided conclusion against her.

In addition, claimant maintained that, in late 1993, she made an innocent prank involving another employee's paycheck by holding it up to the light in a feigned attempt to determine the employee's salary. Claimant contended that her actions were not designed to determine the employee's salary and that no harm was caused to the company, its employees, or any of its customers.

Claimant alleged that, on March 29, 1994, during a regional meeting Stecklow informed her that, due to the prank described above, her employment with Fidelity was terminated effective immediately. Claimant contended that Stecklow invited her to the meeting with the intention of firing her and treated her in a humiliating and demeaning manner. Claimant further contended that, contrary to Fidelity's written policies, Fidelity did not conduct a thorough review of the allegations made against her by Stecklow and did not provide her with an opportunity to explain her actions and the circumstances surrounding those allegations.

As a result of the foregoing claimant asserted the following causes of action: violation of New Jersey law against discrimination on the basis of sex or national origin; breach of contract and implied covenants of good faith and fair dealing; intentional infliction of emotional distress; negligent infliction of emotional distress; defamation of character; and negligent supervision.

Respondents contended that claimant's employment was terminated because of misconduct which constituted a serious violation of Fidelity's policies. In addition, respondents alleged that claimant was fired because her actions fell far short of the professional demeanor expected of all Fidelity managerial employees. Respondents maintained that claimant had no basis to assert claims regarding sex and/or race discrimination and that at all times their actions complied with all applicable federal and state laws. Respondents also maintained that they acted appropriately in their dealings with claimant and that Stecklow's conduct when he dismissed claimant was not demeaning or humiliating.

ARBITRATORS' SIGNATURES

James P. O'Neill, Esq.
Chairperson-Public Arbitrator

Barry Feiden
Barry Feiden
Public Arbitrator

Theodore Brown
Industry Arbitrator

Date of Decision: August 21, 1997


I, Barry Feiden, 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.

Barry Feiden
Barry Feiden

ARBITRATORS' SIGNATURES

James P. O'Neill, Esq.
Chairperson-Public Arbitrator


Barry Feiden
Public Arbitrator



Theodore Brown
Industry Arbitrator

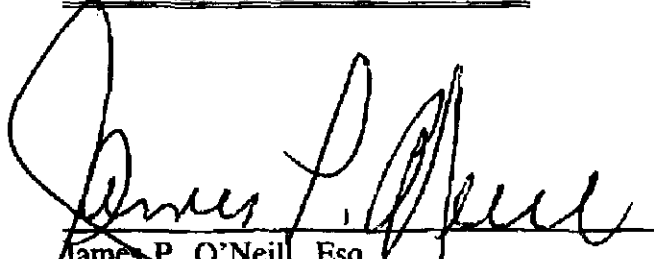
Date of Decision: August 21, 1997

I, Theodore Brown, 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.



Theodore Brown

ARBITRATORS' SIGNATURES



James P. O'Neill, Esq.
Chairperson-Public Arbitrator

Barry Feiden
Public Arbitrator

Theodore Brown
Industry Arbitrator

Date of Decision: August 21, 1997

I, James P. O'Neill, 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.



James P. O'Neill, Esq.