

**NASD, Regulation, Inc.,
Office of Dispute Resolution**

JENNIFER M. MITCHELL

Prehearing Date/Sessions: Janaury 27, 1997/one session
January 31, 1997/one session

Hearing Date/Sessions:

- July 29, 1996/two sessions
- February 5, 1997/two sessions
- February 6, 1997/two sessions
- February 7, 1997/two sessions
- February 10, 1997/two sessions
- February 11, 1997/two sessions
- February 12, 1997/two sessions
- February 14, 1997/two sessions
- March 4, 1997/two sessions
- March 5, 1997/two sessions
- March 6, 1997/two sessions
- March 7, 1997/two sessions
- March 10, 1997/two sessions
- March 12, 1997/two sessions

CASE SUMMARY

Claimant McLaughlin, Piven, Vogel Securities, Inc. filed a Statement of Claim on or about June 25, 1996 seeking immediate injunctive relief and damages for Respondent Jennifer Mitchell's alleged breach of contract, conversion of trade secrets and breach of fiduciary duty following her resignation from the firm on March 1, 1996. McLaughlin Piven also requested declaratory relief that the firm was not liable for claims of sexual harassment and/or sex discrimination being threatened since March 1, 1996 by Mitchell.

Following an expedited hearing and two sessions held before a three member panel on July 29, 1996, McLaughlin Piven withdrew its claim for immediate injunctive and declaratory relief and modified its claims so as to seek monetary damages only. Claimant sought monetary damages on its claims for Respondent's alleged breach of contract and conversion of customer accounts and breach of fiduciary duty.

Jennifer Mitchell filed a counterclaim on July 22, 1996 seeking damages against McLaughlin Piven, claiming that she was sexually harassed by another registered representative of the firm and that McLaughlin Piven failed to take adequate remedial action to prevent such harassment. Mitchell filed her second amended counterclaim on or about December 13, 1996, claiming that McLaughlin, Piven's CEO, J.C. McLaughlin, created a hostile work environment in the firm's San Francisco office. Jennifer Mitchell sought economic and psychological damages against McLaughlin, Piven based on the firm's alleged sexual harassment, constructive discharge and infliction of emotional distress.

RELIEF REQUESTED

McLaughlin Piven requested unspecified monetary damages against Jennifer Mitchell plus attorneys fees (under Cal. Civ. Code §3426.4), and the costs of this arbitration and requested that Jennifer Mitchell's Counterclaims be denied in their entirety.

Jennifer M. Mitchell requested unspecified monetary damages against McLaughlin Piven, plus attorneys fees, expenses and costs of this arbitration, including forum fees. Jennifer M. Mitchell further requested that the Claimant's claim be denied in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in counter part 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 the NASD.

On July 29, 1996, the panel granted Jennifer Mitchell's motion that the NASD preliminarily waive the fee required for the filing of her counterclaims in this proceeding.

On February 10, 1997, Jennifer Mitchell made a motion to amend her Counterclaim to add J.C. McLaughlin in his individual capacity as a party to this NASD arbitration. J.C. McLaughlin, by his counsel, initially objected to Mitchell's motion on the ground that it was a compulsory counterclaim in arbitration that had been waived because it had not been previously and timely asserted. J.C. McLaughlin, by his counsel, subsequently withdrew his objection to Mitchell's motion to amend on February 11, 1997. Thereafter on February 12, 1997, Jennifer Mitchell withdrew her motion to add J.C. McLaughlin as an individual party to this arbitration proceeding. At that time, on February 12, 1997, the panel represented that, based upon J.C. McLaughlin's consent to be added as an individual party, the panel would have granted Mitchell's motion.

Respondent Jennifer M. Mitchell did not file with the NASD a properly notarized submission to arbitration but is required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and the various submissions of the parties during the course of the proceedings, the undersigned arbitrators have decided in full and final resolution of the claims and issues submitted for determination as follows:

1. Claimant/Counter Respondent McLaughlin Piven Vogel Securities, Inc. is awarded and Respondent/Counter Claimant Jennifer M. Mitchell shall pay to McLaughlin Piven Vogel Securities, Inc. the sum of \$20,000. This sum represents damages awarded for Mitchell's breach of contract.
2. Respondent/Counter Claimant Jennifer M. Mitchell is awarded and Claimant/Counter Respondent McLaughlin Piven Vogel Securities, Inc. shall pay to Jennifer M. Mitchell the sum of \$100,000. This sum represents damages awarded on Mitchell's counter claim for economic loss and emotional distress.
3. Respondent/Counter Claimant Jennifer M. Mitchell is awarded and Claimant/Counter Respondent McLaughlin Piven Vogel Securities, Inc. shall pay to Jennifer M. Mitchell the sum of \$97,500.00 in attorney's fees (Cal. Govt. Code 12965; 42 USC 2000 e -54(k))
4. Respondent/Counter Claimant Jennifer M. Mitchell's request for punitive damages is denied.
5. All other claims made by either party are denied.
6. Each side to bear their respective costs and fees including expert witness fees.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were 30 sessions x \$750 plus 2 prehearing conferences x \$300 = \$23,100 in total forum fees. Pursuant to §43(b) of the NASD Regulation, Inc., Office of Dispute Resolution 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 § 43(c) of the Code of Arbitration Procedure the panel has determined to assess a total of \$15,000 in forum fees. The parties shall divide the forum fees 75%-25%, with the McLaughlin Piven Vogel Securities, Inc. bearing 75%, and Jennifer M. Mitchell bearing 25%.

Fee Summary

	Total	<u>\$15,000.00</u>
MPV Sec. 75% share		\$11,250.00
MPV Sec. credit for deposit		<u>\$ 750.00</u>
MPV Sec. Balance		\$10,500.00
 Mitchell's 25% share		 <u>\$3,750.00</u>

Mitchell's Balance

\$3,750.00

Pursuant to §43(c) of the Code, NASD Regulation, Inc. 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 \$750 previously deposited with NASD Regulation, Inc. by McLaughlin Piven Vogel Securities, Inc.


Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$500 previously paid by McLaughlin Piven Vogel Securities, Inc. Pursuant to §10205(h) the NASD shall retain the injunctive relief fee in the amount of \$2,500 previously paid by McLaughlin Piven Vogel Securities, Inc.

Fees are payable to the NASD, Regulation, Inc.

Dated:

Richard L. Jaeger, Esq.
Public Arbitrator, Presiding Chair

Mario Henry Barsotti
Public Arbitrator



George Stanley Gurn
Industry Arbitrator

March 21, 1997

Date served: 3/25/97

Mitchell's Balance

\$3,750.00

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Richard L. Jaeger, Esq.
Public Arbitrator, Presiding Chair

Dated:

3/21/97

Mario Henry Barsotti
Public Arbitrator

George Stanley Guth
Industry Arbitrator

Date served: 3/25/97

NASD Arbitration No. 96-02703

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