

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Joan Hutchison

Claimant,

and

No. 96-04128

Dorsey & Company, Inc.,
and Steven Reub,

Respondents.

REPRESENTATION OF PARTIES

Claimant Joan Hutchison ("Claimant") was represented by Jeffrey A. Schwartz, Esq. and Audrey N. Browne, Esq. of Schwartz & Browne, L.L.C. located in New Orleans, Louisiana.

Respondents Dorsey & Company, Inc. ("Dorsey") and Steven Reub ("Reub") (collectively referred to as "Respondents") were represented by Stephen J. Roppolo, Esq. of Fisher & Phillips located in New Orleans, Louisiana.

CASE INFORMATION

The Statement of Claim was filed on or about September 16, 1996.

Claimant's Submission Agreement was signed on August 28, 1996.

Respondents' Statement of Answer was filed on or about December 16, 1996.

Respondent Dorsey's Submission Agreement was signed on January 2, 1997 by Ray Thomson, Senior Vice President of Dorsey & Company, Inc.

Respondent Reub's Submission Agreement was signed on January 2, 1997.

Claimant and Respondents' Post-Hearing Briefs were filed on or about October 26, 1997.

HEARING INFORMATION

The telephonic pre-hearing conference was held on September 10, 1997 for one (1) session.

The hearing was held on September 15, 1997 for two (2) sessions and September 16, 1997 for two (2) sessions.

CASE SUMMARY

Claimant alleged that she was constructively discharged from employment by Dorsey based upon her age and that Respondents treatment of Claimant constituted intentional infliction of emotional distress. Claimant contended that Respondent Reub demonstrated extremely sadistic behavior toward Claimant. Specifically, Claimant asserted that Respondent Reub often berated Claimant loudly in the presence of other employees; criticized Claimant's work unjustifiably to other individuals; "quizzed" Claimant on various industry facts, often in front of other employees, by snapping his fingers in her face and barking questions at her; deleted computer programs from her computer system; and otherwise insulted and humiliated Claimant at work. Claimant maintained that she personally complained about Respondent Reub's behavior to her supervisors, but that Dorsey never took any action to remedy the problem. Claimant contended that Respondents' discriminatory conduct, which ultimately forced Claimant to resign from Dorsey, violated La. R. S. 23:1006, La. R.S. 23:971, and La. R.S. 51:2232. Claimant also contended that Dorsey's discriminatory treatment of her violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq* and the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq*. Additionally, Claimant asserted that Respondent Reub intentionally inflicted emotional distress upon Claimant in violation of La. Civ. Code Art. 2315. Claimant also alleged that Respondent Dorsey failed to properly pay her for work she performed in excess of forty hours per week during her employment in violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*. In addition, Claimant contended that Dorsey failed to pay Claimant her accrued vacation pay when her employment with Dorsey terminated in violation of La. R.S. 23:631.

Respondents denied all liability to Claimant in the Joint Statement of Answer. Respondents alleged that any employment relationship between Claimant and Dorsey, was at-will and subject to termination, with or without cause. Respondents contended that Claimant's claims are barred to the extent that she failed to fulfill her duty to mitigate her alleged damages. Respondents contended that the Claimant was an administrative employee and therefore exempt from the overtime provisions of the Fair Standards Act. Respondents asserted that the Statement of Claim failed to state a claim, in whole or part, against Dorsey upon which relief can be granted. Respondents alleged that Claimant's claims are barred, at least in part, by the applicable statute of limitations. Respondents generally denied any wrongdoing on the part of Respondents.

RELIEF REQUESTED

Claimant requested an award consisting of: back and front pay, lost past and future benefits, compensatory damages, punitive damages, overtime compensation, liquidated damages, 90 day's penalty wages, judicial interest, compensatory damages, reasonable attorney fees and court costs, and for any and all general and equitable relief to which she may be entitled.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice and that Respondents be awarded all costs, including attorney fees.

OTHER ISSUES CONSIDERED AND 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 Regulation, Inc. Office of Dispute Resolution.

At the conclusion of his closing argument, counsel for Claimant sought to preserve his objection to arbitrability. The panel finds that, having signed a submission agreement, as well as having appeared and testified at the hearing, the Claimant has consented to arbitration and that this case is properly heard in the arbitration forum.

AWARD

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

- (1) Respondent Dorsey & Company, Inc. is liable for and shall pay to Claimant Joan Hutchison the following award in connection with her claim for overtime wages: Actual Damages in the amount of \$5,120.00; Statutory Liquidated Damages in the amount of \$5,120.00 (per Fair Labor Standards Act, 29 U.S.C. § 626(b)); and Attorney Fees in the amount of \$5,317.51 (per Fair Labor Standards Act, 29 U.S.C. § 626(b)); which amounts to Total Damages in the amount of \$15,557.51;
- (2) Respondent Dorsey & Company, Inc. is further liable for and shall pay to Claimant Joan Hutchison interest on the above sum at the rate of 9.25% per annum, which shall begin to accrue from the date of the award and shall continue to accrue until the date the award is paid in full;
- (3) The panel unanimously voted to deny Claimant's claims for age discrimination, intentional infliction of emotional distress and the recovery of compensation for accrued vacation. A majority of the panel voted to deny Claimant's claims for gender discrimination;
- (4) That all claims against Respondent Steven Reub are hereby dismissed in their entirety with prejudice; and
- (5) Other than forum fees, which are addressed below, all other claims and requests for relief not specifically addressed and enumerated are also 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 was one (1) pre-hearing conference x \$300 = \$300 in forum fees. There were four (4) hearing sessions x \$600 = \$2,400 in forum fees. Total forum fees = \$2,700. Pursuant to § 10205(b) of the NASD Code of Arbitration Procedure ("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 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to § 10205(c) of the Code, Respondent Dorsey & Company, Inc. is liable for and shall pay all forum fees incurred in this matter in the amount of \$2,700.

Pursuant to § 10205(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain Respondent Dorsey & Company, Inc.'s member surcharge in the amount of \$350.

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

Concurring Arbitrators' Signatures

\s\ Edward J. Gay, III, Esq.
Edward J. Gay, III, Esq.
Chairperson
Public Arbitrator

November 14, 1997
Dated:

\s\ Sherrill I. Davidson, Esq. Concurring as to all
Sherrill I. Davidson, Esq. issues except gender
Panelist discrimination / Dissenting
Public Arbitrator as to the gender discrimination
issue

November 14, 1997
Dated:

\s\ Frederick H. Bruce
Frederick H. Bruce
Panelist
Industry Arbitrator

November 13, 1997
Dated:

For NASD use only:
Date Award served on the parties: November 21, 1997