

9/7/2075

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Mary Buchingnani,
Claimant,

v.

96-04401

*Vining-Sparks IBG, Limited Partnership,
Vining-Sparks Securities, Inc., and
James Vining,
Respondents.

REPRESENTATION OF PARTIES

Mary Buchingnani ("Claimant") was represented by Alan G. Crone, Esq., of Wilder, Crone, Johnston, Mason & Goodwin, P.L.C., Memphis, Tennessee.

Vining-Sparks IBG, Limited Partnership, Vining-Sparks Securities, Inc., and James Vining ("Respondents") were represented by Charles W. Hill, Esq., of Waring Cox, P.L.C., Memphis, Tennessee.

CASE INFORMATION

Claimant filed the Statement of Claim on or about September 17, 1996. Claimant signed the Submission Agreement on September 17, 1996 and November 1, 1996.

Respondents filed the Statement of Answer on or about December 11, 1996. Respondents signed their Submission Agreements on November 27, 1996.

The parties Statement of Agreement to Arbitrate Pursuant to Section 46 of the NASD Code was filed on or about September 6, 1997.

The parties' Second Joint Stipulation was filed with the NASD Regulation Office of Dispute Resolution, prior to hearing, wherein Claimant's claims against Mr. James Vining, as an individual, arising only under Title VII were withdrawn.

HEARING INFORMATION

Telephonic pre-hearing conferences were held on August 28, 1997 for one (1) session and October 21, 1997 for one (1) session.

The Arbitration Panel held a hearing on November 4, 1997 for two (2) sessions, November 5, 1997 for two (2) sessions, and November 6, 1997 for one (1) session in Memphis, Tennessee for a total of five (5) sessions.

CASE SUMMARY

Claimant brought this arbitration against the Respondents for the following alleged violations of her Civil Rights: Gender discrimination; hostile work environment; and reprisal and retaliatory discharge. All of the claims were brought pursuant to 42 U.S.C. §2000e et seq.

Specifically, Claimant alleged that: She, and other female employees, were subjected to unwanted and unwelcome sexual conduct and conditions that created an offensive and hostile working environment; the environment was so pervasive that Respondents' management knew or should have known about the unreasonable conditions to which the female employees were subjected; these activities had the effect of unreasonable interfering with her work performance; Respondents maintained a "glass ceiling" in effect, whereby no female employee was able to advance into executive positions or other positions of authority; Respondents systematically discriminated against women, never allowing any to advance into positions of authority and executive management; Claimant attempted to break the "glass ceiling" by informing Respondents of the treatment of women in the workplace and that she, or other women, needed to be considered for promotions, and was summarily fired; Claimant reported all of the aforementioned activities, in numerous meetings, to Respondents' management and suggested that as a senior female professional, she be given some role and authority in eliminating the discriminatory conduct and harassment; and after Claimant made the statements to Respondents, they began a systematic campaign to punish her for voicing her opinion which ended in her discharge on or about March 20, 1996.

Unless specifically admitted in their Answer, Respondents denied the allegations set forth in the Statement of Claim. Respondents asserted the following defenses: As a matter of law, the Statement of Claim fails to state claims for which relief can be granted; the Statement of Claim fails to state a claim or claims for relief against Respondent, James L. Vining, individually, because, as a matter of law, neither Title VII of the Civil Rights Act of 1964 (42 USC §§2000e et seq.) provide for an action against an individual; the Statement of claim fails to state a claim against Vining-Sparks Securities, Inc. due to the fact that Claimant was employed at the time of her termination by Vining-Sparks IBG (VSIBG) and as a matter of law, Claimant's Title VII and ADEA claims can only be pursued against her employer, VSIBG and not the general partner, Vining-Sparks Securities, Inc.; to the extent the Statement of Claim seeks to pursue claims for relief for incidents occurring prior to 300 days prior to September 13, 1995, such claims are time-barred and failed to state a claim for relief; any and all claims set forth in the Statement of Claim that were not the subject of the charge of discrimination filed by the Claimant with the Equal Employment Opportunity Commission are barred; and to the extent the Statement of Claim seeks recovery for alleged mental, emotional and physical injuries suffered by the Claimant, such claims fail to state a claim for relief.

RELIEF REQUESTED

Claimant requested an award of the following damages: All back pay from the time of termination in the amount of \$373,610, plus pre-judgement interest from the time of her termination; front pay compensation for Respondents' failure to promote her to an executive position, in the amount of \$6,788,823, or in the alternative, front pay for loss of future earnings for a bond sales person in the amount of \$2,295,861, plus pre-judgement interest from the time of her termination; compensation for loss of income derived from the profit sharing benefits package and employee partnership units in an amount to be proven at the arbitration, plus pre-judgement interest from the time of her termination; compensatory damages for mental and psychiatric injuries sustained as a proximate cause of the Respondents' actions which caused permanent damages to the Claimant in the amount of \$200,000; punitive damages of \$200,000 per Respondent, per claim; her attorney's fees and cost of bringing this action, in an amount to be proven upon her vindication; and all other relief deemed just and equitable.

Respondents asked the panel to: Dismiss the claims of the Claimant in their entirety and rule that Claimant not be awarded any compensatory, punitive or any other monetary damages; award Respondents their costs, including reasonable attorney's fees; award Respondents recovery for forum fees, assessments and charges imposed in connection with these proceedings; and that Respondents be awarded such other and further relief to which they showed themselves entitled.

OTHER ISSUES CONSIDERED & DECIDED

On or about October 15, 1997, Respondent Vining-Sparks Securities, Inc. filed a Motion to Dismiss it from these proceedings. Claimant filed her response on or about October 20, 1997. After review of the documents and deliberation, the arbitrators denied the motion.

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 NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

It is the unanimous decision of the panel that the Claimant failed to carry her burden of proof and her claims for damages are denied with prejudice. It is the further decision of the panel that any prayer for attorney's fees by Claimant or Respondents are denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) pre-hearing sessions @ \$300 per session and five (5) hearing sessions x \$1,000 = \$5,600 in forum fees. Pursuant to Rule 10332(b) of the 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 Rule 10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution 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 \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to Rule 10333 of the Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$500 previously paid by the Respondents.

~~Additional forum fees in the amount of \$3,600 (\$5,600 - \$1,000 deposit - \$1,000 overpayment of surcharge) are assessed by the arbitrators against Respondents.~~

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

Dated:

Jack F. Marlow
Jack F. Marlow
Public Arbitrator, Presiding Chair

/s/ December 3, 1997

Rosemarie L. Bryan
Rosemarie L. Bryan
Public Arbitrator

/s/ December 4, 1997

Phil Lubetkin
Phil Lubetkin
Industry Arbitrator

/s/ December 4, 1997