

NASD REGULATION, INC. AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

Sandra W. Randleman
Nancy E. Burnett

96-04925

Name of Respondent

New York Life Insurance Company

REPRESENTATION

For Claimant Sandra W. Randleman and Nancy E. Burnett ("Claimants"): Sandra W. Randleman

For Respondent New York Life Insurance Company ("Respondent"): George K. Evans, Jr., Esq. of the law firm of Cansler, Lockhart, Campbell, Evans, Bryant & Garlitz, P.A., Charlotte, NC

CASE INFORMATION

Statement of Claim filed: November 1, 1996

Claimant Sandra W. Randleman's ("Randleman") Submission Agreement signed on: October 24, 1996

Claimant Nancy E. Burnett's ("Burnett") Submission Agreement signed on: October 21, 1996

Statement of Answer filed by Respondent on: February 13, 1997

Respondent's Submission Agreement was executed by John H. O'Byrne, Vice President of New York Life Insurance on: February 13, 1997

HEARING INFORMATION

Pre-Hearing Conference: June 11, 1997 - one session and June 25, 1997 - one session

Hearing Dates/Sessions: June 4, 1997 - two sessions
 June 5, 1997 - two sessions
 August 13, 1997 - two sessions
 August 14, 1997 - three sessions
 August 18, 1997 - one session

Hearing Locations: Sheraton Hotel and Charlotte Hilton Executive Park, Charlotte, NC

CASE SUMMARY

Randleman alleged, among other things, that she became an employee of Respondent on or about May 2, 1987, and that her employment was terminated on or about June 30, 1995. Burnett alleged, among other things, that she became an employee of Respondent on or about December 16, 1985, and that her employment was terminated on or about March 3, 1995. Claimants alleged that while employed they worked as sales agents, that they were required to attend mandatory meetings, and followed a set schedule. They alleged they were not allowed to sell insurance for other companies without written approval by Respondent and that they had to get approval for correspondence or other documents sent to their clients. Claimants alleged that they were told which markets to target and Burnett claims that she was told "not to sell to blacks." Both Claimants alleged that they were told they were terminated for failing to meet Respondent's minimum production requirements, but that in fact they met their contractual requirements. They further alleged that there were other white males who were not terminated in spite of not meeting production requirements. Both Claimants alleged that they were terminated on account of their sex, female, and that Randleman was also terminated on account of her race, African-American, in violation of the public policy set forth in North Carolina General Statutes, Section 143-422.2. Claimants further alleged that on account of this termination, they suffered loss of wages and benefits of employment, mental anguish and emotional distress, and other damages.

Respondent denied that Claimants were employees at the time their agent contracts were terminated, but rather independent contractors, so that they may not recover under the North Carolina statute. Respondent also denied that discrimination of any sort played a role in the termination of Claimants' agent's contracts; instead, that each Claimants' agent's contract with Respondent was terminated on account of failure to meet publicized and specific production requirements. Respondent admits that each Claimant was an employee at the time of her initial relationship with Respondent, pursuant to a Training Allowance Subsidy Contract, which by its own terms lasted three years, and that thereafter, each Claimant was an independent contractor pursuant to the express written terms of an agent contract with Respondent. Respondent alleged that Claimants failed to meet minimum production standards applicable to agents assigned to the Charlotte office, \$24,000 per year in first-year commissions. Respondent alleged that upon Burnett's failure to meet the production requirement to which she was subject, the General Manager of the Charlotte office recommended that her agency contract be terminated, and her contract was terminated effective March 3, 1995 pursuant to a provision of her contract allowing either party to terminate with or without cause upon thirty days written notice. Respondent alleged that Randleman also failed to meet the 1994 production requirement to which she was subject, that she requested an extension due to personal hardships, and that the request was granted with the understanding that her contract was subject to termination if she failed to obtain \$6,000 in first-year commissions during the first quarter of 1995. Respondent alleged that Randleman failed to meet this requirement, that the General Manager of the Charlotte office recommended termination of her contract and that her agent's contract was terminated effective June 30, 1995, pursuant to the provision of the agent's contract permitting termination by either party upon thirty days written notice. Respondent alleged that a white male to whom Claimants apparently refer was deemed exempt from the production requirements by virtue of his having twenty years of service with Respondent. Respondent alleged that each Claimant's relationship with New York Life was terminated on account of her failure to meet uniformly applied production standards and not due to her race and/or sex. Respondent further alleged that Claimants have failed to mitigate their damages, if they have suffered any damages.

RELIEF REQUESTED

Claimants requested, at the hearing, damages for each Claimant in the amount of no less than \$1,000,000; plus, punitive damages in an amount to be determined by the panel.

Respondent requested that Claimants' claim be denied in its entirety and that the Arbitration decision and Award be rendered in favor of Respondents, and that Respondent recover all costs, including reasonable attorney's fees, incurred to defend this matter.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and that the parties have agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc., Office of Dispute Resolution.

The parties and the panel agreed to conduct closing arguments by tele-conference call on August 18, 1997.

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. That Claimants' claim is denied in its entirety.

2. Claimants' claim for punitive damages is denied in its entirety.

3. That the parties shall bear their respective costs, including attorney's fees, except as forum fees are specifically addressed below.

FORUM FEES

Pursuant to Rule 10205 of the Code of Arbitration Procedure, the following Forum Fees are assessed.

(10 hearing sessions x \$500) + (2 pre hearing conferences x \$300) = \$5,600

Claimants' non refundable filing fee of \$500 was received and is retained.

Respondent's member surcharge of \$200 was received and is retained.

Forum fees Assessed Against: Claimants' shall bear twenty five percent (25%) of the forum fee. Respondent shall bear seventy five percent (75%) of the forum fees. Claimants are assessed forum fees in the amount of \$1,400; however, Claimants' are entitled to offset this amount with their hearing session deposit of \$500 so that the amount due from Claimants' is \$900. Respondent is assessed forum fees in the amount of \$4,200.

Fees are payable to NASD Regulation, Inc.

Randleman/Burnett Award

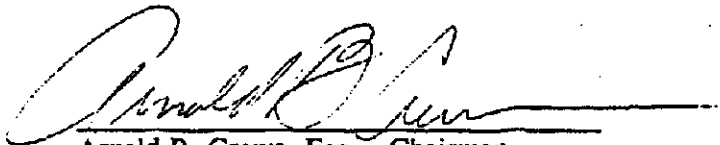
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Date Signed

9/3/97

Concurring Arbitrators' Signatures



Arnald B. Crews, Esq. - Chairman
Public Arbitrator

Lynn T. Albert, Esq. - Panelist
Public Arbitrator

William W. Marchant, Jr. - Panelist
Industry Arbitrator

Date Served By NASD Regulation:

September 5/1997

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Arnald B. Crews, Esq. - Chairman
Public Arbitrator

9/3/97

Lynne J. Albert
Lynne J. Albert, Esq. - Panelist
Public Arbitrator

William W. Marchant, Jr. - Panelist
Industry Arbitrator

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9/10/97

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Arnald B. Crews, Esq. - Chairman
Public Arbitrator

Lynn T. Albert, Esq. - Panelist
Public Arbitrator

SEP 3, 1997

William W. Marchant, Jr.
William W. Marchant, Jr. - Panelist
Industry Arbitrator

Date Served By NASD Regulation:

September 5, 1997