

NASD REGULATION, INC. AWARD**Office of Dispute Resolution**

In the Matter of the Arbitration Between

Name of Claimant

Leyda Gonzalez

Case No. 96-05301

Names of Respondents

Metropolitan Life Insurance Company
John Carlton Moorcroft

REPRESENTATION OF PARTIES

For Claimant: H. Mark Vieth, Esq. of the law firm of Tilghman & Vieth, P.A., Miami, Florida.

For Respondent Metropolitan Life Insurance Company ("MetLife"): Marilyn J. Hollifield, Esq. of the law firm of Holland & Knight, Miami, Florida.

For Respondent John Carlton Moorcroft ("Moorcroft"): Joseph Z. Fleming, P.A. of the law firm of Alley and Alley, Miami, Florida.

CASE INFORMATION

Statement of Claim filed: November 27, 1996. Claimant's Submission Agreement signed: November 26, 1996.

Statement of Answer filed by Respondent MetLife: February 18, 1997. Respondent MetLife's Submission Agreement signed: February 11, 1997.

Statement of Answer filed by Respondent Moorcroft: February 19, 1997. Respondent Moorcroft's Submission Agreement signed: January 24, 1997.

HEARING INFORMATION

A telephonic pre-hearing conference was conducted on February 20, 1998 with an arbitrator presiding. A telephonic pre-hearing conference was conducted on August 8, 1997 with the full panel presiding. The evidentiary hearing was conducted on February 23 through 26, April 15 through 17, and May 8 through 8, 1998, in Fort Lauderdale, Florida for a total of twenty (20) sessions.

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CASE SUMMARY

Claimant alleged the following: Claimant was wrongfully terminated by MetLife. Specifically, she was terminated on account of her disability, that is, her inability to perform all of her job duties without accommodation due to on-going treatment for metastatic breast cancer, and that she was terminated in retaliation for participating in protected activities of testifying and opposing unlawful employment practices. Claimant was defamed by MetLife in its pretextual justification for termination.

Respondent MetLife denied the allegations set forth in the Statement of Claim and specifically asserted the following: Claimant was discharged for legitimate, non-discriminatory reasons including her violations of numerous company policies. Claimant was not defamed as the statements contained on the Form U-5 were true, privileged and were made without malice.

Respondent Moorcroft made a special appearance to deny that this panel had jurisdiction or that he was a properly named party. Mr. Moorcroft asserted that the Panel had jurisdiction to find and rule that it lacked jurisdiction over him. In addition, Mr. Moorcroft asserted the following: Claimant was discharged for legitimate, non-discriminatory reasons including her violations of numerous company policies. Claimant was not defamed as the statements contained on the Form U-5 were true, privileged and were made without malice.

RELIEF REQUESTED

Claimant requested an award of compensatory damages for lost income and benefits in the an amount exceeding \$1,200,000.00, for mental pain and anguish, and for punitive damages. Under Title VII, 42 U.S.C. §2000(e) et seq. and Chapter 760, Fla. Stat., Claimant has asserted a further claim for attorney's fees.

Respondent MetLife requested a dismissal and costs.

Respondent Moorcroft requested a finding that this panel lacked jurisdiction over him.

OTHER ISSUES CONSIDERED & DECIDED

1. The panel was notified at the commencement of the evidentiary hearing that the Claimant had dismissed Respondent Moorcroft. Therefore, this panel made no determination regarding the liability of Mr. Moorcroft.

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2. Pursuant to the stipulation of the parties at the hearing, the panel did not consider the issue of attorney's fees.

3. 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 originals remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

1. Respondent MetLife is found not liable and, therefore, all claims against it are hereby dismissed.

2. Based upon the stipulation of the parties at the hearing, the panel makes no determination with respect to the Claimant's request for attorney's fees.

3. Claimant's request for punitive damages is denied.

FORUM FEES

Pursuant to Rule 10205(b) of the NASD Code of Arbitration Procedure ("Code"), a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10205(c) of the Code, the panel has assessed forum fees in the amount of \$31,800.00 (1 pre-hearing conference with the panel: \$1,500.00 per session, 1 pre-hearing conference with an arbitrator: \$300.00 per session, plus 20 hearing sessions x \$1,500.00 per session).

1. Claimant is assessed the sum of \$15,900.00 for which NASD Regulation, Inc. shall retain the \$1,500.00 previously deposited in partial satisfaction thereof, leaving a balance due to NASD Regulation, Inc. in the sum of \$14,400.00.

2. Respondent MetLife is assessed the sum of \$15,900.00 for which NASD Regulation, Inc. shall retain the \$15,000.00 previously deposited in partial satisfaction thereof, leaving a balance due in the sum of \$900.00.

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OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent MetLife has paid to NASD Regulation, Inc. the \$500.00 member surcharge which was previously invoiced.

Pursuant to Rule 10205 of the Code, Claimant has paid to NASD Regulation, Inc. the \$500.00 claim filing fee.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/

Thomas N. Holloway, Esq.
Public Arbitrator, Presiding Chair

/s/

Judy Avey
Public Arbitrator

/s/

Heather D. Fitzenhagen, Esq.
Industry Arbitrator

Date of Decision: 7-21-98