

AWARD  
NASD Regulation, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

Jocelyn Morin

vs.

98-00375

Name of Respondents

Flynn Options Trading Co.  
Thomas Flynn

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REPRESENTATION

For Claimant: Sidney L. Gold, Esq. of Lovitz and Gold, Philadelphia, Pennsylvania.

For Respondents: Steven R. Williams, Esq. of Mesirov, Gelman, Jaffe, Cramer & Jamieson, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed: January 30, 1998.

Claimant Jocelyn Morin's ("Claimant") Submission Agreement signed on: January 26, 1988.

The Joint Statement of Answer filed by Respondents Flynn Options Trading Co. ("FOT") and Thomas Flynn ("Flynn") on: June 11, 1998.

Respondent FOT's Submission Agreement signed on: July 7, 1998.

Respondent Flynn's Submission Agreement signed on: July 7, 1998.

HEARING INFORMATION

Pre-Hearing Conference: September 14, 1998/ 1 Session

Hearing Dates/Sessions: February 23, 1999/ 2 Sessions  
February 24, 1999/ 2 Sessions

Hearing Location: NASD Regulation District 9 Office  
Philadelphia, Pennsylvania

CASE SUMMARY

Claimant alleged she was employed by FOT from January 10, 1994, until May 19, 1995. Claimant further alleged that FOT, acting through it's agents, servants and employees, including Flynn, subjected her to offensive and sexually oriented conduct. Claimant asserted that Flynn

made repeated sexual advances, sexually-offensive comments and gestures. Claimant contended that she resisted and opposed the conduct and complained to FOT management, but FOT failed to take action. Claimant alleged that the actions of FOT and Flynn (collectively "Respondents") created a hostile and offensive work environment, imposed intolerable working conditions, and made it impossible to continue her employment at FOT. Claimant asserted that her employment was terminated as a result of discriminatory employment practices and her repeated resistance and opposition to Flynn's sexual advances.

Respondents denied the allegations of sexual harassment or sexual discrimination as asserted in the Statement of Claim. Respondents further denied that Claimant at any time told Flynn to cease engaging in the alleged conduct. Respondent maintained that Claimant did not make any complaints to FOT management about allegations of sexual harassment or sex discrimination. Respondents further maintained that Claimant was never subjected to a hostile working environment nor discharged due to her resistance and opposition to alleged discriminatory employment practices.

Respondents raised the affirmative defenses that Claimant failed to state a cause of action for which relief can be granted. Respondents asserted that Claimant was not subjected to sexual discrimination in any way and Claimant's employment was terminated due to poor performance. Respondents further maintained that Claimant failed to mitigate her damages and the claims asserted are barred, in whole or in part, by the statute of limitations and/or the doctrine of laches. Finally, Respondents asserted that the NASD does not have jurisdiction over the arbitration of these claims because FOT did not join the NASD until 1997.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$100,000.00; punitive damages; pre and post award interest; costs including attorney and expert witness fees; and such other relief as is deemed just and proper.

Respondents requested an award rendered in their favor with costs of arbitration and other relief as is deemed just and proper.

### **OTHER ISSUES CONSIDERED & 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 agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

At the conclusion of the case, the Panel approved Claimant's request to withdraw the claims of intentional infliction of emotional distress and retaliation, including that FOT reinstate Claimant to her former position of employment and front pay. Therefore, Claimant went forward on the claims of sexual harassment, as well as punitive damages.

### 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 Claimant's claims for sexual harassment are denied;
2. That Claimant's claims for punitive damages are denied;
3. That each party shall bear their own costs and expenses, with the exception of forum fees as specified below; and
4. That any and all relief not specifically addressed herein is denied.

### OTHER COSTS

Pursuant to Rule 10333 of the Code of Arbitration Procedure ("Code"), Respondent FOT was assessed a member surcharge in the amount of \$1,500.00, a prehearing processing fee of \$600.00, and a hearing processing fee of \$1,500.00. FOT paid the member surcharge and \$405.50 of the prehearing processing fee, leaving a balance due for prehearing and hearing processing fees of \$1,694.50.

### FORUM FEES

Pursuant to Rule 10332(c) the Code, the following Forum Fees are assessed:

1 Prehearing Session	x	\$750.00	=	\$ 750.00
4 Hearing Sessions	x	\$750.00	=	<u>\$3,000.00</u>
TOTAL FORUM FEES				\$3,750.00

Forum fees are assessed to Claimant in the amount of \$1,875.00 and to Respondents FOT and Flynn, joint and several, in the amount of \$1,875.00.

Claimant shall receive a credit for the hearing session deposit of \$1,050.00 previously submitted to the NASD. Therefore, Claimant owes a balance of \$825.00.

Respondents FOT and Flynn, jointly and severally, owe forum fees in the amount of \$1,875.00.

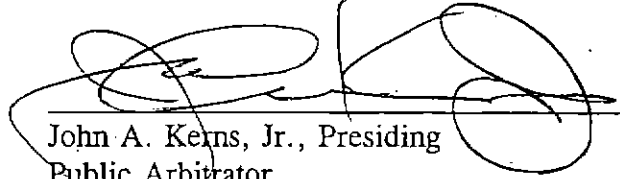
In addition, Respondent FOT owes \$1,694.50 in prehearing and hearing processing fees.

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

DATE:

3/16/99

CONCURRING ARBITRATORS' SIGNATURES

  
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John A. Kerns, Jr., Presiding  
Public Arbitrator

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Roy W. Romberger  
Public Arbitrator

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Sean M. Sweeney  
Industry Arbitrator

Date Decision Served by NASD Regulation: March 22, 1999

DATE:

CONCURRING ARBITRATORS' SIGNATURES

3/3/99

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