

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Rathen Mason

Case No. 98-04975

Names of Respondents

The Prudential Insurance Company of America  
Donald E. Helms  
New York Life Insurance Company  
NYLife Securities, Inc.

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**REPRESENTATION OF PARTIES**

For Claimant Rathen Mason ("Mason"), hereinafter referred to as "Claimant": X. Michael Frascogna, Esq., James L. Powell, Esq. and Shannassey Howell, Esq. of the law firm of Frascogna Courtney, PLLC, Jackson, Mississippi.

For Respondents Donald E. Helms ("Helms"), New York Life Insurance Company ("New York Life Insurance") and NYLife Securities, Inc. ("NYLife"): W. Thomas McCraney III, Esq., Walter J. Brand, Esq. and Kenneth E. Milam, Esq. of the law firm of Watkins & Eager, PLLC, Jackson, Mississippi.

For Respondent The Prudential Insurance Company of America ("Prudential"): Ted D. Meyer, Esq. of the law firm of Seyfarth, Shaw, Fairweather & Geraldson, Houston, Texas.

**CASE INFORMATION**

Agreed Order Staying Action Pending Arbitration filed.  
Statement of Claim filed on or about: December 21, 1998.  
Letter dated February 24, 1999 from James L. Powell, Esq. to NASD Regulation, Inc. filed.  
Claimant signed the Uniform Submission Agreement: March 29, 1999.  
Statement of Answer filed by Respondent New York Life Insurance Company and Donald E. Helms on or about: June 15, 1999.  
Respondent New York Life Insurance Company signed the Uniform Submission Agreement: June 14, 1999.  
Respondent Donald E. Helms signed the Uniform Submission Agreement: June 14, 1999.  
Statement of Answer filed by Respondent The Prudential Insurance Company of America on

or about: June 16, 1999.

Respondent The Prudential Insurance Company signed the Uniform Submission Agreement: May 24, 1999.

Respondent NYLife Securities, Inc. did not file a Statement of Answer or executed Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following: Claimant was employed by Respondent New York Life Insurance from January 22, 1996 until October 31, 1997. At various times during Claimant's employment, managerial officials of New York Life Insurance, including Respondent Helms, subjected her to verbal and physical sexual harassment. Claimant was obliged to work in an atmosphere that was hostile to females by virtue of unsolicited and unwelcome sexual advances, requests for sexual favors and other verbal and physical conduct of a sexual nature. This sexual harassment was sufficiently pervasive to alter the conditions of Claimant's employment and create a working environment that was intimidating, insulting and abusive to female employees in violation of Section 703(a) of Title VII of the Civil Rights Act of 1964. As a result of this sexual harassment, Claimant was obliged to resign her employment on October 31, 1997, and was thereby constructively discharged. As a direct result of Claimant's complaints relative to his behavior and the policies and practices in force at New York Life Insurance, Respondent Helms, New York Life Insurance' managing partner, actively worked to prevent Claimant from obtaining employment with another insurance company. Respondent Helms, in retaliation for Claimant's actions, made contact with the management of Prudential and spoke with disfavor about Claimant resulting in her loss of employment with Prudential. These actions of retaliation are also in violation of Title VII. Further, Respondent Prudential followed a policy and practice against Claimant because of her sex in violation of 42 U.S.C. Section 2000(e), et seq. as Prudential deprived her of her employment opportunities and subsequently caused her to lose her employment because of her sex.

Respondents New York Life Insurance and Helms asserted the following: Claimant is a former New York Life Insurance sales manager who voluntarily resigned her employment effective October 31, 1997. In this action, Claimant asserted claims against New York Life Insurance and her former supervisor, Respondent Helms, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000(e), et seq. for sexual harassment, retaliation and constructive discharge as well as claims under Mississippi law for intentional infliction of emotional distress and assault and battery. The Title VII claims based on the alleged conduct of Respondent Helms should be dismissed because these alleged events occurred more than 180 days prior to the filing of the EEOC charge on March 23, 1998, as well as for lack of any corroborating evidence. Claimant's claim that she was fired for complaining about events which allegedly occurred at a retreat should be dismissed because Claimant failed to show that she was fired or was threatened with termination, and the overwhelming weight of evidence presented at the hearing indicated that she left the company on her own volition. The only other theory of liability under Title VII is that of the sexually hostile environment culminating with the incidents occurring at an all-male "beauty pageant" during the retreat.

However, that event is totally unrelated to the incidents involving Respondent Helms who was not present at the "beauty pageant". Moreover, the events that occurred at New York Life Insurance during Claimant's entire employment, including the "beauty pageant", were not severe and pervasive so as to constitute a sexually hostile environment under Title VII. Also, Claimant failed to follow the company policy regarding sexual harassment because she did not complain to anyone about the alleged sexual harassment pursuant to the policy. The claim that New York Life Insurance retaliated against Claimant by attempting to prevent her from being hired by Prudential should be dismissed because Claimant failed to present any credible evidence to support her claim and, in fact, the evidence is overwhelmingly to the contrary.

Respondent Prudential alleged the following: Claimant never became an employee of Prudential contrary to her assertion in her Statement of Claim; Claimant was not offered a position with Prudential because the office she was interviewing with closed and because of her shortcomings in recruiting agents; and, Claimant did not sustain any actual, compensatory or punitive damages as a result of any action by Prudential and she is not entitled to reinstatement or to any other relief, including attorneys' fees and costs.

#### **RELIEF REQUESTED**

In a letter dated February 24, 1999 to NASD Regulation, Inc., Claimant's counsel specified the amount of damages requested as \$750,000.00 in compensatory and punitive damages and \$150,000.00 in back pay plus an independent award of attorneys' fees. At the hearing, Claimant requested damages in the sum of \$450,000.00 as outlined below:

Title VII violations	\$220,000.00
Intentional Infliction of Emotional Distress	75,000.00
Attorneys' Fees	55,000.00
Punitive Damages	100,000.00

Respondents New York Life Insurance and Helms requested that Claimant's Statement of Claim be dismissed, with prejudice, at the cost of Claimant, and that Respondents New York Life Insurance and Helms be awarded their reasonable attorneys' fees and costs incurred in the defense of this action.

Respondent Prudential requested that Claimant's Statement of Claim be dismissed and that Claimant take nothing; that Prudential recover all attorneys' fees, costs, and expert witness fees incurred by it; and, that Prudential be awarded all other relief as the arbitration panel deemed just and proper.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent NYLife did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and having

appeared is bound by the determination of the Panel on all issues submitted.

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.

On or about February 22, 2000, Claimant informed NASD Regulation, Inc. that she had reached a settlement agreement with Respondent Prudential.

On or about February 29, 2000, the panel issued rulings which granted Donald Helms' motion to dismiss Title VII claim asserted against him, individually, and granted Respondents New York Life Insurance and Helms' motion to dismiss claims for assault and battery that occurred before October 9, 1997.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The panel finds in favor of Respondents Donald Helms and New York Life Insurance Company and dismisses the claims of Claimant Rathen Mason with no award of damages.

The panel finds that no allegations were asserted against Respondent NYLife. Therefore, the panel dismisses NYLife as a party in this matter.

Each party shall bear their respective costs, including attorneys' fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$500.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$3,500.00

#### **Adjournment Fees**

No adjournments were requested during these proceedings.

**Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One Pre-hearing session with a single arbitrator x \$300.00	= \$300.00
Pre-hearing conference: December 15, 1999	1 session
Two Pre-hearing sessions with the Panel x \$1,000.00	= \$2,000.00
Pre-hearing conferences: October 7, 1999	1 session
March 8, 2000	1 session
Six Hearing sessions x \$1,000.00	= \$6,000.00
Hearing Dates: March 1, 2000	2 sessions
March 2, 2000	2 sessions
March 3, 2000	1 session
<u>March 9, 2000</u>	<u>1 session</u>
Total Forum Fees	= \$8,300.00

The Panel has assessed \$4,150.00 of the forum fees to Claimant.

The Panel has assessed \$4,150.00 of the forum fees jointly and severally to Respondents  
New York Life Insurance and Helms.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$500.00
Forum Fees	= \$4,150.00
Total Fees	= \$4,650.00
<u>Less payments</u>	<u>= \$195.62</u>
Balance Due NASD Regulation, Inc.	= \$4,454.38

Respondent NYLife Securities, Inc. be and hereby is solely liable for:

Member Fees	= \$6,100.00
Total Fees	= \$6,100.00
<u>Less payments</u>	<u>= \$6,100.00</u>

Balance Due NASD Regulation, Inc. = \$0.00

Respondents Helms and New York Life Insurance be and hereby are jointly and severally liable for:

Forum Fees	= \$4,150.00
Total Fees	= \$4,150.00
Less payments	= \$1,000.00
Balance Due NASD Regulation, Inc.	= \$3150.00

All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Martin Patrice Irons, JD  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Frederick H. Bruce  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
David J. Park  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

April 4, 2000  
Date of Service (For NASD office use only)


Balance Due NASD Regulation, Inc. = \$0.00

Respondents Helms and New York Life Insurance be and hereby are jointly and severally liable for:

Forum Fees	= \$4,150.00
Total Fees	= \$4,150.00
Less payments	= \$1,000.00
Balance Due NASD Regulation, Inc.	= \$3150.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

  
Martha Patrice Irons, JD  
Public Arbitrator, Presiding Chair

3/28/00  
Signature Date

\_\_\_\_\_  
Frederick H. Bruce  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
David J. Park  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)

Balance Due NASD Regulation, Inc. = \$0.00

Respondents Helms and New York Life Insurance be and hereby are jointly and severally  
liable for:


Forum Fees	= \$4,150.00
Total Fees	= \$4,150.00
Less payments	= \$1,000.00
Balance Due NASD Regulation, Inc.	= \$3150.00


All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Martin Patrice Irons, JD  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

  
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Frederick H. Bruce  
Public Arbitrator

  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
David J. Park  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)



Balance Due NASD Regulation, Inc. = \$0.00

Respondents Helms and New York Life Insurance be and hereby are jointly and severally liable for:

Forum Fees	= \$4,150.00
Total Fees	= \$4,150.00
Less payments	= \$1,000.00
Balance Due NASD Regulation, Inc.	= \$3150.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

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Martin Patrice Irons, JD  
Public Arbitrator, Presiding Chair

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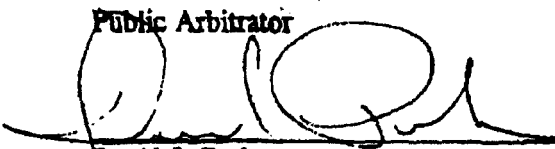
Signature Date

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Frederick H. Bruce  
Public Arbitrator

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Signature Date



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David J. Park  
Industry Arbitrator

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Signature Date

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Date of Service (For NASD office use only)

3-27-2000