

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

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In the Matter of the Arbitration Between:

Donna V. Gross, (Claimant) vs. Griffin Financial Services n/k/a Washington Mutual Financial Services, (Respondent).

Case Number: 99-000456

Hearing Site: Houston, Texas

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**REPRESENTATION OF PARTIES**

Claimant, Donna Gross ("Gross"), hereinafter referred to as "Claimant": Margaret A. Poissant, Esq., Margaret A. Poissant, P.C., Houston, Texas and Jennifer Melby, Esq., Houston, Texas.

Respondent, Griffin Financial Services n/k/a Washington Mutual Financial Services, hereinafter referred to as "Respondent": Lee Stallings, Esq., Christina Rodriguez, Esq. and Kathryn S. Vaughn, Esq., Baker & Botts, Houston, Texas.

**CASE INFORMATION**

Statement of Claim filed on or about: February 1, 1999

Claimant signed the Uniform Submission Agreement: January 21, 1999

Statement of Answer filed by Respondent on or about: May 13, 1999

Respondent signed the Uniform Submission Agreement: May 4, 1999

**CASE SUMMARY**

Claimant submitted the following case summary:

Claimant, Donna V. Gross (date of birth 5/22/42), alleges her former employer, Griffin Financial Services, Inc., violated the Age Discrimination in Employment Act when her employment was terminated on August 22, 1996. Claimant asserts the following prima facie case in support of her claims: (1) she was ordered to resign or else be fired and have a false report of her performance published to the industry; (2) she was qualified for her position, as evidenced by the written performance evaluations and the fact that Griffin re-hired her after requiring her to re-apply for the position in 1995, as well as the fact that her region was on target to meet its production goals for the year; (3) she was

54 years old in August 1996, her date of birth being May 22, 1942; and (4) she was replaced by Michelle Pederson, age 39 at the time, a substantially younger individual who lacked qualifications held by Ms. Gross, including an MBA, Series 65 License, local knowledge of Texas, collegiate teaching experience, former business ownership experience, and a Texas Insurance License, all of which were relevant to the position and all of which Ms. Gross possessed.

Griffin denies Claimant's allegations, and maintains Claimant voluntarily terminated her employment in order to avoid having poor performance documented.

Claimant further alleges that Griffin's purported legitimate, non-discriminatory reason for its actions are untrue, denies that she voluntarily terminated her employment, denies her performance was deficient in any manner and denies that she was ever counseled for any alleged deficiency in her performance.

Respondent submitted the following case summary:

In her Statement of Claim, Claimant alleged that Respondent, Griffin Financial Services n/k/a Washington Mutual Financial Services, discriminated against her because of her age, in violation of the Age Discrimination in Employment Act ("ADEA"), by forcing her to resign and then replacing her with a younger employee. Claimant also alleged in her Statement of Claim that Respondent defamed her, intentionally inflicted emotional distress upon her and violated the Employee Retirement Income Security Act. On November 3, 1999, Claimant voluntarily withdrew all of her claims except the ADEA claim.

In its answer, Respondent denied Claimant's allegations. Respondent answered that Claimant was not ordered to resign. Claimant was made aware that her poor performance was going to be documented, which could lead to termination. Claimant chose to resign to avoid having her poor performance documented. Respondent also noted in its answer that Claimant had numerous performance problems, including resistance to change, managerial deficiencies, and low sales volume. Respondent also noted that age discrimination was unlikely because Claimant's direct supervisors were close to Claimant's age and because Respondent had rehired Claimant a little over a year before Claimant resigned.

#### **RELIEF REQUESTED**

Claimant requested:

Declaratory Judgment that Respondent's conduct was in violation of her rights;

Specific Performance of enjoining Respondent from engaging in such conduct and/or ordering reinstatement of her employment

Interest	unspecified
Compensatory Damages	unspecified
Punitive Damages	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	unspecified

Respondent requested:

Dismissal

### **OTHER ISSUES CONSIDERED AND 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.

### **AWARD**

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

1. The Statement of Claim filed by Donna V. Gross is denied in its entirety and dismissed with prejudice; and
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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
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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 Griffin Financial Services n/k/a Washington Mutual Financial Services.

Member surcharge	= \$1,200
Pre-hearing process fee	= \$600
Hearing process fee	= \$2000

**Adjournment Fees**

Adjournments requested during these proceedings:

November 17, 18 and 19, 1999, adjournment by Griffin Financial Services n/k/a Washington Mutual Financial Services = \$600

**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 (1) Pre-hearing session with Panel x \$600 = \$600

Pre-hearing conference: August 24, 1999 1 session

Six (6) Hearing sessions x \$600 = \$3,600

Hearing Dates: January 10, 2000 2 sessions

January 11, 2000 2 sessions

January 12, 2000 2 sessions

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Total Forum Fees = \$4,200

1. The Panel has assessed \$2,100 of the forum fees to Donna V. Gross.
2. The Panel has assessed \$2,100 of the forum fees to Griffin Financial Services n/k/a Washington Mutual Financial Services.

**Fee Summary**

1. Claimant, Donna V. Gross hereby is solely liable for:

Initial Filing Fee = \$500

Forum Fees = \$2,100

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Total Fees = \$2,600

Less payments = \$1,250

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Balance Due NASD Regulation, Inc. = \$1,350

2. Respondent, Griffin Financial Services n/k/a Washington Mutual Financial Services, be and hereby is solely liable for:

Member Fees = \$3,800

Adjournment Fee = \$600

Forum Fees = \$2,100

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Total Fees = \$6,500

Less payments = \$4,400

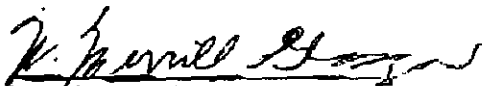
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Balance Due NASD Regulation, Inc.

= \$2,100

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures



W. Merrill Glasgow  
Public Arbitrator, Presiding Chair

2/2/00  
Signature Date

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Charles C. Bailey  
Public Arbitrator

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

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Stephen B. Benton  
Industry Arbitrator

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Signature Date

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Date of Service (For NASD office use only)

Balance Due NASD Regulation, Inc.

= \$2,100

All balances are due to NASD Regulation, Inc

Concurring Arbitrators' Signatures

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W. Merrill Glasgow  
Public Arbitrator, Presiding Chair

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Signature Date

  
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Charles C. Bailey  
Public Arbitrator

1-31-00  
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Signature Date

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Stephen B. Benton  
Industry Arbitrator

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Signature Date

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Balance Due NASD Regulation, Inc.

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Public Arbitrator

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Signature Date

  
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Stephen B. Benton  
Industry Arbitrator

1/28/00  
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Signature Date

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Date of Service (For NASD office use only)