

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Michelle Marano, (Claimant) vs. Randall Gibbs and BTU Brokers, L.L.C.,
(Respondents).

Case Number:
99-04432

Hearing Site:
Houston, Texas

REPRESENTATION OF PARTIES

Claimant, Michelle Marano ("Marano"), hereinafter referred to as "Claimant": R. Vince Glauser, Esq., Houston, Texas.

Respondents, Randall Gibbs ("Gibbs") and BTU Brokers, L.L.C. ("BTU"), hereinafter collectively referred to as "Respondents": Scott R. McLaughlin, Esq., Fulbright & Jaworski, LLP, Houston, Texas.

CASE INFORMATION

Statement of Claim filed on or about: September 29, 1999.

Claimant, (Marano), signed the Uniform Submission Agreement: September 27, 1999.

Statement of Answer filed by Respondents, (Gibbs and BTU), on or about: December 1, 1999.

Respondent, (Gibbs), signed the Uniform Submission Agreement: December 1, 1999.

Respondent, (BTU), signed the Uniform Submission Agreement: December 1, 1999.

Motion for Default Judgment filed by Claimant, (Marano), on or about: December 10, 1999.

Response to Claimant's Motion for Default Judgment filed by Respondents, (Gibbs and BTU), on or about: December 13, 1999.

Claimant, (Marano), filed a First Amended Statement of Claim, on or about: December 23, 1999.

First Amended Statement of Answer and Motion to Dismiss filed by Respondents, (Gibbs and BTU), on or about: January 10, 2000.

Second Amended Statement of Answer, Original Counterclaim, and Motion to Dismiss filed by Respondents, (Gibbs and BTU), on or about: January 18, 2000.

Reply to Respondents' Counterclaim filed by Claimant, (Marano), on or about: January 24, 2000.

Reply to Claimant's Answer filed by Respondents, (Gibbs and BTU), on or about:
February 2, 2000.

CASE SUMMARY

Claimant asserted the following causes of action:

1. Breach of Contract.
2. Breach of Good Faith and Fair Dealing.
3. Intentional Infliction of Emotional Distress.
4. Negligent Infliction of Emotional Distress.
5. Assault and Battery.
6. Negligent Hiring, Supervision, and Retention of Employees.
7. Malice.
8. Sexual Harassment (Violation of Title VII).
9. Breach of Second Employment Contract.

Unless specifically admitted in its Answer, Respondents (Gibbs and BTU) denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant failed to mitigate her damages, if any.
2. Claimant's claim for damages is barred, in whole or in part, by the after acquired evidence doctrine.
3. Claimant failed to properly exhaust her administrative remedies and her Title VII claim should be dismissed.
4. Claimant's claims are barred by the applicable statute(s) of limitation.
5. Claimant, not Respondents, was the proximate cause of any damages suffered as a result of her resignation of employment.
6. Claimant's behavior at work, and around her coworkers, indicates that she was never offended by the alleged conduct of which she complained.
7. Claimant's claim for punitive damages under the facts and circumstances of this case would violate the Fourteenth Amendment of the United States Constitution.
8. Under Texas law, there is no cause of action for breach of the duty of good faith and fair dealing in the employment context.
9. Under Texas law, there is no cause of action for negligent infliction of emotional distress.
10. If Claimant were assaulted and battered as she claimed, any such act was outside the course and scope of the alleged actor's employment and was neither ratified nor in any way approved by Respondents.
11. Under Texas law, a negligent hiring/supervision/retention claim does not lie unless an underlying tort cause of action is proven first.
12. All of Claimant's claims sounding in negligence are barred by the exclusivity provision of the Texas Workers' Compensation Act.
13. Respondents did not engage in extreme or outrageous conduct.

14. Claimant has not suffered severe emotional distress as required by her claim of intentional infliction of emotional distress.
15. Even if Claimant suffered severe emotional distress, such distress preexisted her employment at BTU and/or was not caused by Respondents.
16. A novation occurred, which discharged BTU's obligations under Claimant's February 1998, employment contract.
17. Claimant's own breach of contract excused BTU from performance.

Respondents asserted the following Counterclaim:

1. Claimant Breached the Second Employment Contract.

Unless specifically admitted in its Answer, Claimant, (Marano), asserted the following defenses to the Respondents' Counterclaim:

1. Counterclaim should have been filed with the original answer.

Respondents asserted the following in support of its Counterclaim:

1. NASD Code of Arbitration Procedure Rules 10328 and 10314(b) support the timing and form of its Counterclaim.

Claimant asserted the following in her Motion for Default Judgment:

1. Respondents failed to serve Claimant with a timely response to her Claim.

Respondents asserted the following in their Response to Claimant's Motion for Default Judgment:

1. Respondents filed and served upon Claimant their Statement of Answer by mailing them on December 1, 1999.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$50,000
Treble Damages	\$248,512.00
Interest	Pre and post judgment interest at a rate of 30% per annum.
Attorneys' Fees	Unspecified
Other Costs	\$1,425.00
Other Monetary/Non-Monetary Relief if any:	After settling or disposing of this matter, a referral of the matter to the appropriate regulatory body for a disciplinary investigation.

Respondents (Gibbs and BTU) requested:

Compensatory Damages	Unspecified
Punitive Damages	\$0
Interest	Pre and Post judgment interest.
Attorneys' Fees	Unspecified
Other Costs	\$1,425.00
Other Monetary/Non-Monetary Relief if any:	Any other relief to which BTU is justly entitled.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel denied Claimant's Motion for Default Judgment.

The Panel denied Respondents' Motion to Dismiss.

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 Arbitration Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Claimant's Statement of Claim is hereby denied in its entirety.

All forum fees are assessed against the Respondent, BTU.

The parties shall bear their own costs, including attorneys' fees, except for the aforementioned forum fees.

BTU Brokers is not and was not registered or licensed with any regulatory body. Testimony indicates that futures contracts and futures options in electricity, gas, and other derivatives were traded on an agency basis for large customers. Testimony further indicated that these trades were in "non-regulated" markets. There was significant testimony regarding extraordinarily high turnover of personnel and lack of oversight of the employees that were hired. There was some testimony regarding misrepresentations made to customers. The Arbitration Panel is concerned about the lack of training, supervision, personnel hiring procedures, and personnel records. The Arbitration Panel recommends that a disciplinary referral be made and, furthermore, that an investigation be conducted by the appropriate regulatory authorities into why this type

of trading firm, including BTU Brokers, should not be required to comply with commodities regulations requiring registration of the firm and its traders and requiring compliance to regulations regarding supervision and record keeping.

Testimony indicated that BTU Brokers was winding down its operations. Many of the brokers are now at other trading companies that also appear to be unlicensed with significant trading operations involving "non-regulated" futures. This Arbitration Panel believes that the turnover of employees, "boiler room" type atmosphere, and large amount of money involved makes this type of trading operation an accident waiting to happen.

Any and all relief not specifically addressed herein, including treble damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$300
Counterclaim	= \$250

Adjournment Fees

Adjournments requested during these proceedings:	
August 8, 2000, adjournment by Respondent (Gibbs)	= \$1,125

Forum Fees and Assessments

The Arbitration 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:

Two (2) Pre-hearing sessions with Panel x \$1,125	= \$2,250
Pre-hearing conferences: April 3, 2000	1 session
July 17, 2000	1 session

Six (6) Hearing sessions x \$1,125	= \$6,750
Hearing Dates: September 13, 2000	3 sessions
September 14, 2000	3 sessions

Total Forum Fees	= \$9,000
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1. The Arbitration Panel has assessed \$0 of the forum fees to Claimant (Marano).
2. The Arbitration Panel has assessed \$0 of the forum fees to Respondent (Gibbs).
3. The Arbitration Panel has assessed \$9,000 of the forum fees to Respondent (BTU).

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.

1. Respondents, (BTU & Gibbs), are ***jointly and severally*** liable for administrative costs incurred by the NASD:
Less Payments
Balance Due to NASD
- | | |
|--|-------------|
| | = \$ 587.50 |
| | = \$ 0 |
| | = \$ 587.50 |

Fee Summary

1. Claimant, (Marano), be and hereby is solely liable for:

Initial Filing Fee	= \$ 300
Forum Fees	= \$ 0
Total Fees	= \$ 300
Less payments	= \$ 1,425
Balance Due from NASD Dispute Resolution, Inc.	= \$ 1,125
2. Respondent, (Gibbs), be and hereby is solely liable for:

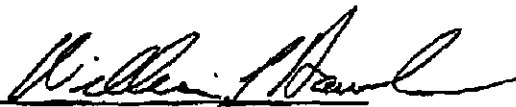
Adjournment Fee	= \$ 1,125
Forum Fees	= \$ 0
Total Fees	= \$ 1,125
Less payments	= \$ 1,125
Balance Due NASD Dispute Resolution, Inc.	= \$ 0
3. Respondent, (BTU), be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 250
Forum Fees	= \$ 9,000
Total Fees	= \$ 9,550
Less Payments	= \$ 3,750
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,500

All balances are due to NASD Dispute Resolution, Inc.

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Concurring Arbitrators' Signature(s)



William J. Hawkins, Esq.
Public Arbitrator, Presiding Chair

10/25/2000
Signature Date

R. Lee Britton, Jr., Esq.
Public Arbitrator

Signature Date

Amir H. Ahanchian, PhD.
Public Arbitrator

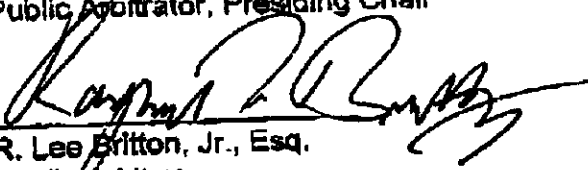
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