

fAward
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Chun Mei (Ida) Zhu

Case Number: 20-01332

vs.

Respondent
Waddell & Reed

Hearing Site: Seattle, Washington

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Person vs. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

Claimant Chun Mei (Ida) Zhu (“Claimant”) appeared pro se.

For Respondent Waddell & Reed (“Respondent”): Jeffrey D. Hanslick, Esq. and Alyssa S. Gonnerman, Esq., Littler Mendelson, P.C., Kansas City, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: April 27, 2020.

Claimant signed the Submission Agreement: April 27, 2020.

Statement of Answer filed by Respondent on or about: July 9, 2020.

Respondent signed the Submission Agreement: June 18, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: discrimination; retaliation; breach of contract; negligence; negligent misrepresentation; conversion; promissory estoppel; and tortious interference with a contract and/or business expectancy. The causes of action relate to Claimant’s employment with Respondent.

In the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Compensatory damages in an amount to be determined at arbitration;
2. Statutory damages;
3. Punitive damages;
4. Exemplary damages;
5. Attorneys' fees;
6. Costs;
7. Prejudgment interest; and
8. Such other relief as is deemed necessary and proper.

In the Statement of Answer, Respondent requested:

1. Claimant take nothing by any of her claims;
2. Costs;
3. Attorneys' fees; and
4. Such other relief to which Respondent is justly entitled.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On July 1, 2021, Claimant filed a response to a discovery order from the Panel, dated June 24, 2021. On July 12, 2021, Respondent filed its response, and a Motion for Sanctions requesting that the Panel dismiss Claimant's Statement of Claim as a sanction and impose monetary sanctions. On July 22, 2021, Claimant filed her reply.

On July 27, 2021, Claimant filed a Motion for Sanctions to impose monetary sanctions. On August 4, 2021, Respondent filed its response.

On August 5, 2021, the Panel heard oral arguments on Respondent's Motion for Sanctions and Claimant's Motion for Sanctions, among other discovery-related motions. By Order dated August 8, 2021, the Panel denied Respondent's Motion for Sanctions. By Order dated August 11, 2021, the Panel denied Claimant's Motion for Sanctions.

During the evidentiary hearing on August 18, 2021, after the conclusion of Claimant's case-in-chief, Respondent moved for dismissal of Claimant's claims pursuant to FINRA Rule 13504(b) of the Code of Arbitration Procedure ("Code"). Claimant objected. After hearing oral arguments from the parties, the Panel denied the motion so that the Panel could hear all of the evidence, including the cross-examination of Respondent's witnesses.

On August 20, 2021, at the conclusion of the evidentiary hearing, Respondent moved for and filed a Renewed Motion to Dismiss pursuant to Rule 13504(b) of the Code. The Panel ordered post-hearing submissions related to Respondent's Renewed Motion to Dismiss. On August 30,

2021, Claimant filed a response opposing the Motion to Dismiss. On September 3, 2021, Respondent filed its reply. The Panel hereby denies the motion.

The explanation provided by the Panel of their decision in the Award is for the information of the parties only and is not precedential in nature.

FINDINGS

After five full days of hearing, during which the pro se Claimant was afforded great latitude in the presentation of her arguments and evidence, the Panel concludes that Claimant failed to prove the essential elements of each of her claims by a preponderance of the evidence, and Respondent's arguments are supported by the evidence presented. Although the Panel did not grant Respondent's Motion for Dismissal at either the close of Claimant's case-in-chief or subsequent to submission of post-hearing briefs, the Panel does conclude that Respondent prevails on the merits.

More particularly, Claimant's federal Title VII discrimination claim fails due to her status as an independent contractor. *See Murray v. Principal Financial Group, Inc.* 613 F.3d 943 (9th Cir. 2010) and the cases cited therein. Furthermore, Claimant did not establish her state discrimination, harassment and retaliation claims because there was insufficient evidence of any adverse action substantially motivated by her status as a woman, her national origin or race. While it is understandable that some of Respondent's business conduct and human errors caused Claimant frustration and concern for her customers' financial well-being, they clearly did not rise to the level of harassment or an abusive working environment. And contrary to Claimant's belief that she was the target of retaliation because of her protected status, the evidence establishes that Respondent made repeated efforts to accommodate and assist her in maintaining her financial success.

Claimant failed to carry her burden of proof regarding the claim that Respondent's negligence caused her economic injury because:

1. She failed to establish a duty owed to her that was independent of her contract, i.e., the "independent duty doctrine". Under this doctrine, Claimant could only recover for economic losses if Respondent was shown to have breached a tort duty independent of her contract. *Eastwood v. Horse Harbor Found., Inc.*, 170, Wash. 2d 380, 388, 241 P.3d 1256, 1261 (2010). There has been no such allegation made in this matter and for that reason alone, her claim for lost economic income fails.
2. She failed to prove that Respondent's administrative human errors rose to a level of unreasonable conduct (any customer losses were corrected); and
3. She offered no proof of the damages caused by the alleged negligence. Furthermore, Claimant failed to prove the essential elements of negligent misrepresentation because:
 - a. there was no credible evidence presented that any of Respondent's representations were false;
 - b. respondent's good faith shortcomings regarding its business aspirations do not constitute negligence; and again
 - c. Claimant failed to prove any resulting damages from the alleged negligent misrepresentations.

Claimant failed to prove her breach of contract and promissory estoppel claims. The evidence is uncontroverted that Respondent abided by its Financial Advisor and Professional Services Agreements. Respondent paid Claimant all sums that were owed to her and never insured that its relationship with its financial advisors would be error free. Thus, no damages resulted from any alleged breaches of contract and no damages were proven.

Claimant failed to prove her conversion claim because there was no evidence presented that Respondent willfully interfered with her rightful possession or control of any chattel.

Finally, Claimant failed to carry her burden of proof regarding her claim of tortious interference with a business expectancy. There was no credible evidence that Respondent willfully interfered or caused termination of any valid business expectancies.

AWARD

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

1. Claimant's claims are denied in their entirety.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$	1,575.00
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**The filing fee is made up of a non-refundable and a refundable portion.*

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. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	3,750.00

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision	= \$	200.00
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Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$	200.00
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The Panel has assessed the total discovery-related motion fees to Claimant.

Hearing Session Fees and Assessments

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

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: April 7, 2021	1 session	
Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	3,375.00
Pre-Hearing Conferences: August 21, 2020	1 session	
June 22, 2021	1 session	
August 5, 2021	1 session	
Nine (9) hearing sessions @ \$1,125.00/session	= \$	10,125.00
Hearings: August 16, 2021	2 sessions	
August 17, 2021	2 sessions	
August 18, 2021	2 sessions	
August 19, 2021	2 sessions	
August 20, 2021	1 session	

Total Hearing Session Fees	= \$	13,950.00
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The Panel has assessed the total hearing session fees to Claimant.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

Craig Charles Beles	-	Public Arbitrator, Presiding Chairperson
Katherine Hendricks	-	Public Arbitrator
William J. Bender	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Craig Charles Beles

Craig Charles Beles
Public Arbitrator, Presiding Chairperson

09/17/2021

Signature Date

Katherine Hendricks

Katherine Hendricks
Public Arbitrator

09/16/2021

Signature Date

William J. Bender

William J. Bender
Public Arbitrator

09/16/2021

Signature Date

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September 17, 2021

Date of Service (For FINRA Dispute Resolution Services use only)