

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Deanna Richert,

Plaintiff,

v.

**COMPLAINT
JURY TRIAL DEMANDED**

National Arbitration Forum, LLC, and
Dispute Management Services, LLC,
d/b/a Forthright,

Defendants.

Plaintiff Deanna Richert, for her Complaint against Defendants, states and alleges as follows:

1. This is a Complaint seeking declaratory, injunctive and monetary relief from Defendants National Arbitration Forum, LLC (hereinafter "NAF") and Dispute Management Services, LLC d/b/a Forthright (hereinafter "Forthright"). Plaintiff seeks a declaratory judgment that an alleged agreement to arbitrate the civil rights disputes that are the subject of this Complaint is null, void, unconscionable and unenforceable, and an injunction prohibiting enforcement of the alleged agreement to arbitrate. Plaintiff further seeks an injunction against practices of defendants which violate the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §325D.43 et. seq., and the Minnesota Consumer Fraud Act, Minn. Stat. § 325F.68 et. seq. Plaintiff also seeks monetary damages against defendants for employment practices that violated Title VII of the Civil

Rights Act of 1964 (as amended), 42 U.S.C. § 2000e, et. seq. ("Title VII"), the Federal Age Discrimination in Employment Act of 1967 as amended, 29 U.S.C. §621 et. seq. ("ADEA") and the Minnesota Human Rights Act, Minn. Stat. § 363A.01, et. seq. ("MHRA").

JURISDICTION OF THE FEDERAL COURT

2. Jurisdiction of this matter arises under 28 U.S.C. §1331 with federal questions involving Title VII and the ADEA. An express grant of federal court jurisdiction over these federal claims is found in Title VII at 42 U.S.C. §2000e-5(f)(3) and the ADEA at 29 U.S.C. §626. The court also has diversity jurisdiction under 28 U.S.C. §1332 (a) because defendants are foreign corporations doing business in the State of Minnesota, the acts complained of herein occurred in the State of Minnesota, plaintiff is a Wisconsin resident and the amount in controversy herein exceeds \$75,000. Jurisdiction over state law claims also arises under the court's supplemental jurisdiction, 28 U.S.C. §1367.

FACTUAL BACKGROUND

3. Plaintiff was originally hired by the National Arbitration Forum, a Minnesota Corporation, on January 12, 2003. On or about June 18, 2007, the National Arbitration Forum merged into two new foreign corporations known as the National Arbitration Forum, LLC ("NAF") and Dispute Management Services, LLC ("Forthright"). Defendants NAF and Forthright thereafter became joint employers of plaintiff as the term "employer" is used in Title VII, 42 U.S.C. § 2000e(b), the ADEA, 29 U.S.C. §630(b) and the MHRA, Minn. Stat. § 363A.03, subd. 15.

4. Defendants are a large, multi-national provider of arbitration services. They utilize the services of over 1,600 arbitrators world-wide. Their headquarters is located at 6465 Wayzata Blvd, St. Louis Park, Minnesota in the County of Hennepin.

5. Plaintiff worked for defendants as a Code Department Manager. In that capacity, plaintiff had been responsible at various times for supervising a significant number of employees. She reported to a senior vice president, who reported to the president of defendants Michael F. Kelly, Jr.

6. On or about July 22, 2008, plaintiff was informed that her employment with defendants was being terminated because her position had been eliminated and there was no position for her at defendants. Prior to plaintiff's termination from employment, she had been denied consideration for and the opportunity to apply for positions for which she was qualified. As further discussed in this Complaint, the denial of employment opportunities, promotions and the termination of plaintiff's employment were because of her gender and age in violation of her rights under Title VII, the ADEA and the MHRA.

7. Plaintiff was a member of the class of females over the age of 40 protected by the civil rights laws referenced herein.

8. At the time of her termination from employment, Plaintiff was qualified for the position she held of Code Department Manager, as well as the position of Assistant Director of Operations.

9. Plaintiff was involuntarily denied employment opportunities, promotions and was ultimately terminated from employment with defendants.

10. Employment opportunities at defendants for which plaintiff was more qualified were given to younger female employees who were favored by the companies' president Michael F. Kelly, Jr. on the basis of sexual and age stereotyping. Mr. Kelly engaged in a pattern and practice of making employment decisions based upon the youth and appearance of female employees. Mr. Kelly exhibited this preference by doing such things as:

- a. Making advances toward younger female employees;
- b. Staring at younger female employees inappropriately as they walked by;
- c. Asking younger female employees to socialize with him after work;
- d. Ignoring plaintiff and other older, female employees when it came to conversations at work and invitations to events. (Although plaintiff reported to a senior vice president of defendants who was one step below Mr. Kelly in the chain of command, Mr. Kelly had taken the time to speak with plaintiff exactly once in the two years of his employment at defendants, while having been observed frequently speaking and even flirting with plaintiff's younger female subordinates.); and
- e. Failing to post open positions that plaintiff was qualified for while encouraging younger female employees to apply and filling the positions with younger, less qualified female employees.

11. Plaintiff complained to her superior of age and sex discrimination in the selection of younger female employees for positions without posting the positions and allowing her and other older female employees to apply.

12. Defendants' stated reasons for the failure to consider her for employment opportunities, failure to promote her to positions for which she was qualified, failure to post open positions and ultimately the termination of her employment are a pretext for unlawful discrimination on the basis of gender and age.

13. Plaintiff has been the victim of disparate treatment on the basis of age and gender, including age and sexual stereotypes.

14. Plaintiff further has been the victim of unlawful retaliation and reprisal for reporting suspected age and gender discrimination to her employer.

NOTICE OF RIGHT TO SUE

15. On or about August 15, 2008, Plaintiff filed a charge of age and sex discrimination and retaliation with the Equal Employment Opportunity Commission (EEOC), Charge No. 444-2008-01717. This charge was cross-filed with the Minnesota Department of Human Rights (MDHR), Charge No. 52345. All allegations contained in these charges are hereby incorporated in this Complaint by reference. Plaintiff thereafter requested and on February 2, 2009, received a Notice of Right to Sue from the EEOC dated January 30, 2009. This lawsuit has been commenced within 90 days of receipt of the Notice of Right to Sue.

COUNT ONE

DECLARATORY JUDGMENT

16. Plaintiff realleges each and every matter contained in the previous paragraphs of this Complaint and further states and alleges as follows:

17. On or about December 18, 2006, plaintiff signed a document entitled "National Arbitration Forum Procedures Agreement" which purported to be an agreement between the National Arbitration Forum (the predecessor of the NAF and Forthright) and plaintiff. Paragraph 9 of this 12 paragraph document (hereinafter simply referred to as "Paragraph 9") provides as follows:

FORUM and EMPLOYEE agree that any dispute between them or claim by either against the other or any agent or affiliate of the other, whether related to this agreement or otherwise, shall be resolved by neutral binding arbitration of the FORUM *Code of Procedure* then in effect when the claim is filed or the American Arbitration Association National Rules for the Resolution of Employment Disputes then in effect when the claim is filed, as selected by the party first making the claim. However, the Parties shall mutually select the arbitrator who shall administer and conduct the arbitration. This agreement shall be governed by the Federal Arbitration Act and judgment upon the award may be entered in any court of competent jurisdiction.

18. On February 16, 2009, following the receipt by the parties of a Notice of Right to Sue from the U.S. Equal Employment Opportunity Commission (EEOC), counsel for the defendants by letter to counsel for plaintiff demanded that plaintiff submit her claims to arbitration pursuant to Paragraph 9. This demand for arbitration has spawned this request for a declaratory judgment that Paragraph 9 is null, void, unconscionable and unenforceable as a matter of law and equity.

19. Paragraph 9 does not mandate the arbitration of plaintiff's statutory claims under Title VII, the ADEA or the MHRA, nor does it purport any agreement by plaintiff to waive her rights to trial by jury. There being no meeting of the minds with respect to the arbitration of those claims, and there being no knowing and voluntary waiver by plaintiff of rights provided by Title VII, the ADEA and the MHRA, including but not limited to the right to trial by jury, the Court must declare Paragraph 9 to be null, void, unconscionable and unenforceable as to the claims contained in this lawsuit.

20. The aforementioned "Procedures Agreement" contains no successorship or survivorship clause making the alleged agreement binding as to plaintiff's employment with the successors to the National Arbitration Forum, defendants NAF and Forthright, or providing for the survival of Paragraph 9 past the end of her employment with the National Arbitration Forum and carrying over to the beginning of her employment with NAF and Forthright. The Court must therefore declare Paragraph 9 to be null and void with the invention of defendants NAF and Forthright.

21. During the course of plaintiff's employment at defendants, she witnessed fraudulent and corrupt practices in the administration of arbitration cases by defendants which draw into question the neutrality of any arbitrator associated in any way with defendants and which practices make any alleged requirement of arbitration fraudulent and unconscionable, and thereby null, void and unenforceable. The NAF and Forthright had regular business users of their arbitration system who were referred to in-house as the "Famous Parties". These "Famous Parties" were repeat filers for arbitration who did not pay for defendants' services as they filed like sporadic filers, but used the arbitration

service so commonly that they paid on account to defendants. Among the fraudulent and corrupt practices witnessed by plaintiff with respect to these "Famous Parties", were the following:

a. Management meetings in which personnel were instructed to call arbitrators and tell them, prior to the release of the decision to the parties to the arbitration, to change decisions they had issued that found against the Famous Parties;

b. Management meetings in which personnel were instructed to make sure that certain arbitrators who had decided cases against a Famous Party did not get any more cases;

c. Defendants drafting the claim forms and fictitious affidavits of service for the Famous Parties, including the placement of stored electronic signatures for the Famous Parties on these documents;

d. Defendants throwing lavish social events to entertain arbitrators during which arbitrators would lobby those at defendants in charge of assigning cases in order to obtain more cases for themselves;

e. Arbitrators providing gifts to those at defendants in charge of assigning cases in the unspoken hope of obtaining more cases or continuing to receive cases for themselves;

f. Arbitrators calling defendants to ask its attorneys how they should rule on a particular matter;

g. Defendants issuing rulings against consumers on procedural matters without consulting with the arbitrators; and

h. The disallowance by defendants of responses by consumers to claims filed against them simply because the consumer did not carbon copy the filer of the claim on their correspondence, thereby putting the consumer into default on an arbitration claim they had attempted to answer.

22. Although Paragraph 9 purports to allow plaintiff the ability to select the American Arbitration Association ("AAA") as an alternate mechanism for arbitrators, plaintiff has no way of knowing if an arbitrator selected through the AAA is also an arbitrator who obtains cases or would like to obtain cases through the defendants and is therefore one who relies or would like to rely upon defendants for his or her livelihood. Given the fraudulent nature of transactions plaintiff has witnessed between defendants and arbitrators, plaintiff cannot reasonably rely upon arbitrators to self-police and disclose their own bias.

23. Paragraph 9 to the extent it is construed by the Court as a contract, is one of adhesion and is unenforceable.

24. The alleged arbitration agreement in Paragraph 9 must be declared null, void, unconscionable and unenforceable as a matter of law and equity.

COUNT TWO

VIOLATION OF MINNESOTA UNIFORM

DECEPTIVE TRADE PRACTICES ACT

25. Plaintiff realleges each and every matter contained in the previous paragraphs of this Complaint and further states and alleges as follows:

26. Paragraph 9 of the National Arbitration Forum Procedures Agreement sought to be enforced by defendants requires the use of the FORUM *Code of Procedure* then in effect when the claim is filed if arbitration through defendants is selected. Part II, Rule 5 of the Forum *Code of Procedure* falsely represents that "Forum arbitrators are neutral". This *Code of Procedure* is not only referenced in Paragraph 9, but is also published by defendants to the wider public on its website in part in the hope that the public will rely upon its representation of the neutrality of its arbitrators in deciding to retain the services of defendants.

27. The representation by defendants in the Forum *Code of Procedure* that its arbitrators are neutral is a deceptive trade practice as defined by Minn. Stat. §325D.44, subd. 1 (7) in that the defendants are representing that services are of a particular standard or quality when they are not.

28. The demand by defendants that plaintiff submit to arbitration pursuant to Paragraph 9, if enforced, renders plaintiff a person likely to be damaged by a deceptive trade practice of defendants. Plaintiff is entitled to an injunction against the enforcement of Paragraph 9 and to prohibit defendants from representing to the general public that its

arbitrators are neutral, all pursuant to Minn. Stat. §325D.45, subd. 1, and such other and further relief as the Court deems just and proper under Minn. Stat. §325D.45, subd. 3.

29. Defendants have willfully engaged in the above trade practice knowing it to be deceptive. Plaintiff is entitled to recovery of her costs and attorneys fees incurred in obtaining the injunction and other relief pursuant to Minn. Stat. §325D.45, subd. 2.

COUNT THREE

MINNESOTA CONSUMER FRAUD ACT

30. Plaintiff realleges each and every matter contained in the previous paragraphs of this Complaint and further states and alleges as follows:

31. Defendants through the false representation that its arbitrators are neutral as contained in its *Code of Procedure* above described, and elsewhere, have used fraud, false pretense, false promise, misrepresentation, misleading statement and deceptive practice in the sale of its arbitration services with the intent to induce others, including plaintiff, to rely thereon in connection with defendants' sale of these services. These false representations constitute a violation of the Minnesota Consumer Fraud Act, Minn. Stat. § 325F.69, subd. 1.

32. Plaintiff as a consumer is entitled by reason of these unlawful representations to injunctive relief to prohibit any requirement of arbitration as to herself and to prohibit the representation by defendants to the general public of its arbitrators as neutral and therefore unbiased. Plaintiff is also entitled to damages, costs, disbursements and attorneys fees against defendants in accordance with Minn. Stat. §8.31, subd. 3a.

COUNT FOUR
SEX DISCRIMINATION

TITLE VII

33. Plaintiff realleges each and every matter contained in the previous paragraphs of this Complaint and further states and alleges as follows:

34. Plaintiff has been the victim of unlawful discriminatory conduct in the workplace. Plaintiff was unlawfully subjected to disparate treatment and suffered adverse employment actions by defendants on the basis of her sex. These employment actions were unlawful in violation of Title VII, 42 U.S.C. § 2000e-2(a).

35. Plaintiff has been made to suffer mental anguish and emotional distress, loss of employment and future employment opportunities, and loss of wages and benefits, as the direct and proximate result of respondent's violation of her civil rights as alleged herein. Plaintiff is reasonably certain to continue to suffer these damages in the future. Plaintiff is entitled to the rights and remedies at law provided by Title VII and 42 U.S.C. § 1981a, including actual damages, compensatory damages, punitive damages, and attorneys' fees.

COUNT FIVE
SEX DISCRIMINATION

MINNESOTA HUMAN RIGHTS ACT

36. Plaintiff realleges each and every matter contained in the previous paragraphs of this Complaint and further states and alleges as follows:

37. The subjection of plaintiff to disparate treatment and adverse employment actions by defendants on the basis of her sex also violated the MHRA. Minn. Stat. § 363A.08, subd. 2.

38. Plaintiff has been made to suffer mental anguish and emotional distress, loss of employment and future employment opportunities, and loss of wages and benefits, as the direct and proximate result of respondents' violation of her civil rights as alleged herein. Plaintiff is reasonably certain to continue to suffer these damages in the future. Plaintiff is entitled to the rights and remedies at law provided by the MHRA, including actual damages, compensatory damages, treble damages, punitive damages, a civil penalty and attorney's fees.

39. Plaintiff seeks all applicable rights and remedies provided by the MHRA, including, but not limited to, recovery of actual damages, compensatory damages, treble damages, punitive damages, civil penalties, interest, costs, disbursements and attorneys' fees.

COUNT SIX

AGE DISCRIMINATION

ADEA

40. Plaintiff realleges each and every matter contained in the previous paragraphs of this Complaint and further states and alleges as follows:

41. The subjection of plaintiff to disparate treatment and adverse employment actions by defendants in whole or substantial part because of her age was in violation of the ADEA, 29 U.S.C. §623(1).

42. Defendant's violation of the ADEA was willful and plaintiff seeks liquidated damages for each violation.

43. Plaintiff has been made to suffer mental anguish and emotional distress, loss of employment and future employment opportunities, and loss of wages and benefits, as the direct and proximate result of defendants' violation of her civil rights as alleged herein. Plaintiff is reasonably certain to continue to suffer these damages in the future. Plaintiff is entitled to the rights and remedies at law provided by the ADEA, 29 U.S.C. § 216(b) including actual damages, compensatory damages, liquidated damages, and attorneys' fees.

COUNT SEVEN

AGE DISCRIMINATION

MINN. STAT. § 363A.08

44. Plaintiff realleges each and every matter contained in the previous paragraphs of this Complaint and further states and alleges as follows:

45. The subjection of plaintiff to disparate treatment and adverse employment actions by defendants in whole or substantial part because of her age was in violation of the MHRA, Minn. Stat. §363A.08, subd. 2.

46. Plaintiff has been made to suffer loss of her employment, income, benefits, and job security, as the direct and proximate result of the violation of her civil rights under the MHRA. Plaintiff has also been made to suffer mental anguish, pain and suffering, embarrassment and humiliation as the direct and proximate result of the violation of her civil rights as alleged herein. Further, Plaintiff is reasonably certain to

suffer these damages in the future. Plaintiff seeks all applicable rights and remedies provided by Minnesota state law, including, but not limited to, recovery of actual damages, compensatory damages, treble damages, punitive damages, interest, costs, disbursements and her attorneys' fees.

COUNT EIGHT

AGE DISCRIMINATION IN VIOLATION OF

MINN. STAT. § 181.81

47. Plaintiff realleges each and every matter contained in the previous paragraphs of this Complaint and further states and alleges as follows:

48. The subjection of plaintiff to disparate treatment and adverse employment actions by defendants in whole or substantial part because of her age was in violation of Minn. Stat. §181.81.

49. Plaintiff has been made to suffer loss of her employment, income, benefits, and job security, as the direct and proximate result of the violation of her civil rights under the above statute. Plaintiff has also been made to suffer mental anguish, pain and suffering, embarrassment and humiliation as the direct and proximate result of the violation of her civil rights as alleged herein. Further, Plaintiff is reasonably certain to suffer these damages in the future. Plaintiff seeks all applicable rights and remedies provided by Minnesota state law, including, but not limited to, recovery of actual damages, compensatory damages, interest, costs, disbursements and her attorneys' fees.

COUNT NINE

UNLAWFUL RETALIATION

TITLE VII

50. Plaintiff realleges each and every matter contained in the previous paragraphs of this Complaint and further states and alleges as follows:

51. Defendants committed unlawful employment practices when they retaliated against plaintiff for her efforts to oppose practices reasonably believed to be prohibited by Title VII, in violation of Title VII, 42 U.S.C. § 2000e-3(a).

52. Plaintiff has been made to suffer mental anguish and emotional distress, loss of employment and future employment opportunities, and loss of wages and benefits, as the direct and proximate result of defendants' violation of her civil rights as alleged herein. Plaintiff is reasonably certain to continue to suffer these damages in the future. Plaintiff is entitled to the rights and remedies at law provided by Title VII and 42 U.S.C. § 1981a, including actual damages, compensatory damages, punitive damages, and attorneys' fees.

COUNT TEN

UNLAWFUL RETALIATION

ADEA

53. Plaintiff realleges each and every matter contained in the previous paragraphs of this Complaint and further states and alleges as follows:

54. Defendant committed unlawful employment practices when it discriminated against plaintiff for her efforts to oppose age discrimination prohibited by the ADEA, in violation of the ADEA, 29 U.S.C. § 623(d).

55. Defendants' violation of the ADEA was willful and Plaintiff seeks liquidated damages for each violation. 29 U.S.C. § 216(b).

56. Plaintiff has been made to suffer mental anguish and emotional distress, loss of employment and future employment opportunities, and loss of wages and benefits, as the direct and proximate result of defendants' violation of her civil rights as alleged herein. Plaintiff is reasonably certain to continue to suffer these damages in the future. Plaintiff is entitled to the rights and remedies at law provided by the ADEA, 29 U.S.C. § 216(b) including actual damages, compensatory damages, liquidated damages, and attorney's fees.

COUNT ELEVEN

UNLAWFUL REPRISAL

MINNESOTA HUMAN RIGHTS ACT

57. Plaintiff realleges each and every matter contained in the previous paragraphs of this Complaint and further states and alleges as follows:

58. Defendants have committed unfair employment practices when it committed acts of reprisal against plaintiff for her efforts to oppose practices prohibited by the MHRA, in violation of the MHRA, Minn. Stat. § 363A.15.

59. Plaintiff has been made to suffer mental anguish and emotional distress, loss of employment and future employment opportunities, and loss of wages and benefits,

as the direct and proximate result of defendant's violation of her civil rights as alleged herein. Plaintiff is reasonably certain to continue to suffer these damages in the future. Plaintiff is entitled to the rights and remedies at law provided by the MHRA, including actual damages, compensatory damages, treble damages, punitive damages, civil penalties and attorney's fees.

JURY TRIAL DEMANDED

60. Plaintiff demands a jury trial on all issues and claims triable by jury.

DISREGARD OF RIGHTS AND SAFETY

61. The violations of law complained of herein were made in both deliberate disregard and reckless indifference for the rights and safety of plaintiff.

WHEREFORE, Plaintiff prays for a judgment jointly and severally in her favor against defendants as follows:

1. Declaring Paragraph 9 of the Procedures Agreement null, void, unconscionable and unenforceable, and enjoining the enforcement of any alleged agreement between plaintiff and defendants to arbitrate claims;

2. Enjoining defendants from representing that its arbitrators are neutral or unbiased in its *Code of Procedures* or in any website, advertisement or promotional materials of any kind;

3. Awarding plaintiff compensatory damages on Count III in excess of \$5,000;

4. Awarding actual and compensatory damages in excess of \$75,000 on counts IV through XI of this Complaint;

5. Awarding punitive damages as provided by statute on plaintiff's Title VII claims;
6. Awarding liquidated damages on plaintiff's ADEA claims;
7. Awarding treble damages on plaintiff's MHRA claims;
8. Awarding punitive damages as provided by statute on plaintiff's MRHA claims;
9. Awarding statutory penalties on plaintiff's MHRA claims;
10. Awarding interest, costs, disbursements and attorneys' fees; and
11. Such other and further relief as the Court deems just and proper.

Dated: April 2, 2009.

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