



NORRIS MCLAUGHLIN

ATTORNEYS AT LAW

Employment Discrimination AAA Arbitration Dismissed on Summary Judgment

On March 16, 2017, an AAA arbitrator granted summary judgment to a Norris McLaughlin client dismissing all claims brought against the client--a large, multinational company--by a former employee who claimed that the client had discriminated against her when it decided to fire her. The real success in the case was not winning the motion itself, but convincing the arbitrator to permit the motion to be filed at all. Grants of summary judgment are rare in arbitrations, as the moving party has to clear an extra hurdle that is not present in court: there is no right to file the motion in the first place; instead, the arbitrator must grant leave to file the motion. In AAA employment arbitrations, that leave is not granted unless the arbitrator determines there is "substantial cause that the motion is likely to succeed and dispose of or narrow the issues in the case."

This matter highlighted the importance of planning ahead to clear that additional hurdle. The terminated employee repeatedly made claims that a manager had been sexually harassing her daughter (who also worked for the client). An internal investigation turned up no evidence supporting her accusations. The client fired the claimant when she confronted this manager and left him at least two vulgarity-laden and threatening voicemails.

The Arbitrator's summary judgment decision specifically noted that his "initial view," based on the employee's characterization of the manager's relationship with her daughter, was "that a summary judgment motion would likely not succeed. . . ." However, referring to a heated and lengthy oral argument on Nick Duston's application to file the motion, the Arbitrator noted in his ultimate decision that "Respondent's counsel [i.e., Norris McLaughlin] insisted that the record would not support Claimant's characterization of events, which turned out in fact to be the case."

Of course, once he heard the voicemails, the arbitrator immediately and completely sided with the client and granted its motion for summary judgment in full. The arbitrator found that the employer had terminated the former employee because of the voicemails--which were quite graphic--and not because it had discriminated against her. But the arbitrator was able to reach that conclusion only because Nick successfully convinced him to hear the motion in the first place, making that initial application to file the motion at all the real victory in the case.



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