

Ballard Spahr Facing Gender Discrimination Claim

The Legal Intelligencer

By Gina Passarella

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Ballard Spahr Andrews & Ingersoll has lost its attempt to halt a gender discrimination claim before it began by a real estate partner in the Baltimore office.

After attempting to resolve internally alleged issues of inequitable pay and the piecemeal removal of her practice over the course of a decade, Jane Ennis Sheehan had confidentially presented on May 9 gender discrimination claims and a demand letter to Ballard Spahr Chairman Arthur Makadon through her counsel, according to court documents from both sides.

Sheehan claimed that another partner who was supposed to be her equal in a two-person team took her practice from her over the course of several years and called it his own. That partner was ultimately paid more for doing the same work, she said in her demand letter.

She also claimed in the letter that she was retaliated against for bringing these claims to light internally, eventually resulting in her being taken from a percentage or equity partner to an income partner.

Makadon; Ballard Spahr's counsel, Barbara Mather of Pepper Hamilton; and Sheehan's attorney, Lynne Bernabei of Bernabei & Wachtel in Washington, D.C., held a conference call on May 30 to discuss Sheehan's demands, according to court documents filed by Sheehan. The call was unsuccessful at reaching a resolution, Bernabei said.

The next day, Ballard Spahr filed an action for declaratory judgment in Philadelphia Common Pleas Court, arguing that the firm had not violated Sheehan's rights under the Equal Pay Act and had not breached any fiduciary duty.

Sheehan then filed a charge of discrimination on June 11 with the EEOC through the Maryland Human Rights Commission, according to court filings.

"I wanted to keep it as discreet as possible. I never expected a suit by the firm," Sheehan said in an interview. "I expected an opportunity to sit down and discuss my concerns with the firm."

Bernabei said Ballard Spahr did "everything wrong" when it came to dealing with an internal complaint, whether or not it agreed with the allegations. She said Sheehan wanted to keep the claims as quiet as possible, but the firm ultimately "advertised the suit" to the partners.

"It's interesting that I could raise the specter of discrimination claims and find myself the defendant," Sheehan said.

When asked to comment on the case and the allegations, Makadon said the firm could not comment on matters pending before the EEOC or anywhere else. He also said he couldn't comment on whether the firm would appeal a recent ruling by Judge Gary F. DiVito on its declaratory judgment action.

The judge granted on Sept. 24 Sheehan's preliminary objections to Ballard Spahr's action.

"[D]eclaratory relief is unavailable when it is sought in anticipation of an action at law by another party," DiVito said.

He said the firm's action was premature. He agreed with Sheehan's argument that administrative remedies must be exhausted before a court of equity could intervene in the matter.

"To sustain an action under the Declaratory Judgment Act, a plaintiff must demonstrate an 'actual controversy' indicating



imminent and inevitable litigation, and a direct, substantial and present interest," DiVito said in his three-page order. "Because an action for declaratory judgment cannot be sustained until these elements can be shown to exist, it follows that a cause of action for declaratory judgment does not arise until such 'actual controversy' exists."

Sheehan joined Ballard Spahr in 1992 as a partner and brought in the firm's first HOPE VI client in 1995, according to her court documents. HOPE VI is a grant program that provides funding for affordable housing.

That year, Sheehan said she enlisted public finance partner Paul Casey to help with the growing practice and operate as 50/50 partners. It was agreed, according to her filings, that Sheehan would act as the relationship partner and Casey would act as the billing partner because Sheehan didn't enjoy the administrative aspect and would prefer to have direct contact with clients. The pair would respond to RFPs jointly and would hold themselves out as equal partners, according to documents filed by Sheehan.

In the late 1990s, Casey began to call the practice his own and would tell the firm's allocation committee that Sheehan was critical "to his practice," according to her court filings. Sheehan found out that, starting in 1999, Casey was earning more compensation than she was at an increasingly disproportionate rate with each passing year, according to the court documents. She said that was the case up until 2004, the last year for which she was aware of Casey's compensation.

In 2004, Sheehan earned \$358,681 for her share of the partnership profits. She said in court documents that that was 82.3 percent of Casey's pay for that year, which would mean he earned almost \$436,000.

Sheehan was eventually told she would become an income partner for the period of July 1, 2005, to June 30, 2006. She said she is still currently an income partner.

Despite holding meetings with Casey in late 2002 to ensure their 50/50 agreement was reinstated and acknowledged by the firm, promises by Casey weren't followed through, Sheehan said in her court filings.

"It's really been a systematic stealing of her business by her partner," Bernabei said.

After another discussion with Sheehan, Casey submitted a letter in January 2003 via e-mail to Baltimore office Managing Partner Raymond G. Truitt, real estate department head Michael Sklaroff and financial partner Thomas Eshelman to re-formalize the 50/50 agreement, according to her court documents.

Sheehan said in her demand letter that Casey, now co-chairman of the firm's housing practice, "secretly met with Mr. Sklaroff" after sending the e-mail. After that meeting, in February 2003, Sklaroff requested a meeting with Sheehan in which he allegedly threatened her for having brought up the issues relating to inequitable pay, according to her demand letter.

He allegedly said Casey would remain billing and relationship partner for all clients and "there would be no change in recognition or compensation," Sheehan said in her letter.

Sheehan said she attempted to resolve the matter through various meetings with Casey, Truitt, Sklaroff, prior firm leader David Cohen and Makadon, according to her court papers.

She said in her court filings, however, that the firm and Casey retaliated against her in several ways after she first raised her concerns.

Casey allegedly diverted some of Sheehan's clients to other partners in the firm without her knowledge, according to her court documents.

Casey allegedly removed client matters from her so that she no longer has involvement with the HOPE VI practice she originally brought to the firm, according to her court filings.

The firm also allegedly refused to give her extra help from associates or pay her membership fees for various associations, according to her demand letter. She said she joined those associations to try to make new contacts in order to build a new practice since her billable hours were falling.

In its response to Sheehan's preliminary objections in the declaratory judgment action, Ballard Spahr said Sheehan had explained her poor performance and low billable hours through a 2004 letter to the allocation committee. She said the reason for the performance was because of personal problems that affected her work life, according to Ballard Spahr's response filing.

Sheehan said in an interview that the firm encourages partners to write letters to explain poor performance. While everything in her letter was accurate, Sheehan said, she did not bring up some of the professional reasons that her billable hours were low because she "did not want to antagonize the partnership," she said she thought she would suffer ramifications she wasn't ready to handle.

"I kept hoping incorrectly that things would straighten out," Sheehan said earlier.

Sheehan said she is still working for the betterment of the partnership through marketing the firm's practices and the Baltimore office, which now has 41 attorneys.

She is in the midst of writing an article with an environmental partner on sustainable energy and green buildings - which she says is an up-and-coming area in real estate law. A new expertise could also help her build a new practice, she said.

"I go to work every day," Sheehan said. "I comport myself in a manner I would if this were not going on in my life."

She said if other attorneys are talking about it, she hasn't heard. Most of her work is totally on her own, she said.

"It's very uncomfortable," Sheehan said. "For someone with my background, it's demoralizing."

Sheehan graduated near first in her class at the University of Baltimore School of Law in 1977, according to a law school spokesman. She clerked for a judge on the Maryland Court of Appeals and then went on to practice at Frank Goldstein Conaway & Goldman from 1977 to 1992, where she became a partner in 1984. The firm eventually dissolved and most of the commercial real estate group opened the Baltimore office of Ballard Spahr in 1992, she said.

Demands

In her demand letter sent to the firm on May 9, Sheehan asked for a retroactive increase in compensation and retirement credits to a level comparable to Casey from 1999 to the present. That amount was estimated at about \$675,000 in compensation and commensurate retirement credits, according to the letter.

She also asked for reinstatement to equity partnership, restoration of Sheehan as relationship partner for all clients in which Casey serves in that capacity and restoration of client matters within the HOPE VI and mixed finance practice area.

Sheehan is currently waiting for a finding by the EEOC and Bernabei said they would sue the firm once that came down.

Paul Casey was not immediately available for comment.