

## FOUL OR FAIR

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### Question:

**I'm 54 years old and, 19 years ago,** was the first woman hired by my firm, which settled a sexual discrimination complaint filed by women employees last year for \$54 million. I've got a couple of questions relating to my termination at the firm. But first some back story:

Three years ago, my firm demanded that I move all of my clients into managed accounts and get rid of all accounts under \$35,000. I lost almost half of my clients in the shift. At about the same time, the firm eliminated my sales assistant, using my lower production as a reason. I now spend 20 to 25 hours weekly on work formerly handled by her.

Two years ago, a young, aggressive sales manager came in and promptly dumped on me 200 accounts, each with less than \$200,000 in assets. It took me a year to clean these accounts up. When the dust settled, I had approximately 250 clients and managed approximately \$20 million to \$25 million.

Now to the meat of the matter: When I sat down at my desk a few weeks back, my computer would not turn on. I was trying to figure out how to call for help, when the branch manager, accompanied by the operations manager, poked his head in the door and said, "You're fired. You have 30 minutes to get out." "Can you give me a minute?" I responded. "I'm not going to cry, but I can't think." I knew I wanted the ops manager to witness my departure, so I couldn't be accused of any negative behavior. The ops manager suggested I get some boxes and start packing my personal belongings. I asked if I would be getting a severance. The ops manager said no. The branch manager said I'd get my commission check, if I'd earned any.

They gave me a couple of sheets of paper detailing my benefits. I'm covered for 18 months of medical insurance under COBRA. I was one year and two months away from having medical coverage at my current payment until age 65. I'm certain that played into their considerations. I left, not saying goodbye to anyone.

I'm a high profile, well-respected member of my community. I'm on a lot of community boards. In fact, about two weeks before I was fired, a regional director for my firm's public finance department contacted me for all my municipal contacts, which I gave him.

Of the four branch managers (two women) I've served under in the last eight years, one doled out accounts to favorites at marathon drinking sessions, and another gave accounts to a lover. I never received a performance review unless I asked for it.

Given all this, am I correct in my belief that I was discriminated against regarding account distribution, training opportunities, marketing, support and partnership opportunities because I was a woman rep who wasn't aligned with a male partner to protect me?

Second, even though I was an employee-at-will, do I deserve a severance because I did all of the administrative work for three years — was forced to do it to keep my job? An administrative assistant would have gotten a severance package, correct?

### Answer:

**Because you are an employee-at-will,** your employer has the right to terminate your employment at their discretion. It is not clear from your narrative whether or not you have an employment agreement or some form of a contract governing the terms of your employment.

It is fairly common in the industry for brokers to enter into employment contracts that specify the terms and conditions of their employment. Such employment contracts generally specify a broad range of conditions, which, if not met, provide the grounds for termination of employment. For instance, many broker's contracts contain minimum commission production clauses that give a firm the right to terminate a broker's employment if the specified minimum production is not met. This is just one example of the many possible conditions that firms impose on their employees. It is the broker's responsibility to read, review and understand the terms of their employment prior to entering into any agreement.

As a commission-based employee of the firm, you have unlimited opportunities to generate income for yourself and the firm. You indicated that you were given 200 accounts, each containing less than \$200,000 in assets and that you perceived this as way for your "aggressive" sales manager to force you out of the office. Rather than view the situation you found yourself in as a negative, you should have viewed it as an opportunity to grow your business by building your client base and increasing your assets under management. Many lower producing brokers would welcome the opportunity to develop 200 accounts.

It is critical to remember that how you handle difficult tasks or respond to what you perceive as an unpleasant situation will often be determinative of an employer's assessment of your capabilities and worth within the organization. Sound and prudent business practices dictate that an employer's limited resources will be put to work in the most beneficial areas.

The addition or removal of administrative assistance is commonly predicated upon the productivity of the recipient of the assistance. The mere fact that having limited assistance caused you to be responsible for certain administrative tasks does not change your employment status or your employer's responsibilities to you. Unless specifically contracted for, severance pay is not a right conferred upon employees. It is a benefit that an employer may choose to provide to a former employee; it is not guaranteed.

Based upon the facts that you provided, it does not appear that your gender had anything to do with your termination and, as such, there would be no claim for discrimination. While the securities industry has always had a legitimate reputation for being male-dominated, in the last several decades it has improved dramatically where opportunities for women are concerned.

You indicated that during your employment in your branch at various times you reported to two different women branch managers. This seems to strongly suggest that women are in fact given opportunities to succeed and advance within your firm.

Moreover, contrary to your contentions that you did not receive consideration in account distributions within the branch, you in fact received a very large number of accounts and had the opportunity to use those accounts to increase your worth within the firm and at the same time increase your own bottom line. That is, as you stated, precisely why you chose to become a broker in the first place.

**Jeffrey S. Feinberg, Esq.**  
**Nackman & Feinberg, LLP**  
**Attorneys at Law**  
**110 Wall Street**  
**11<sup>th</sup> Floor**  
**New York, New York 10005**  
**212.748.4800**  
[jfeinberg@bnfcounsel.com](mailto:jfeinberg@bnfcounsel.com)