

Labor and Employment Practice

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In March, the Court handed down New York State Department of Labor (Unemployment Insurance Appeal Board) v. New York State Division of Human Rights (505720 and 505925), a decision that establishes the circumstances under which the New York State Division of Human Rights ("SDHR") must give collateral estoppel effect to an arbitrator's decision.

Cynthia T. Lowney ("Lowney") was hired by the New York State Department of Labor ("DOL") in May 1991 to serve as an Administrative Law Judge ("ALJ") for the Unemployment Insurance Appeal Board. As such, she was assigned to be supervised by senior ALJ Ronald Moss. Lowney soon began to experience what she perceived to be sexually harassing and gender-based discriminatory conduct by Moss, which prompted her to contact DOL's Division of Equal Opportunity Development ("DEOD") in November 1991. Soon after, the relationship between Moss and Lowney deteriorated, and Timothy Coughlin, Executive Director of the Unemployment Insurance Appeal Board, appointed himself Lowney's direct supervisor. Thereafter, in April 1992, at Coughlin's request, Lowney's employment was terminated.

In response, Lowney filed grievances both before and after her discharge, under which she alleged, among other things, that her termination was in retaliation for her complaints to DEOD. Ultimately, they were consolidated and heard by an arbitrator as part of the final step in the grievance process. The arbitrator issued a decision awarding Lowney \$1,200 for DOL's failure to investigate her claims of discrimination, but dismissed the balance of Lowney's grievances, including her claim of retaliatory discharge.

Meanwhile, Lowney had filed a complaint with the State Division of Human Rights ("SDHR") in April 1992. In April 1996, SDHR issued a probable cause determination and, in April 2004, some 12 years after Lowney's complaint was filed, a public hearing on the matter was finally commenced. Following the hearing, which encompassed 37 days of testimony over 16 months, SDHR ultimately issued an alternative proposed order in March 2007 finding DOL guilty of retaliatory discharge, and ordering, among other things, that DOL pay Lowney \$46,656 in back pay, with interest accruing thereon from March 1, 1993 at a rate of 9% per year, \$50,000 as compensation for mental anguish, and out-of-pocket expenses she incurred because of her wrongful termination. SDHR's Commissioner adopted the order, and DOL commenced a proceeding seeking to annul the determination.

In annulling SDHR's determination, the Appellate Division initially noted that it is black letter law that the principles of res judicata and collateral estoppel apply to awards in arbitration. More specifically, the Court explained that an arbitrator's interpretation and application of the terms of a collective bargaining agreement ("CBA") is entitled to deference, unless the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power. As pertinent here, there was no such limitation because the CBA did not clearly bar arbitration of Lowney's claims, and, to the extent that any ambiguity was present, the arbitrator, at Lowney's request and over DOL's objection, determined that Lowney's discrimination claims were arbitrable grievances.

Given the foregoing, the Court held that Lowney was precluded from relitigating either the arbitrator's findings of fact or his conclusions in a subsequent proceeding, and SDHR was required to give them collateral estoppel effect. The arbitrator credited the testimony of Lowney's managers and found that, despite warnings of specific errors and deficiencies,

Lowney's work had been and continued to be unacceptable, and she would not have been discharged if she had heeded those warnings and complied with her employer's requirements. The arbitrator further found that there was no credible evidence of a plot to terminate Lowney, and there was no discriminatory animus or vindictiveness in her supervision. According to the Court, the arbitrator could not have made these findings without rejecting all of Lowney's claims, including her allegation that she was terminated from her employment in retaliation for having complained of sexual harassment and gender discrimination to DEOD and others.

As explained by the Appellate Division, SDHR's error was that it merely decided that it was not bound by any of the arbitrator's determinations because it viewed Lowney's retaliation claim as alleging a type of discrimination different than that considered in the arbitration. SDHR then substituted its own contrary findings that there were no significant deficiencies in Lowney's work, and, therefore, they could not have been the real reason for her termination. However, since the underlying acts of DOL in terminating Lowney had been determined in the arbitration, SDHR could only correctly conclude that there was a nondiscriminatory basis for her termination.