

claimed that the full-time administrative assistant hired after she left was hired on the spot, whereas she was subject to a hiring process through a temp agency that lasted several months.

A witness testified that the Brown Distributing employee who decided not to hire Marcell full-time had told her to fire other workers because they were too old. The witness also testified that a fellow manager told another female employee that she was fired because she was too old and did not fit the image Brown Distributing was attempting to present. When it was brought to the attention of the manager that the woman could not be fired because of her age, the manager refused to change the termination decision.

Another witness testified that a manager asked her to photocopy drivers' licenses of all applicants so that he could see how old they were.

Brown Distributing contended that Marcell was not hired full-time because she performed poorly at the job, could not multi-task and did not follow through with important tasks. It explained that Marcell had been given notice that she would not be hired permanently and then notified that she would be allowed to stay on until she found another position. It claimed that she was terminated shortly thereafter, when her supervisors discovered that she had conducted herself improperly at the state office of beverage licensing.

INJURIES/DAMAGES Marcell claimed that she lost wages of \$40,000 for the four months after she was told by Brown Distributing that her services were no longer needed. She also claimed depression as a result of losing the job and not finding another for four months and sought emotional distress damages.

Brown contended that the plaintiff did not offer any evidence to support the wage loss claim. According to defense counsel Sally Still, Marcell earned \$36,000 a year and was only out of work for a few months before she found another job, which she subsequently left or was fired. Brown contended that it was not responsible for Marcell's lost income due to subsequent terminations.

RESULT The jury Brown Distributing liable for age discrimination and awarded Marcell \$40,000 in damages.

GALE MARCELL \$35,000 past lost earnings
 \$5,000 emotional distress
 \$40,000

TRIAL DETAILS Trial Length: 4 days
 Jury Deliberations: 1 day
 Jury Composition: 5 female, 1 male

**PLAINTIFF
 EXPERT(S)** None reported

**DEFENSE
 EXPERT(S)** Merry Haber, psychology research, Miami, FL

POST-TRIAL The defendant's motion for new trial was denied and it plans to appeal the verdict.

—Peter Scoolidge

EMPLOYMENT AGREEMENT

Oral Agreement — Commissions

Former VP sought commissions for business he brought in

VERDICT (P) \$225,000

CASE Miguel Palacios v. Teamcare Infusion, Inc.,
 No. 02 10635 CA 06

COURT Dade County Circuit Court, FL

JUDGE Jeri Beth Cohen

DATE 11/14/2003

PLAINTIFF

ATTORNEY(S) Paul A. McKenna, McKenna & Obront,
 Miami, FL
 Curt Obront, McKenna & Obront, Miami,
 FL
 Josepha Velis, Velis and Velis,
 Coral Gables, FL
 Vidal Velis, Velis and Velis, Coral Gables,
 FL

DEFENSE

ATTORNEY(S) Alan C. Gold, Alan C. Gold, P.A., Coral
 Gables, FL
 James Parado, Alan C. Gold, P.A., Coral
 Gables, FL

FACTS & ALLEGATIONS In late 1997, plaintiff Miguel Palacios entered into an oral employment agreement with Mark Schneider, the president of Miami-based Teamcare Infusion Inc., a closed pharmaceutical company that sold IV products for home use by the sick and elderly. Palacios contended that the agreement called for him to become vice president of sales, a 20% shareholder and to receive a 3.2% commission on all business that he brought in.

Palacios established several lucrative contracts from major healthcare providers in the Miami area. He was paid a salary, but never received any commissions.

In early 2002, Schneider terminated Palacios for alleged improper use of a company credit card and failure to pay back a company loan. The repayment of the \$50,000 loan and the \$7,000 in credit card charges were the subject of an earlier trial, in which a jury found that the \$50,000 was, in fact, a loan but that it was not yet due back to Teamcare. In addition, \$6,000 of the \$7,000 in credit card charges were for personal use and were owed to Teamcare. See VerdictSearch Florida Reporter Issue 3 (July 2003).

FLORIDA

In the instant matter, Palacios sued Teamcare and Schneider for breach of an oral agreement to pay him commissions.

During Palacios' case-in-chief, both he and Schneider testified.

Palacios introduced the business plan that was presented to him by Schneider prior to the formation of Teamcare, which showed a future commission projection rate of 3.2%.

Schneider denied that the 3.2% applied to Palacios or that he ever offered Palacios commissions. He asserted that the business plan was drafted years before Palacios and Schneider met, strictly to lure potential investors. Schneider also said that Palacios, as a result of being made a vice president and a 20% shareholder, was not entitled to commissions.

The defendants pled the affirmative defense of waiver. They argued that, during the full period of his employment, Palacios never once asked for his commissions by letter, e-mail or verbally. They called the office manager and Schneider's wife, who was also an officer for Teamcare, to confirm that Palacios never raised the commission issue.

INJURIES/DAMAGES Palacios sought a 3.2% commission on all business that he brought into Teamcare.

RESULT The jury found that the defendants breached an oral agreement for commissions and awarded Palacios \$225,000.

DEMAND \$125,000 before trial
OFFER \$100 before trial

TRIAL DETAILS Trial Length: 3 days
Jury Deliberations: 1.5 hours
Jury Poll: 6-0
Jury Composition: 3 female, 3 male

EXPERT(S) None reported

POST-TRIAL Palacios' motion for prejudgment interest in the amount of \$28,738.36 is pending.

EDITOR'S NOTE Defense counsel did not contribute to this report.

—Alison Love



VERDICT RESOURCES

ONLINE: Access our
easy-to-use verdict and settlement database.

www.VerdictSearch.com

GENDER DISCRIMINATION

Hostile Work Environment — Retaliation — Municipalities

Male accounting clerk transferred to maintenance

VERDICT (P) \$250,000

CASE Jeffrey Gallagher v. Manatee County,
No. 2001-CA-1254

COURT Manatee County Circuit Court, FL

JUDGE Charles Williams

DATE 10/27/2003

PLAINTIFF

ATTORNEY(S) Kendra Presswood, Law Offices of Kendra Presswood, Bradenton, FL
Kathleen Kirwin, Kathleen Kirwin, Attorney at Law, Tallahassee, FL

DEFENSE

ATTORNEY(S) Robert Eschelender, Manatee County Attorney's Office, Bradenton, FL

FACTS & ALLEGATIONS Plaintiff Jeffrey Gallagher, 52, was an accounting clerk for the Administrative Department of Manatee [Fla.] County Parks and Recreation Department.

Claiming that he was mistreated by his female supervisor, Gallagher filed an internal grievance with the county's internal investigation department in October 1997. After the department investigated, Gallagher claimed that he was continually harassed by his supervisor and her subordinates. In July 1999, he filed another internal grievance. Soon after, he was transferred to the maintenance department by his supervisor's boss. He claimed that the reason for his transfer to the less desirable maintenance department was that he initiated internal grievance procedures.

Gallagher further claimed that his supervisor treated him unfairly because he was a male. He contended that he was assigned a desk in the hallway and that his requests to be promoted and assigned an office were repeatedly refused. He further claimed that, right after he was transferred to the maintenance department, a female employee got the promotion and the office he had been seeking.

Gallagher sued the county under the state anti-discrimination statute for gender discrimination in a hostile work environment context and for retaliation.

On the discrimination claim, the county argued that Gallagher did not get the promotion and the office that he had been seeking because of his inability to work well in a group environment, especially beneath a female supervisor. Further, the promotion and office assignment were given to a more-deserving employee.