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## \$2.64 Million Awarded in Rare Verdict On Job Fraud

■ The decision in favor of the employee, who moved cross-country for a position that didn't exist, is thought to be largest yet in the state.

**By Craig Anderson**  
Daily Journal Staff Writer

In an unusual case of employment fraud, a San Jose federal court jury has awarded a Santa Clara County woman \$2.64 million after she moved across the country in 1995 for a job that was already occupied.

The verdict in favor of Alisa Behne, who was transferred to a different position at Massachusetts' MicroTouch Systems Inc. and then fired in 1997, is believed to be the largest award for employment fraud in California, according to plaintiffs attorney Jody LeWitter of Siegel & LeWitter in Oakland.

The jury on Friday awarded Behne damages for intentional misrepresentation, negligent misrepresentation and violation of a California Labor Code section prohibiting an employer from misrepresenting a job to get a prospective employee to move. The jury rejected her claim of sex discrimination; it also awarded no damages even while agreeing that the company retaliated against her for complaining about the alleged sex discrimination.

In the case of *Behne v. MicroTouch Systems Inc.*, 97-21012, the plaintiff was awarded \$535,000 in economic damages, \$2 million in punitive damages and \$55,000 for emotional distress.

LeWitter said Behne, a sales manager, was hired away from MicroTouch's leading competitor and promised a \$95,000 salary and a sales director's position by company president James Logan. But when she started work, Behne discovered that the incumbent sales director was still there and that she was supposed to share the position, according to her attorney.

"There was no job for her to come to," LeWitter said.

LeWitter said MicroTouch officials were so intent on damaging their competitors at EloTouch that they hired Behne without intending to give her the position. When she complained about the unwieldy job-sharing arrangement, Behne was stripped of her responsibilities and then transferred to an assignment for which she had no experience, according to court documents.

This "corporate exile" was done to force her to resign, LeWitter said.

MicroTouch Systems' attorney, Martin Kresse of Curiale Dellaverson Hirschfeld Kelly & Kramer in San Francisco, could not be reached for comment on the case or any plans to appeal the verdict.

Company officials said Behne was extremely difficult to work with and denied she had ever been promised she would be the only sales director, according to LeWitter.

She said the verdict is a triumph for at-will employees. "There is a check on the power of corporations," LeWitter said. "They need to make good on their promises. They can't just use people as a pawn in some corporate game."