

Employment Law

Woman Alleging Fraud, Misrepresentation In Job Offer Wins \$2.64 Million in Damages

SAN FRANCISCO—A federal jury in California has awarded \$2.64 million to a woman who in 1995 moved from California to Massachusetts for a position with MicroTouch Systems Inc. that was already filled when she arrived, the plaintiff's attorney said March 18.

The San Jose, Calif., jury March 12 awarded Alisa Behne \$535,000 for economic and \$55,000 emotional distress damages and \$2 million in punitive damages in her suit against MicroTouch (*Behne v. MicroTouch Systems Inc.*, N.D. Cal., No. C97-21012 EAI, jury verdict 3/12/99).

The jury verdict is the largest employment fraud award since the California Supreme Court's 1996 ruling in *Lazar v. Superior Court*, plaintiff's attorney Jody LeWitter said (20 DLR A-9, 1/31/96). In that case, the high court held the plaintiff could proceed with his fraud claim against Rykoff-Sexton Inc. and seek damages for relocation costs and loss of security and income associated with his former job.

The jury found that MicroTouch, which manufactures touch screens, violated California Labor Code Section 970 by misrepresenting the nature of employment to induce an employee to move. Behne was recruited by MicroTouch from a competitor in California to be a sales director in Massachusetts.

Jury Found Retaliation. Jurors also found that the company retaliated against Behne for her Equal Employment Opportunity Commission complaints of sex discrimination, but found there were no additional actual

damages on that claim. They did award her an additional \$50,000 in punitive damages, according to LeWitter.

Behne alleged that the company had no intention of honoring her offer letter to double her salary and become director of sales. The judge ruled that the letter was not a contract but could be used to prove a claim of intentional misrepresentation, LeWitter said.

The company said it is seeking a new trial or a reduction in the verdict. "MicroTouch is extremely disappointed with the outcome of the case," Chief Executive Officer Wes Davis said in a March 15 statement. "The company believes that it conducted matters in good faith throughout the individual's employment and believes that the imposition of \$2 million in punitive damages in the case is unwarranted. We intend to vigorously contest the result of the case."

Job Filled on Arrival. When she arrived in Massachusetts in October 1995, LeWitter said Behne received a telephone call telling her to stay at her hotel and not report for work at that point because the person she was replacing had not been told. At that point, the company president told the sales director Behne was going to be co-director but did not tell Behne, LeWitter said.

Behne then reported for work, but later discovered that she was listed as co-director of sales instead of director, and she said there was confusion in the office about her job title.

In April 1996 MicroTouch granted Behne's request to return to California and work from San Jose, LeWitter said. Behne's job duties changed from point of sales to medical sales. Her duties were cut in half after the EEOC charge was filed, and she assigned to write reports. The company told Behne in June 1997 that she was being fired for writing inadequate reports. Behne sued alleging fraud, intentional misrepresentation, and negligent misrepresentation.

"Employers shouldn't get too comfortable by the fact that it's [California] an at-will state. Even if it is they still have to be truthful about the representations with people that they still have to be held accountable," LeWitter told BNA.

Geoffrey Clear, vice president for finance and administration at the Methuen, Mass.-based company, declined comment March 17.