Defense Arbitration Award Obtained in Ethnic and Religious Slur Case

A salesperson at an automobile dealership client alleged he was subjected to daily anti-Semitic and ethnic slurs by the top salesperson. He claimed that he complained repeatedly to management but that his employer did nothing because it valued its top producer over the plaintiff. The plaintiff alleged that the constant harassment forced him to quit. Coincidentally, the plaintiff had a history of poor sales performance throughout his career, and his pay rate was dropping under a new pay plan the day he decided to quit. The plaintiff, of course, claimed his poor sales and resulting pay reduction were due to the alleged ongoing harassment and that he could not successfully function in that environment.

We tried the case before a retired judge sitting as an arbitrator. We presented a detailed reconstruction of the plaintiff’s prior and subsequent employment history showing his repeated poor sales performance in at least 15 jobs over ten years. At the conclusion of the case the arbitrator found for the employer on all claims. The arbitrator found that the employer did respond appropriately to the plaintiff’s complaints of harassment by immediately calling the harasser in and counseling him that anti-Semitic remarks would not be tolerated. The arbitrator also found that the company’s instruction to the plaintiff to go directly to the general manager if the harassment continued demonstrated adequate remedial action. The arbitrator also held that our client was entitled to seek recovery of its costs and attorneys’ fees in defending the case.