

**BEFORE THE  
AMERICAN ARBITRATION ASSOCIATION  
PETER R. MEYERS, ARBITRATOR**

<b>MICHELLE MORTENSEN</b>	)	
	)	
<b>Claimant,</b>	)	
<b>vs.</b>	)	<b>AAA Case No. 51 160 00578 13</b>
	)	
<b>MENARD, INC., a Wisconsin Corporation,</b>	)	
<b>d/b/a MENARDS,</b>	)	
	)	
<b>Respondent.</b>	)	

**ORDER AND DECISION  
AND FINAL AWARD**

THIS MATTER COMING ON TO BE HEARD on Claimant Michelle Mortensen’s (hereinafter referred to as “Mortensen”) Petition for Attorneys’ Fees and Costs, totaling \$85,087.92 in fees and \$1,980.69 in costs, and this Arbitrator having reviewed said petition, as well as the Memorandum In Support of Mortensen’s Petition for Award of Attorneys’ Fees and Costs and the declarations and time sheets and the various exhibits that are attached to the petition, and Respondent Menard, Inc.’s (hereinafter referred to as “Menard”) Brief in Opposition to Mortensen’s Petition for Attorneys’ Fees and Costs, as well as the exhibits attached thereto, and this Arbitrator having been fully advised in the premises:

**IT IS HEREBY ORDERED:**

1. This Arbitrator issued an Interim Decision and Award on May 27, 2014, that was substantially favorable to Mortensen. This Arbitrator found in that Interim Decision and Award that Menard had violated Title VII of the Civil Rights Act

when it discharged Mortensen from her position at Menard in retaliation for Mortensen having made a complaint of sex discrimination in the workplace. Mortensen was awarded \$71,192.00 in back pay, minus unemployment compensation, plus \$75,000.00 in punitive damages. This Arbitrator also ordered that Menard was to remove any evidence of Mortensen's wrongful termination from her personnel record. This Arbitrator retained jurisdiction over this matter for a period of ninety days to determine Mortensen's reasonable attorneys' fees and costs. The parties have filed their respective pleadings subsequent to the issuance of the Interim Decision and Award and this Order and Decision and Final Award is being issued within those ninety days;

2. In the Interim Decision and Award, this Arbitrator also found that Mortensen did not prevail on her Title VII claim of sex discrimination and she did not prevail on her tort claim of intentional infliction of emotional distress. This Arbitrator finds that, therefore, Mortensen was not totally successful in the claims that she brought to hearing and is not entitled to an award of one hundred percent of her attorneys' fees. Mortensen did not prevail on all of her counts and did not receive the total amount of damages that she had sought which included, among other things, front pay ;
3. After review of the record and the evidence presented, this Arbitrator finds that the filing of the original charge of sex discrimination and the presentation of evidence on that claim and hearing was a fundamental aspect of Mortensen's

case and was, in part, necessary to fully substantiate Mortensen's claim of retaliation on which she was successful. Therefore, with respect to the time spent by her attorneys in the early stages of this case, as well as their time spent in presenting the sex discrimination case as part of the retaliation case, this Arbitrator finds that it was a necessary part of Mortensen's ultimate success on her retaliation claim. Consequently, there will be no reduction of attorneys' fees for the time spent by Mortensen's counsel for the work that was performed on the sex discrimination claim which ultimately led to her favorable ruling on the retaliation claim. In addition, Mortensen received her full compensatory damages for the Title VII retaliation violation which would have been the total amount of the compensatory damages awarded even if Mortensen had also prevailed on the other Title VII claim;

4. On the contrary, with respect to the tort claim of intentional infliction of emotional distress that Mortensen raised in her complaint and argued in her brief, there was really minimal evidence presented to support that claim and there clearly was an insufficient factual basis to support it. There was very little testimony presented and no medical evidence whatsoever to support the tort claim. Consequently, there must be some reduction in Mortensen's request for attorneys' fees in that Mortensen was totally unsuccessful on her tort claim and Mortensen's counsel did spend some of their hours, set forth in their time records, developing and presenting that claim;

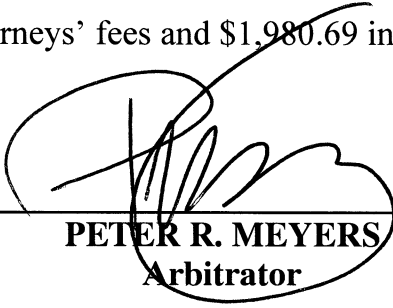
5. As far as the hourly rate sought by Mortensen's counsel, this Arbitrator finds that it has been substantially supported by the exhibits and the declarations that were tendered by Mortensen and has not been successfully rebutted by Menard in its responsive brief; and
6. Therefore, this Arbitrator orders that Mortensen be awarded all of her costs in the amount of \$1,980.69, but only eighty-five percent of the attorneys' fees that Mortensen sought. Consequently, the total attorneys' fees being awarded to Mortensen is \$72,324.73. The fifteen percent reduction in attorneys' fees is based on the fact that Mortensen was not one hundred percent successful in presenting her case.

**FINAL AWARD:**

Menard did not discriminate against Mortensen on the basis of her gender in violation of Title VII of the Civil Rights Act of 1964 when it terminated her employment. Menard did retaliate against Mortensen for complaining about what she believed to be unlawful gender-based discrimination when it discharged her from her employment. Mortensen is awarded \$71,192.00 in back pay, as well as \$75,000.00 in punitive damages. The back pay amount shall be set off by the unemployment compensation received by Mortensen, but those monies have to be reimbursed to Mortensen's account at the Illinois Department of Employment Security as set forth in the Interim Decision and Award. Mortensen is denied front pay. The personnel record of Mortensen must be amended to remove any evidence of her wrongful termination. Mortensen

is also awarded \$72,324.73 in attorneys' fees and \$1,980.69 in costs against Menard.

SO ORDERED:



**PETER R. MEYERS**  
Arbitrator

Dated: July 23, 2014