



## The Voice

### And The Defense Wins

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On September 30, 2016, DRI member [David V. Batt](#), senior partner of **Lobman, Carnahan, Batt, Angelle & Nader** in New Orleans prevailed, on behalf of the defendant, Gardner Realtors, in a jury trial in the U.S. District Court for the Eastern District of Louisiana, in the case of *Reuther v. Gardner Realtors*, No. 2:2015-cv-02850.

The plaintiffs' complaint was focused on a claim of discrimination based on ageism in the workplace. Plaintiffs also brought broad claims of discrimination based on the ADEA, Title VII, and the ADA against Gardner. Plaintiffs, who were Managers/Real Estate Agents with Gardner (a multi-state residential realtor), claimed that they were wrongfully discharged by Gardner Realtors on the basis of their age, and for health reasons. Plaintiffs were seeking damages for wrongful termination, lost earnings, diminished reputation, emotional distress, and mental anguish, as well as punitive damages under Title VII. After a five day trial, the jury found no discrimination and awarded zero damages.

Plaintiffs claimed that Gardner wrongfully terminated the plaintiffs, and replaced plaintiffs with younger persons. Plaintiffs also maintained that their discharge by Gardner was an act of retaliation, in violation of the Federal statutes. Plaintiffs contended that Gardner engaged in a pattern of discriminatory conduct against the plaintiffs, until the plaintiffs were ultimately, and wrongfully, discharged by Gardner. Further, plaintiffs claimed that they were disabled, and that Gardner's termination was discrimination based on disability.

Gardner presented evidence showing that it had cause to discharge the plaintiffs, as a Gardner office, under plaintiffs' management, operated at a loss for several years. It also introduced evidence that plaintiffs failed to follow the required corporate protocol in their real estate transactions. In its cross examination of the plaintiffs, Gardner forced plaintiffs to admit that plaintiffs spent energies developing a conflicting business, rather than performing their duties as its agents/managers.

Gardner presented evidence of its memorialized policies against discrimination in the workplace. Gardner presented evidence showing that it employed individuals in a wide range of ages, both older and younger than the plaintiffs, and that statistically Gardner did not discriminate on the basis of age.

Gardner also showed that plaintiffs had executed employment contracts with Gardner, wherein plaintiffs stipulated to their capacity as "independent contractors," not employees, of Gardner. However, plaintiffs claimed that their employment with Gardner included duties beyond the scope of the employment agreements. Plaintiffs argued that, as they operated in different capacities from those addressed in the employment agreements, that they were employees, and that the classification of "independent contractors" in the employment agreements did not apply.

The jury unanimously found that plaintiffs, in all capacities, were independent contractors of Gardner, not employees. The provisions of the ADEA, Title VII, and the ADA, therefore did not apply to plaintiffs.

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