

Superior Court of New Jersey, Law Division.
Law Division
Mercer County
Lynn L. **POWELL**, Plaintiff,
v.
JANSSEN PHARMACEUTICA INC., **Janssen** Pharmaceutica Products, L.P., and Johnson & Johnson, Defen-
dants.
No. L-0358-05.
November 30, 2005.

Amended Complaint & Jury Demand

Farrell & Thurman, PC, P.O. Box 671, Princeton, New Jersey 08542-0671, Ph: (609) 924-1115, Fx: (609) 924-5266,
For Hand Deliveries:, 172 Tamarack Circle, Skillman, NJ 08558, Attorneys for: Plaintiff Lynn Powell.
Plaintiff Lynn L. Powell (hereinafter "Powell") for her Amended Complaint states:

PARTIES

1. This is an action seeking remedies for Powell's wrongful discharge on February 11,2004.
2. Powell is a former employee of defendant Janssen Pharmaceutica Products, L.P. She currently resides at 10144 Mizner Lane, Raleigh, North Carolina.
3. Defendants Janssen Pharmaceutica Inc. and Janssen Pharmaceutica Products, L.P. (hereinafter collectively "Janssen") are New Jersey corporations. Janssen's headquarters are located in Mercer County at 1125 Trenton-Harbourton Road, Titusville, New Jersey 08560-1504.
4. Defendant Johnson & Johnson (hereinafter "J&J") is a publically traded New Jersey corporation. Its headquarters is located in Middlesex County at 1 Johnson & Johnson Plaza, New Brunswick, New Jersey 08933-0002, Defendant Janssen is a subsidiary of J&J.

FACTUAL ALLEGATIONS

A. Powell's Employment History

5. Janssen hired Powell in August 1999 and assigned her to work at its Titusville, New Jersey headquarters where she assisted with the design and preparation of training and marketing materials for use by Janssen's CNS ("central nervous system") Sales Force.
6. In April 2000, Janssen promoted Powell to the position of CNS Specialty Sales Representative and assigned her to a North Carolina sales district.
7. As a Sales Representative, Powell promoted a line of prescription medications approved for the treatment of neurological and central nervous system disorders. She made sales calls on physicians, hospitals, prisons, clinics, and pharmacists.

8. The policies governing Powell's performance and compensation as a Sales Representative were made in New Jersey. She continued to report to New Jersey on compensation-related issues and for human resources support. She returned to New Jersey on a regular basis for additional training and to assist Janssen in training others.

9. Powell received positive reviews throughout her tenure as a Sales Representative. Based on her sales record and positive feedback received from her superiors at Janssen, Powell reasonably believed that she was a valued employee and eligible for advancement,

B. Janssen's Sales Management

10. Powell and other Sales Representatives in her district reported to a District Manager who, in turn, reported to a Regional Business Director.

11. Powell's Regional Business Director reported to a Field Sales Director who, in turn, reported to the CNS National Sales Director.

12. The CNS National Sales Director reported to the Vice President of Marketing and Sales who, on information and belief, oversaw the design and implementation of compensation and incentive schemes applicable to Powell and other CNS Sales Representatives.

13. The Field Sales Director, CNS National Sales Director, and Vice President of Marketing and Sales were located in New Jersey.

C. Risperdal

14. Janssen manufactures and markets prescription medications including drugs for the treatment of neurological and central nervous symptom disorders. One of those drugs is an oral medication called Risperdal(R) (risperidone). Janssen also markets a long-acting, injectable form of risperidone called Risperdal(R) ConstaTM and a quick dissolve tablet called Risperdal(R) - TabTM. When used in this Complaint, the term "Risperdal" refers to all forms of risperidone marketed by Janssen.

15. The Food and Drug Administration ("FDA") approved Risperdal for the treatment of schizophrenia in adults on December 29, 1993.

16. At all times relevant to this Complaint, Risperdal had not been approved for promotion as a treatment for schizophrenia in children, bi-polar disorder, depression, generalized anxiety disorder, social anxiety disorder, obsessive compulsive disorder, borderline personality disorder, autism, sleep disturbance, or post traumatic stress disorder. Use of Risperdal to treat these conditions is deemed "off-label" use.

D. Off-label Compensation Scheme

17. The incentive programs and compensation schemes used to focus the efforts of the CNS sales force are designed, implemented, and monitored by executives in Janssen's New Jersey headquarters.

18. In the Summer of 2003, Powell faced a dilemma. Although her sales volume continued to increase, she saw no improvement in her eligibility for incentive compensation. To the contrary, her "profitability quotient" had declined to zero.

19. In early September 2003, Powell met with the New Jersey-based Risperdal Group Director and subsequently requested an explanation of the profitability paradox faced by the sales force,

20. Approximately a week after meeting with the Risperdal Group Director, Powell met with her managers. At that meeting, Janssen communicated the solution to the profitability paradox.

21. The managers advised Powell that in order to increase her income under the current compensation scheme (i.e., to increase her profitability quotient), she needed to focus on promoting off-label (i.e., promoting Risperdal as a treatment for anxiety, depression, and bi-polar disorder). The managers explained that her profitability under the compensation scheme was tied to her effectiveness in taking market share from a competing drug that was being actively promoted as a treatment for anxiety, depression and bi-polar disorder.

22. At the time the managers explained the scheme to Powell, neither Risperdal nor the competitor's drug was approved for the treatment of anxiety, depression, or bi-polar disorder.

23. Powell implemented the suggested sales strategy and her profitability quotient immediately increased.

E. Powell's Opposition to the Compensation Scheme

24. Throughout her career with Janssen, Powell received instruction and encouragement in the off-label promotion of Risperdal.

25. In mid-September 2003, Powell called the Human Resources office in New Jersey to discuss a recent peer performance review. During that call, Powell stated that she was uncomfortable with the forcefulness of Janssen's push for off-label sales.

26. Powell asked the New Jersey Human Resources office for assistance and guidance on the issue of off-label promotion. The Human Resources office directed her to call another HR manager for guidance.

27. Over the next two weeks, Powell called the designated HR manager several times to request guidance on off-label issues. The HR manager never answered Powell's calls and did not respond to her voice messages.

28. In late September 2003, Powell spoke with the Human Resources office in New Jersey and advised that no one had responded to her calls and that she had yet to receive guidance on her concerns about off-label sales activities.

29. Thereafter, Powell continued to try to reach the HR manager designated to respond to her questions. Repeated calls to the HR manager's office and cell phone went unanswered.

30. After making diligent efforts to obtain guidance from Janssen on the issue of off-label marketing with no response from the Company, Powell continued to follow management's sales directives, but refused to omit such activities from her sales call records or to conceal Janssen's off-label practices in her communications with others.

F. Janssen Terminates Powell

31. In November 2003, Powell scheduled speaker programs in the Raleigh district for the first quarter of 2004. The programs were intended to be promotional vehicles for Risperdal and were not designed as continuing medical education ("CME"). One of the scheduled speakers was Dr. Robert Findling.

32. In January 2004, Powell exchanged emails with Dr. Findling addressing the content and logistics of his presenta-

tion. The proposed subject of Dr. Findling's presentation was to include Risperdal treatment options for adolescents. Dr. Findling noted that this topic was off-label and questioned Powell whether federal regulations prohibited his use of a Power Point presentation in a non-CME setting.

33. Powell advised Dr. Findling that it was customary for Janssen speakers to use Power Point presentations and discuss off-label studies. However, because she shared concerns about the appropriateness of management's emphasis on off-label promotion and given Janssen's failure to respond to her requests for guidance on this issue, she disclosed Dr. Findling's inquiry and asked her manager to seek guidance.

34. On information and belief, Powell's manager forwarded Dr. Findling's inquiry to a third-party vendor who advised Janssen's Compliance Department of a possible violation of FDA rules prohibiting off-label promotion by drug companies.

35. On February 4, 2004, Janssen's V.P. of Healthcare Compliance interviewed Powell by phone from New Jersey regarding Dr. Findling's inquiries. Powell described the standard speaker practices followed in her district. Thompson advised Powell that those practices (as Powell had long suspected) were improper, but assured Powell that "everything is OK" because he understood that she had acted in good faith. This was the first time anyone at Janssen had informed Powell that practices directed and endorsed by Janssen's sales management were improper.

36. About nine hours after her interview with the V.P. of Healthcare Compliance, Powell received a call from her District Manager. The manager informed Powell that the home office was involved and that Powell's job was in jeopardy.

37. On February 11, 2004, Powell's District Manager summarily terminated her, giving as the reason her off-label correspondence with Dr. Findling.

38. On information and belief, the decision to terminate Powell, like the compensation scheme she challenged and the off-label promotional activities she refused to conceal, was engineered and authorized by executives in the defendants' New Jersey headquarters.

COUNT ONE (CONSCIENTIOUS EMPLOYEE PROTECTION ACT)

39. Powell incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

40. Janssen and J&J are "employers" as defined by the New Jersey Conscientious Employee Protection Act, [N.J.S.A. 34:19-1 et seq.](#) ("CEPA").

41. Powell is an "employee" as defined by CEPA.

42. Powell is a "whistleblower" under CEPA, in that she:

(a) Disclosed, or threatened to disclose, to a supervisor or to a public body an activity, policy or practice of her employer, or of another employer with which her employer had a business relationship, that she reasonably believed to be in violation of a law, or rule or regulation promulgated pursuant to law; and/or

(b) Objected to or refused to participate in or conceal an activity, policy or practice which she reasonably believed to be:

(1) in violation of a law or a rule or regulations promulgated pursuant to law; and/or

(2) fraudulent or criminal; and/or

(3) incompatible with a clear mandate of public policy concerning the public health, safety and welfare or protection of the environment.

43. As a result of the actions and statements of Powell described above, defendants Janssen and J&J, acting from their New Jersey headquarters, retaliated against Powell by directing that she be terminated.

44. Defendants are liable for their conduct which violates CEPA.

COUNT TWO (IN THE ALTERNATIVE TO COUNT ONE, WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY)

45. Powell incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

46. The actions of defendants in terminating Powell from her position of employment were in violation of a clear mandate of the public policy of the State of New Jersey.

COUNT THREE (TITLE VII)

47. Powell incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

48. Powell was told on several occasions by defendants' management that an ideal or preferred sales team was a male-female partnership.

49. Powell's sales team partner was a female.

50. Powell's replacement on the team was a male.

51. The justification provided Powell for the immediate termination of her employment was a pretext for discrimination based on her sex.

52. On August 6, 2004, Powell filed a charge of discrimination with the United States Equal Employment Opportunity Commission alleging discrimination on the basis of sex in the termination of her employment.

53. Plaintiff Lynn Powell received a Notice of Right to Sue from the United States Equal Employment Opportunity Commission on or about September 30, 2005.

54. In terminating Powell's employment, defendants discriminated against Powell on the basis of her sex in violation of Title VII of the Civil Rights Act of 1964, [42 U.S.C. §2000e et seq.](#)

WHEREFORE, Powell demands judgment against defendants for all manner of equitable, compensatory, punitive, and other damages permitted by law, including costs and attorneys fees, and for interest on such damages at the maximum rate permitted by law.

JURY DEMAND

Plaintiff Lynn Powell hereby demands trial by jury.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4 the Court is advised that John L. Thurman, Esq. is hereby designated as trial counsel.

DATE: 11-28-05

Lynn L. POWELL, Plaintiff, v. JANSSEN PHARMACEUTICA INC., Janssen Pharmaceutica Products, L.P., and Johnson & Johnson, Defendants.
2005 WL 6249356 (N.J.Super.L.) (Trial Pleading)

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