

This Woman Was Charged \$185,000 In Her Own Sexual Harassment Case

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By Emily Peck



First, Karen Ward was sexually harassed by her boss. When she spoke up, the former Ernst & Young partner faced retaliation. Then, she was fired.

Now, Ward, 49, is fighting back — but it's costing her an astonishing amount of money just to bring her case to court.

She's paid \$185,000 so far to have judges hear her sexual harassment and discrimination complaint against EY, a firm that pulls in billions of dollars of revenue annually, according to a complaint Ward filed last week in federal court.

"How many victims will even be able to afford to pay hundreds of thousands of dollars to have their claims heard?" Ward and her lawyers ask in the court filing.

These bills have piled up because Ward's harassment case is in arbitration, a private court outside the public justice system, where suits are heard by retired judges or lawyers who bill parties sometimes as much as \$1,000 an hour to hear their cases. Ward's case is being heard by a panel of three arbitrators.

Ward's employment contract with EY contained a forced arbitration clause, something companies often include in part to prevent allegations from former employees from becoming public.

If Ward had been able to file her initial harassment claims publicly in New York, where EY is based, it would have cost \$450.

Ward is arguing that the high arbitration costs render the employment agreement unenforceable and is seeking the right to take her suit to open court.

Ward and her lawyers say her fight against the high fees isn't just about her; she's able to pay these fees, so far, with her savings.

"Ms. Ward is pursuing her claims because of her firm belief that discrimination and retaliation of any form is wrong and cannot go unaddressed," Michael Willemin, a partner at New York law firm Wigdor who is representing Ward, told HuffPost. "EY knows this will cause other women to never bring these kinds of claims. They know how they'll be treated."

And if she can get her case before a jury, she might be able to win millions of dollars.

'Eye-Poppingly Outrageous' Costs

Ward's case shines a rare light on arbitration, which is typically an opaque process that tends to advantage large employers over workers. Companies typically require arbitrations to stay secret, and documents aren't made public like they are in normal court proceedings.

Because of the secrecy, it's hard to know how many victims of sexual harassment and discrimination have been silenced by arbitration. Occasionally examples do surface. Sterling Jewelers, parent company of retailers Kay and Jared, used the process to hush up tens of thousands of employees who had been harassed, discriminated against and underpaid by the company, [The New York Times recently reported](#).

Companies typically have several advantages in arbitration. First, this process discourages aggrieved employees from filing a case. Once they do, employers tend to win in arbitration, [according to research on the subject](#). And when companies *do* lose, payouts to former employees tend to be lower than they would be in a public case.

There is also less "discovery" in arbitration, meaning victims are hampered in their ability to conduct research on their harassers to find out these behaviors are part of a pattern.

One of the arguments companies typically make in favor of arbitration is that it's faster and costs less than going to court. That's partly because discovery is limited — and paying for that research is part of the financial burden of pursuing a sexual harassment claim, whether in court or arbitration.

And, in most cases, companies foot the bill, said Paul Bland, executive director of the legal advocacy firm Public Justice, who's fought against forced arbitration clauses for years.

The fees in Ward's case are "eye-poppingly outrageous," Bland said — among the highest he had ever heard of. That might give her an advantage in court.

"The costs in this case are so high and extreme I think there is a good argument that the court should intervene and strike down the arbitration clause and say it's abusive," Bland said. "But there are no guarantees."

The \$185,000 wasn't for anything out of the ordinary, Ward's lawyer Willemin said. The money paid for time that the three judges have spent working on the case, doing pretty mundane case work: Calls with the lawyers about schedules, conferences about discovery, deciding motions on discovery. They also bill in advance, Willemin said, for time they expect to spend reviewing motions and conducting the actual hearing.

The Supreme Court has upheld the arbitration process, but hasn't weighed in on court costs. Bland thinks that's where Ward might have an advantage.

"The Supreme Court has been so favorable to arbitration that some lower courts are enforcing even the most abusive clauses," he said. "There's an enormous amount of unfairness in this area."

Over the past year or so, a few major companies — under pressure in the MeToo moment — have stopped forcing harassment victims into secret arbitration proceedings, including Microsoft, Uber and Google.

There have also been legislative efforts to prohibit companies from forcing victims of harassment or sexual harassment into arbitration, but they've largely gone nowhere. One bill, backed by former Senator Al Franken (D-Minn.), has floundered since he resigned from his seat after facing multiple allegations of harassment.

'Could This Be Because I'm A Woman?'

Ward filed her sexual harassment and discrimination charges against EY in October. She claimed that EY retaliated against her because she complained about her boss, who made lewd comments about her body, about her "nice ass" and "great big boobs." He

propositioned her on a business trip and took credit for her work, she said in her complaint to the Equal Employment Opportunity Commission.

A subsequent [HuffPost investigation](#) uncovered emails and letters in which Ward tried to take her complaints to other managers inside the firm and was consistently silenced and sidelined.

At one point, in a phone call with a senior partner, the head of the investment banking division, she wondered if her mistreatment had to do with her gender. “Could this be because I’m a woman?” she asked.

He dismissed the idea, she said, and told her to be careful about raising the gender issue. “Don’t push that rock up the hill, it will roll back on you and crush you,” he told her, according to her complaint last year.

Much later, Ward conceded to HuffPost that he was right: “The rock crushed me,” she said.

‘I Won’t Be Silenced’

In cases like Ward’s, where she’s accusing a company of violating part of federal civil rights laws, it’s even more galling that she can’t go to a public courtroom, said Peter Romer-Friedman, counsel at Outten & Golden, who represents workers in employment cases.

Forced arbitration means that many workers are cut off from the means of justice. “Workers shouldn’t have to pay exorbitant amounts of money just to have their claims heard,” Romer-Friedman said.

Ward never wanted to arbitrate. In an open letter to EY’s former CEO Mark Weinberger last fall, she asked him to release her from the arbitration clause.

“EY’s ‘catchphrase’ is: ‘building a better working world.’ Forcing women, as a condition of employment, to pursue claims of gender discrimination and harassment only in secret arbitration proceedings does not help to ‘build a better working world.’ In fact, it does the opposite,” Ward wrote.

Weinberger, who stepped down as CEO last month, never directly responded to Ward and the company proceeded to arbitration.

Once in arbitration, Ward and her lawyers asked the arbitration panel to force EY to shoulder all the costs of the proceedings, but the company argued against her — and the arbitrators sided with the firm.

In a statement to HuffPost, the company argued that it was the arbitrators who were making Ward pay court costs.

“Karen Ward voluntarily commenced an arbitration proceeding against EY in October 2018,” the statement said. “The parties appointed three neutral arbitrators to hear the dispute. The arbitrators, not EY, determined by their ruling several months ago that the cost of the arbitration would be shared by the parties, subject to final resolution of the proceedings.”

In their statement EY also strongly denied all of Ward’s claims, insisting she was fired for poor performance.

Through her lawyer, Ward declined to talk to HuffPost for this story. But in interviews last year she recounted the stress and anxiety she felt at EY.

Getting fired was a crushing blow. And the ensuing months have been rough — she’s had trouble finding work, she said.

Still, at the time, she was determined to fight.

“What [EY has] done here is a really ugly thing, but I won’t be silenced over it,” she said at the time. “it’s just flat out wrong. It has to stop.”