

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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KIM FRISINGER,	:	Civil Action No.: 17-6030
	:	
Plaintiff,	:	
	:	
V.	:	<u>COMPLAINT</u>
	:	
CITIBANK, N.A.,	:	<u>JURY TRIAL DEMANDED</u>
	:	
Defendant.	:	
-----X	:	

Plaintiff, Kim Frisinger (“Plaintiff”), by his attorneys, Broach & Stulberg, LLP, complaining of Defendant, Citibank, N.A. (“Citibank” or “Defendant”), respectfully alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action to remedy discrimination because of his age in violation of the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621, *et. seq.* As alleged herein, Defendant denied Plaintiff promotions for which he was highly qualified, denied him opportunities for executive training and development, and terminated his employment because of his age. Plaintiff seeks injunctive and declaratory relief, monetary damages, liquidated damages, and all other appropriate legal and equitable relief, pursuant to 28 U.S.C. § 2201, and 29 U.S.C. § 626(b), and all other applicable federal and state laws.

JURISDICTION AND VENUE

2. Jurisdiction of this Court over Plaintiff's ADEA claim is invoked pursuant to 29 U.S.C. § 626(c) and 28 U.S.C. §§ 1331 and 1343(a)(4).

3. Venue is proper within this District, pursuant to 28 U.S.C. § 1391(b), in that Defendant resides and can be found in this District.

4. Plaintiff has complied with all administrative requirements of the ADEA. On October 5, 2016, Plaintiff timely filed a Charge of Discrimination against Defendant with the United States Equal Employment Opportunity Commission ("the EEOC") complaining of the acts of discrimination alleged herein. The EEOC issued a Notice of Right to Sue dated May 12, 2017 to Plaintiff.

PARTIES

5. Plaintiff is sixty-five (65) years old. His birthdate is June 14, 1952.

6. Plaintiff is a United States citizen.

7. Plaintiff resides in Hong Kong.

8. At all pertinent times herein, Plaintiff was employed by Defendant. At all pertinent times herein, Plaintiff was an "employee" within the meaning of 29 U.S.C. § 630(f).

9. Upon information and belief, Defendant is a Delaware corporation authorized to conduct business in New York. Upon information and belief, Defendant maintains its principal place of business at 399 Park Avenue, New York, New York 10043. Defendant is an "employer" within the meaning of 29 U.S.C. §§ 623(h) and 630(b).

STATEMENT OF FACTS

10. Plaintiff has had a distinguished 40-year career as a global risk management

professional specializing in investigation, remediation and prevention of financial crimes, including money laundering, fraud and corruption.

11. In or around May 2013, Defendant hired Plaintiff for the newly-created position of Senior Vice President, Anti-Money Laundering (“AML”) Investment Banking Division (“IBD”) Compliance Head, based in Hong Kong. Plaintiff’s position was in Defendant’s Asia Pacific (“APAC”) AML, Sanctions, and Anti-Bribery & Corruption Unit (“the Unit”).

12. As AML IBD Compliance Head, Plaintiff was responsible for, among other things, developing ways to identify all “episodic” transactions in APAC, to establish procedures for identifying potential AML, sanctions, anti-bribery and/or corruption concerns with those transactions, and to develop relationships to resolve those concerns within the business and compliance units. (“Episodic” transactions are those that are periodic in nature, including initial public offerings (“IPOs”), mergers and acquisitions, and derivatives, finance or securitization deals.)

13. Plaintiff also served as a voting member on Citibank’s PN21 Committee, which approved and monitored all APAC IPOs (about 40 per year on average).

14. Plaintiff’s job performance was excellent.

15. In April 2014, Plaintiff’s then-manager told him that his work was outstanding and that his “3” performance rating (Generally Strong) reflected only his mid-2013 start date.

16. In April and May 2014, Plaintiff asked a new manager (44 years old) and the Unit Head (45 years old), to address his (Plaintiff’s) prospects for career development (as required by Defendant’s annual review process), but they ignored that request.

17. In May 2014, Plaintiff applied for a promotion to the internally posted position of

Regional Director of Investigation in Corporate Security & Investigations (“CSIS”), for which Plaintiff was eminently qualified.

18. Defendant passed Plaintiff over for promotion to the CSIS position and instead promoted a candidate for that position who was in his early 30s, and who was substantially less qualified than Plaintiff.

19. In July 2014, Plaintiff was assigned to the additional executive position of Regional Head of the APAC AML Discovery Analytics Program (“ADAP Head”). As ADAP Head, Plaintiff was responsible for developing, reporting and coordinating global intelligence concerning existing and emerging financial crimes and terrorist financing risks, and oversaw a staff that was separate from the employees he oversaw as AML IBD Compliance Head.

20. When Plaintiff accepted the ADAP Head position, the Unit Head told him that Defendant’s Human Resources Unit (“HR”) had confirmed that the combined ADAP Head and AML IBD Compliance Head functions constituted a Director-level position.

21. Although Plaintiff was functioning at and was qualified for a promotion to a Director-level position, Defendant refused to promote Plaintiff to Director and instead repeatedly promoted substantially younger, less experienced employees over Plaintiff to Director.

22. For instance, in or around late 2014, the Unit Head told Plaintiff that, although HR had confirmed that Plaintiff was functioning at a Director level, he (Plaintiff) would not be promoted to Director. The Unit Head explained that he (the Unit Head) had to promote to Director two other Senior Vice Presidents -- a 34-year old who was working in Sanctions and Anti-Bribery & Corruption (“AB&C”) and a 45-year old who was working in Core AML (handling training and other functions).

23. In or around 2015, Defendant promoted to Director the substantially younger and less experienced individuals referenced in paragraph 22 above (the 34-year old and 45-year old), as well as another substantially younger, less experienced employee, a 39-year old who was promoted to Director and Head of the Financial Intelligence Unit (“FIU”).

24. In January 2015, Plaintiff received an overall performance rating of 2 (Highly Effective) with numerous Exceptional ratings.

25. Although Plaintiff’s then-supervisors then variously told Plaintiff that he would be promoted to Director, when Plaintiff asked them about his career development prospects, his inquiries were ignored.

26. In January 2016, Plaintiff received another overall performance rating of 2 (Highly Effective) with numerous Exceptional ratings.

27. In January 2016, however, Defendant again passed over Plaintiff for promotion to Director, even though Plaintiff was functioning at the Director level and even though Defendant had promoted substantially younger, less experienced employees to Director.

28. One of Plaintiff’s then-supervisors cited as the reason for the denial a purported new procedure, in which Plaintiff needed a unanimous vote of the APAC Compliance Executive Committee to approve a promotion. The supervisor said that some Committee members claimed not to know Plaintiff and therefore withheld their approval for a promotion.

29. Even if such a purported procedure existed, Defendant treated Plaintiff disparately with respect to that procedure because of his age.

30. Upon information and belief, Defendant invited substantially younger promotion candidates, including the three substantially younger and less qualified individuals promoted to

Director, as described in paragraph 23 above, to participate in invitation-only executive training, grooming, and/or development programs, including one focused on promotion, where candidates met and interacted with senior executives from APAC and Citibank Headquarters.

31. Unlike those substantially younger promotion candidates, Plaintiff was never invited to any of these training, grooming and/or development programs, or even told that they existed.

32. Upon information and belief, Defendant did not provide Plaintiff with opportunities to participate in training, grooming and/or development programs that were afforded to substantially younger and less experienced employees because of his age.

33. In or around April 2016, Defendant replaced Plaintiff's then-supervisor as APAC Director of the Global Investigations Unit ("GIU") with a candidate from outside of Citibank, who was in his early forties, even though Plaintiff was qualified for the position.

34. In or around May 2016, Plaintiff told the Director and Regional AML Head of Institutional Clients Group ("RAH") that he was interested in the vacant position of Director of AML Compliance for Trade and Transfer Services, which reported to the RAH. The RAH told Plaintiff that the position was open.

35. On May 30, 2016, however, Defendant summarily terminated Plaintiff's employment. The Unit Head told Plaintiff that his position had been eliminated, but that statement contradicted the Unit Head's statements to the RAH only a week or so earlier that there would be no layoffs in the Unit.

36. When Plaintiff asked whether he had been considered for other positions, he was told that no other positions were deemed appropriate for him. Plaintiff also asked whether he had

been considered for the open position of Director of AML Compliance for Trade and Transfer Services, for which he was highly qualified. Defendant told Plaintiff that the position was deemed unsuitable for him but failed to provide any explanation as to why.

37. Defendant replaced Plaintiff as AML IBD Compliance Head with a thirty-year old Senior Vice President, who lacked experience in the areas overseen by Plaintiff and was substantially less qualified. That thirty-year old, substantially less experienced employee also replaced Plaintiff as a voting member on Defendant's PN21 Committee. Defendant also gave Plaintiff's functions as ADAP Head to the less experienced, 39-year old employee referenced in paragraph 23 above, who had been promoted over Plaintiff to Director and Head of FIU.

38. Upon information and belief, when Plaintiff was terminated, Plaintiff was the oldest employee in the Unit and, upon information and belief, one of the oldest employees in the IBD. Upon information and belief, Plaintiff was 20 to 30 years older than the other SVPs in the Unit, 11 to 30 years older than the Directors in the Unit, 22 years older than the Director to whom Plaintiff reported, and 17 years older than the Unit Head.

39. Upon information and belief, at all relevant times herein, Defendant's policies specifically authorized the downgrading and/or mandatory retirement of APAC executives, including American citizens, age 65 and older.

40. Upon information and belief, Defendant denied Plaintiff promotions, opportunities for career development and advancement, and terminated his employment because of his age. Upon information and belief, Defendant committed those acts willfully.

41. As a result of Defendant's illegal acts, Plaintiff has suffered substantial and

continuing damages, including but not limited to, loss of compensation, loss of benefits, emotional distress, mental anguish and damage to reputation.

AS AND FOR A FIRST CAUSE OF ACTION
Age Discrimination in Violation of the ADEA

42. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 41 of the Complaint as though recited at length herein.

43. Upon information and belief, Defendant took the adverse actions described in paragraphs 1 through 41 of the Complaint because of Plaintiff's age.

44. Upon information and belief, Defendant, by the actions described in paragraphs 1 through 41 of the Complaint, has unlawfully discriminated against Plaintiff because of Plaintiff's age in violation of 29 U.S.C. § 623.

45. Upon information and belief, Defendant's violations of the ADEA described in paragraphs 1 through 41 of the Complaint were willful, within the meaning of 29 U.S.C. § 626(b).

46. Plaintiff has suffered, is now suffering, and will continue to suffer irreparable injury and monetary damages as a result of Defendant's discriminatory acts unless and until this Court grants the relief requested herein.

47. No previous application has been made for the relief requested herein.

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment:

(a) declaring that the acts and practices complained of herein are in violation of the ADEA;

(b) enjoining and permanently restraining the violations alleged herein;

(c) directing Defendant to reinstate Plaintiff to the positions he would have occupied, but for Defendant's discriminatory treatment, and to make him whole for all earnings and benefits he would have received but for Defendant's discriminatory treatment, including, but not limited to, wages, bonuses, health insurance benefits, pension benefits, life and accident insurance benefits, stock options and all other benefits and compensation;

(d) directing Defendant to pay Plaintiff liquidated damages for its willful acts of discrimination, pursuant to the ADEA, 29 U.S.C. § 626(b);

(e) awarding Plaintiff the costs of this action together with reasonable attorneys' fees, as provided for in 29 U.S.C. § 626(b); and

(f) granting such other and further relief as this Court deems necessary and proper.

Dated: August 9, 2017
New York, New York

BROACH & STULBERG, LLP
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By: 

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DEMAND FOR JURY TRIAL

Plaintiff, by and through his above-signed counsel, hereby demands, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, a trial by jury in the above-captioned action.