

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

94 6932

ARLENE M. STONE,
on behalf of herself and
all other present and former
employees similarly situated,

CASE NO.:

~~CITIZEN~~ ~~AMERICAN~~

MAGISTRATE
BANDSTRA

Plaintiff,

v.

FIRST UNION CORPORATION,
Charlotte, N.C., and

FIRST UNION CORPORATION OF
FLORIDA, and

FIRST UNION NATIONAL BANK of
FLORIDA,

Defendants.

~~FILED BY~~
~~SEP 26 1994~~
~~CLERK U.S. DISTRICT COURT~~
~~S.D. FLORIDA~~
~~COMPLAINT~~

FILED BY
SEP 27 1994
T. G. CHEN, CLERK
U.S. DISTRICT COURT
S.D. FLORIDA
TAMPA

Plaintiff Arlene M. STONE, on behalf of herself and all other present and former employees similarly situated, sue the Defendants, FIRST UNION CORPORATION, and FIRST UNION CORPORATION OF FLORIDA, and FIRST UNION NATIONAL BANK OF FLORIDA (collectively, "First Union") for age discrimination pursuant to the provisions of Section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. Section 216(b), and the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 621 et seq. (ADEA), and pursuant to the age discrimination in employment provisions of Florida Statutes, Section 760.10 and states:

[Handwritten mark]

JURISDICTION

1. This Court has jurisdiction of this action pursuant to 29 U.S.C. Sections 626, 633 and 28 U.S.C. Section 1331. Written consents to join this action, when executed by other individual Plaintiffs, will be filed with the Court pursuant to 29 U.S.C. Section 216(b). The action is brought under the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621 et seq. (ADEA) to redress and enjoin employment practices of First Union in violation of that statute. This complaint also asserts claims of age discrimination in employment pursuant to Florida Statutes, Section 760.10, for which jurisdiction is based on the doctrine of pendent jurisdiction.

PARTIES

2. Plaintiff Arlene M. Stone, resides in Broward County, Florida and at all times relevant to this complaint, was over the age of 40. Plaintiff Stone was employed by Southeast Bank from September 1969 until it was acquired by First Union on or about September 1991. At the time of the acquisition, Plaintiff Stone was Vice President, and Manager, Galt Ocean Mile Banking Center, in Broward County. She continued working for First Union until October 1992 when she was involuntarily terminated and laid off by First Union because she was over the age of 40. At the time of her termination, Plaintiff Stone had been involuntarily transferred and demoted to the position of Assistant branch manager because she was over the age of 40. The acts complained of occurred predominantly in Broward County, Florida.

3. Plaintiff Stone filed a charge of age discrimination with the Florida Commission on Human Relations and the Equal Employment Opportunity Commission (EEOC), on or about November 30, 1992 and has complied with all applicable procedural requirements of the ADEA.

4. In addition to the above Plaintiff, various persons who are present or former employees of First Union and who are similarly situated to Plaintiff are filing or will file written consents to join this action as opt-in Plaintiffs pursuant to 29 U.S.C. Section 216(b).

5. Defendant, First Union National Bank of Florida is a national bank with offices throughout the State of Florida, and is a corporation chartered under the laws of the United States. It is an employer within the meaning of the ADEA.

6. Defendant, First Union Corporation is a bank holding company incorporated under the laws of the State of North Carolina and registered under the Bank Holding Company Act of 1956. Its principal office is located at One First Union Center, Charlotte, North Carolina 28288.

7. Defendant, First Union Corporation of Florida, is a company incorporated under the laws of the State of Florida. Its principal office is located at 225 Water St., Jacksonville, FL 32202. It is the parent company of First Union National Bank of Florida.

8. All Defendants participated in common plan of acquisition and consolidation and participated in decisions concerning reduction-in-force and other employment decisions which resulted in intentional and disproportionate termination of employees because they were over 40 years of age. The common plan included replacing these older employees with younger employees in blatant, intentional, and willful disregard of the laws against age discrimination. Further, all defendants knew or were in reckless disregard for the matter of whether the common plan and its impact on employees over the age of 40 was prohibited by the FLSA.

NATURE OF COLLECTIVE ACTION

9. Plaintiff brings this action on her own behalf and pursuant to 29 U.S.C. 216(b), as incorporated in 29 U.S.C. 626, on behalf of all other persons similarly situated who are at least 40 years of age, who have been, are being, or will be adversely affected by First Union's unlawful age discrimination in employment policies and practices. This collective action includes all persons in the present or former employ of First Union, who have or will execute and file written consents to join this action pursuant to 216(b), and who were:

- (a) at least 40 years of age;
- (b) employed by First Union;
- (c) involuntarily discharged, laid off, terminated, downgraded, or demoted from employment by First Union because

they were over the age of 40, or who otherwise suffered adverse employment actions by First Union because they were over the age of 40;

(d) subjected to the above adverse employment actions pursuant to or in connection with First Union's acquisition of, or consolidation with other banking institutions.

10. Plaintiffs are unable to state at this time the exact size of the potential class but estimate that it exceeds 200 persons. Opt-in Plaintiffs who are similarly situated to Plaintiff Stone will file written consents with the Court, as they elect to join the pending lawsuit.

COUNT I
(Collective Action)

11. Plaintiffs repeat and reallege paragraphs 1 through 10 of the Complaint.

12. Commencing on or about September 1991, and continuing to the present, Defendants have intentionally and willfully engaged in a series of unlawful acts, practices, policies, and procedures in connection with their common plans of acquisition of, or consolidation with, other banking institutions, which plans were in blatant violation of the age discrimination in employment laws. These several plans have been part of a systematic and concerted program to terminate, demote, and lay-off employees over the age of 40.

Stone v. First Union

13. The design, implementation, and maintenance of the common plan has reflected, both in purpose and effect, a blatant and willful pattern of age discrimination, including:

(a) terminating qualified persons from employment who are at least 40 years of age because of their age, with discriminatory purpose and impact;

(b) depriving qualified persons who are at least 40 years of age of the same employment opportunities as are, or were, available to persons under the age of 40;

(c) refusing to rehire or to place qualified persons in other positions because they were over 40 years of age, which in purpose and impact has adversely affected the employment status of persons who are at least 40 years of age.

14. As a consequence of the foregoing, the common plan has produced, and continues to produce, both a disparate adverse treatment of, and a disparate adverse impact upon employees who are at least 40 years of age. In particular, the common plan has caused, directly and indirectly, the disproportionate elimination of substantial numbers of employees who are at least 40 years of age, from First Union's job ranks, including Plaintiff and others similarly situated. The common plan has also resulted in the demotion and downgrading of an unknown number of employees, including Plaintiff and others similarly situated who were at least 40 years of age.

Stone v. First Union

15. The above described pattern and practice of systematic and concerted discrimination complained of by Plaintiff as a demoted and discharged employee of First Union, has similarly affected ~~all other~~ members of the class so that the claims of all such class members are common and typical to one another.

COUNT II

(Individual Claim of Age Discrimination)

16. Plaintiff Stone repeats and realleges paragraphs 1 through 10, and 12 through 14 of the Complaint.

17. Throughout Plaintiff Stone's years of employment both with First Union and its predecessor, Southeast Bank, her work performance has been consistently satisfactory.

18. Pursuant to, and in connection with the common plan, when First Union acquired Southeast Bank in September 1991, it embarked upon a concerted, systematic, and willful course of discrimination based upon Plaintiff Stone's age which was over 40.

19. Plaintiff Stone was demoted to the position of assistant branch manager because of her age. She was informed she was being transferred to the position of assistant branch manager, and that it was a non-existent position from which she would be terminated. However, after her demotion and termination, a younger male retained the position of assistant branch manager.

20. Plaintiff Stone was forced to "post" for other positions within the bank, when younger employees were placed in other positions within the bank and they were not required to go through the "posting" procedure. This action was based upon her age, over 40.

21. Plaintiff Stone was denied the opportunity to attend training classes that would have assisted her in obtaining another position within the bank. The class was cancelled for her, but younger employees were permitted to attend.

22. Plaintiff Stone applied for various job openings within the bank for which she was qualified, including Branch Manager, and Sales Manager positions, often at lower salary grades, but was either not interviewed, or was not placed, or was told not even to bother to apply. These actions by First Union were based upon Plaintiff Stone's age, over 40. Younger persons were not treated this way.

23. Plaintiff Stone was not informed of a policy of casual attire for Fridays, while younger employees were allowed to dress in slacks and tee shirts.

24. Plaintiff Stone's termination and the events leading to her termination, were made by First Union in knowing or reckless disregard of the requirements of the ADEA.

25. As a result of the willful, knowing, and intentional conduct of First Union, made pursuant to its common plan, Plaintiff Stone suffered mental anguish, distress, personal

Stone v. First Union

embarrassment, and public humiliation among her peers and former customers, friends and family.

COUNT III

(State claim for age discrimination
under Florida Statutes, Section 760.10)

26. Plaintiff restates and realleges paragraphs 1 through 10, 12 through 15, and 17 through 25.

27. The actions alleged in Counts I and II constitute age discrimination in employment pursuant to Florida Statutes, Section 760.10.

JURY DEMAND

Plaintiffs demand trial by jury of all issues triable of right by a jury.

RELIEF SOUGHT

WHEREFORE, Plaintiffs respectfully request that this Court:

(a) Award against Defendants and in favor of Plaintiffs actual damages for loss of revenue including back-pay, future earnings and pension adjustments;

(b) Award an equal amount in liquidated damages and prejudgment interest in amounts to be proven at trial, to any person adversely affected by the unlawful employment practices described herein;

(c) Award compensatory damages for mental anguish, personal suffering, professional embarrassment and public humiliation;

(d) Grant affirmative relief to those Plaintiffs who so elect, of immediate reinstatement to their respective former

position, or to positions of comparable status with the defendants, at the same or comparable rate of compensation and with other comparable benefits applicable to those positions;

-- (e) Award Plaintiffs their reasonable attorneys' fees and costs as provided in 29 U.S.C. Section 626(b) and, by incorporation, 29 U.S.C. Section 216(b);

(f) Award punitive damages as may be provided under State law;

(g) Grant a permanent injunction enjoining Defendants, their agents, successors, employees, and other representatives from engaging in or continuing to engage in any employment acts, policies, practices, or procedures, which may discriminate, in purpose or impact, against any present or former employee of defendants on the basis of the employee's age;

(g) Grant such other and further relief as the Court deems just or proper.

Dated: September 23rd, 1994.

Respectfully submitted,



JACK SCAROLA
Florida Bar No.: 169440
DAVID J. SALES
Florida Bar No.: 794732
SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.
Attorneys for Plaintiffs
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33402
(407) 686-6300

BRENDA J. CARTER
Florida Bar No.: 857289
Attorney for Plaintiffs
1451 West Cypress Creek Rd., #300
Fort Lauderdale, FL 33309
(305) 489-2718