

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

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

Plaintiff,

v.

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

FIRST UNION CORPORATION OF
FLORIDA, and

FIRST UNION NATIONAL BANK OF
FLORIDA,

Defendants.

CASE NO. 946932-CIV-FERGUSON

FILED BY
95 JUN 21 PM 4:08
J.C.

ANSWER TO PLAINTIFF'S COMPLAINT

COME NOW First Union Corporation, First Union Corporation of Florida and First Union National Bank of Florida, Defendants in the above-styled action, and file their Answer to Plaintiff's Complaint, as follows:¹

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

¹ Plaintiff's Complaint incorrectly refers to the three Defendants collectively as "First Union." Defendants object to such characterization since First Union Corporation, First Union Corporation of Florida and First Union National Bank of Florida are separate and distinct entities.

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.

Response: Defendants admit that this Court has jurisdiction of this action and that it is brought pursuant to the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.* and Florida Statutes, Section 760.10. Defendants are without knowledge or information sufficient to form a belief as whether written consents to join this action will be filed with the Court. Defendants deny that any such written consents would properly join additional Plaintiffs to this action. Defendants deny all other allegations contained in Paragraph 1 of Plaintiff's Complaint.

PARTIES

2. Plaintiff, Arlene M. Stone, resides in Brown 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.

Response: Defendants are without knowledge or information sufficient to form a belief as to whether Plaintiff resides in Broward County, Florida, or is over the age of 40. ~~Defendants admit that Plaintiff was employed by Southeast Bank until September 1991, at which time Plaintiff was Vice President and Manager, Galt Ocean Mile Banking Center in Broward County. Defendants admit that Plaintiff was hired by First Union National Bank of Florida and continued working for First Union National Bank of Florida until October 1992. Defendants deny all other allegations contained in Paragraph 2 of Plaintiff's Complaint.~~

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.

Response: Defendants admit that Plaintiff filed a charge of age discrimination with the Equal Employment Opportunity Commission. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3 of Plaintiff's Complaint.

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).

Response: Defendants are without knowledge or information sufficient to form a belief as to whether or not other persons are filing or will file consents to joint this action. Defendants deny that any such additional persons are entitled to join this action as opt-in Plaintiffs.

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.

Response: Defendants admit the allegations contained in Paragraph 5 of Plaintiff's Complaint.

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.

Response: Defendants admit the allegations contained in Paragraph 6 of Plaintiff's Complaint.

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.

Response: Defendants admit the allegations contained in Paragraph 7 of Plaintiff's Complaint.

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.

Response: Defendants deny the allegations contained in Paragraph 8 of Plaintiff's Complaint.

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.

Response: Defendants admit that Plaintiff seeks to bring this action on her behalf and on behalf of other persons. Defendants deny that Plaintiff may do so. Defendants further deny all other allegations contained in Paragraph 9 of Plaintiff's Complaint.

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.

Response: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of Plaintiff's Complaint. By way of further answer, Defendants deny that other persons may join in the pending lawsuit.

COUNT 1

(Collective Action)

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

Response: Defendants repeat and reallege their answers to Paragraphs 1 through 10 of Plaintiff's 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.

Response: Defendants deny the allegations contained in Paragraphs 12 of Plaintiff's Complaint.

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.

Response: Defendants deny the allegations contained in Paragraphs 13 of Plaintiff's Complaint.

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.

Response: Defendants deny the allegations contained in Paragraphs 14 of Plaintiff's Complaint.

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.

Response: Defendants deny the allegations contained in Paragraphs 15 of Plaintiff's Complaint.

COUNT II

(Individual Claim of Age Discrimination)

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

Response: Defendants repeat and reallege their answers to Paragraphs 1 through 10 and 12 through 14 of Plaintiff's 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.

Response: Defendants deny the allegations contained in Paragraphs 17 of Plaintiff's Complaint.

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.

Response: Defendants deny the allegations contained in Paragraphs 18 of Plaintiff's Complaint.

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.

Response: Defendants deny the allegations contained in Paragraphs 19 of Plaintiff's Complaint.

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.

Response: Defendants deny the allegations contained in Paragraphs 20 of Plaintiff's Complaint.

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.

Response: Defendants deny the allegations contained in Paragraphs 21 of Plaintiff's Complaint.

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.

Response: Defendants deny the allegations contained in Paragraphs 22 of Plaintiff's Complaint.

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.

Response: Defendants deny the allegations contained in Paragraphs 23 of Plaintiff's Complaint.

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.

Response: Defendants deny the allegations contained in Paragraphs 24 of Plaintiff's Complaint.

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

Response: Defendants deny the allegations contained in Paragraphs 25 of Plaintiff's Complaint.

COUNT III

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

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

Response: Defendants restate and reallege their answers to Paragraphs 1 through 10 and 12 through 14 and 17 through 25 of Plaintiff's Complaint.

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

Response: Defendants deny the allegations contained in Paragraphs 27 of Plaintiff's Complaint.

JURY DEMAND

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

Response: Defendants admit that Plaintiff seeks a trial by 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 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.

Response: Defendants deny that Plaintiff is entitled to any of the relief sought in her prayer for relief.

FIRST AFFIRMATIVE DEFENSE

Plaintiff failed to exhaust her administrative remedies.

SECOND AFFIRMATIVE DEFENSE

Defendants First Union Corporation and First Union Corporation of Florida are not proper parties to this action because they are not and have not been Plaintiff's employers.

THIRD AFFIRMATIVE DEFENSE

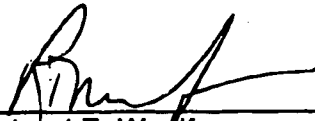
All of Defendants' actions toward Plaintiff were for legitimate, non-discriminatory reasons.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's action is barred, in whole or in part, by applicable statutes of limitation.

Respectfully submitted this 27 day of January, 1995.

BUNNELL, WOULFE & KELLER

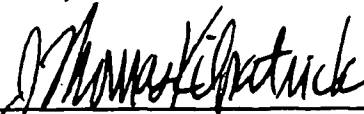


Richard T. Wolfe
Florida Bar No. 222313

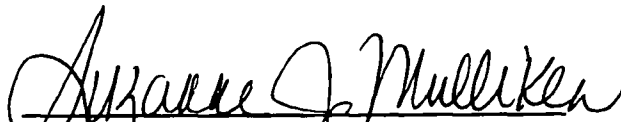
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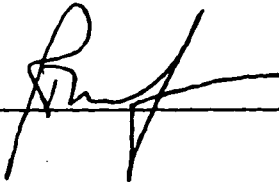
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **Answer to Plaintiff's Complaint** by depositing copies thereof in the United States Mail, postage prepaid, addressed to:

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David J. Sales, Esq.
~~Searcy, Denney, Searola, Barnhart~~
& Shipley, P.A.
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This 27 day of January, 1995.



A handwritten signature in black ink, appearing to be 'B. Carter', is written over a horizontal line.