

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 94-6932-CIV-GOLD/Bandstra

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FILED

FEB 27 2003

CLARENCE MADDOX  
CLERK, USDC / SDFL / MIA

ARLENE M. STONE, et al.,

Plaintiff(s)

vs.

FIRST UNION CORPORATION, et al.,

Defendants.

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**DEFENDANTS' MOTION AND BRIEF IN SUPPORT OF THEIR  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendants, First Union Corporation, et al., (hereinafter "Defendants") hereby submit this Brief in Support of their Motion for Partial Summary Judgment on Plaintiff Arlene Stone's claims that she was (1) forced to post for positions, (2) denied training, (3) not hired for positions for which she applied and was qualified, (4) not informed of a casual Friday policy, and (5) demoted from branch manager to assistant branch manager, showing the Court as follows:

**I. INTRODUCTION**

In November 1992, Plaintiff filed a Charge of Discrimination with the EEOC alleging that she was laid off, demoted and transferred because of her age. In September 1994, after receiving her right to sue, Ms. Stone filed this lawsuit against Defendants alleging discrimination in violation of the ADEA. Among other things, her Complaint included the following claims: (1) that she was forced to post for various positions, while younger employees were not; (2) that she was denied training for certain positions; (3) that she was not hired for certain positions for which she applied and was qualified; and (4) that she was not informed about a casual Friday

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policy. These claims are beyond the scope of the claims contained in Plaintiff's Charge of Discrimination, and are subject to summary judgment. Plaintiff's Complaint also alleges that she was demoted from branch manager to assistant branch manager in 1991. Because this alleged demotion took place more than 300 days prior to the filing of Plaintiff's EEOC charge, it is barred by the applicable statute of limitations. As shown below, summary judgment on all of these claims is appropriate.

## **II. CONCISE STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED**

1. Ms. Stone's EEOC Charge of Discrimination was filed on November 30, 1992, and alleges that she was laid off from her position and demoted and transferred because of her age. (Nov. 30, 1992 EEOC Charge of Discrimination).<sup>1</sup>

2. Ms. Stone's November 30, 1992 Charge of Discrimination does not allege that she was forced to post for positions, denied training for certain positions, not hired for certain positions for which she applied and was qualified, or not informed about a casual Friday policy. (Nov. 30, 1992 EEOC Charge of Discrimination).

3. In her Complaint and in her deposition testimony, Ms. Stone alleges that she was forced to post for positions, denied training for certain positions, not hired for certain positions for which she applied and was qualified, and not informed about a casual Friday policy. (See Complaint, ¶¶ 20-23; Stone Dep., at pp. 52-55, 80-82<sup>2</sup>; Stone Dep. 2, at pp. 56-57<sup>3</sup>).

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<sup>1</sup> A copy of Ms. Stone's November 30, 1992 Charge of Discrimination is attached hereto as Exhibit 1.

<sup>2</sup> Relevant excerpts of Arlene Stone's first deposition are attached hereto as Exhibit 2. The original deposition has previously been filed with the Court.

<sup>3</sup> Relevant excerpts of Arlene Stone's second deposition are attached hereto as Exhibit 3. The original deposition has previously been filed with the Court.

4. Ms. Stone alleges that she was demoted from branch manager to assistant branch manager in the Fall of 1991. (Stone Dep., at p. 15, Stone Dep. 2, at 22-23).

5. The EEOC Determination letter states that Ms. Stone alleged that she was demoted from branch manager to assistant branch manager in September 1991. (June 10, 1994 EEOC Determination Letter).<sup>4</sup>

### III. ARGUMENT AND CITATION OF AUTHORITY

#### A. Summary Judgment on Plaintiff's Forced to Post, Failure to Hire, Denial of Training, and Failure to Inform about Casual Fridays Claims is Appropriate.

Ms. Stone's claims that she was (1) forced to post for positions, (2) denied training for certain positions, (3) not hired for certain positions for which she applied and was qualified, and (4) not informed about a casual Friday policy should be dismissed because they are beyond the scope of the charge filed by Ms. Stone at the administrative level. The ADEA, like Title VII, contains an administrative exhaustion rule that requires claimants to file a charge of discrimination with the EEOC or other appropriate state agency prior to filing suit. See 29 U.S.C. § 626. It is clear in the Eleventh Circuit that "no issue will be the subject of a civil action until the EEOC has first had the opportunity to attempt to obtain voluntary compliance." Sanchez v. Standard Brands, Inc., 431 F.2d 455, 467 (5th Cir. 1970). Therefore, the scope of a plaintiff's employment discrimination complaint is necessarily limited to the scope of the EEOC investigation that can reasonably be expected to grow out of the charge of discrimination. Id.; Mulhall v. Advance Sec., Inc., 19 F.3d 586, 589 n.8 (11th Cir. 1994). If claims raised subsequent to the EEOC charge are not "reasonably related" to the claims raised in the EEOC charge, the Court is precluded from hearing them. See Isaac v. The School Board of Miami-

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<sup>4</sup> A Copy of the EEOC Determination Letter is attached hereto as Exhibit 4.

Dade County, No. 00-0890-CIV, 2002 WL 31086118 at \*10 (S.D. Fla. Sept. 3, 2002); Simmons v. Neumann, No. 97CV8653, 1999 WL 1893667 at \*10 (S.D. Fla. Nov. 5, 1999).

In this case, while Plaintiff did file a Charge of Discrimination with the EEOC, her Charge failed to incorporate all of the alleged adverse actions that she listed in her Complaint. Plaintiff's EEOC Charge of Discrimination provided as follows:

I am 61 years of age. I believe that I was discriminated against in violation of The Age Discrimination in Employment Act of 1967, by being laid off from my position of Vice President on October 7, 1992. No reason was given to me for my layoff. I was also demoted and transferred to various branches. To my knowledge, younger people have not been subjected to the type of treatment I received.

(See November 30, 1992 Charge of Discrimination). The language in Ms. Stone's Charge of Discrimination is clearly limited to claims of layoff, demotion and transfer.

In her Complaint, and throughout the course of this litigation, however, Ms. Stone has attempted to improperly expand her claims beyond those she initially filed with the EEOC. Specifically, in her Complaint, Ms. Stone has alleged that she "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." (Complaint, at ¶ 20, Stone Dep. 2, at pp. 80-81). As seen above, Ms. Stone did not raise this "forced to post" allegation in her Charge of Discrimination. In her Complaint, Ms. Stone has also asserted that she was denied the opportunity to attend training classes that would have assisted her in obtaining another position within the bank." (Complaint, at ¶ 21; Stone Dep., at pp. 52-55; Stone Dep. 2, at pp. 56-57). Similarly, Ms. Stone did not include this "denial of training" claim in her Charge of Discrimination. Ms. Stone's Complaint also alleges that "she 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 to even bother to apply." (Complaint, at ¶ 22). She failed, however, to mention this "failure to hire" claim in her Charge of Discrimination. Finally, Ms. Stone has attempted to claim that she "was not informed of a policy of casual attire for Fridays, while younger employees were allowed to dress in slacks and tee shirts." (Complaint, at ¶ 23). Again, she did not raise this "failure to inform of casual Friday" claim in her Charge of Discrimination.

Despite her failure to raise them at the administrative level, Ms. Stone claims that these additional acts, as well as those separate acts identified in her Charge of Discrimination, constitute discrimination on the part of Defendants. The subject claims, however, are not ones which grew out of or would reasonably be expected to grow out of the EEOC's investigation of Plaintiff's Charge of Discrimination. See Mulhall, 19 F.3d 586, 589 n.8. (The scope of a plaintiff's employment discrimination complaint is limited to the scope of the EEOC investigation that can reasonably be expected to grow out of the charge of discrimination). Rather, they are distinct allegations that were not investigated by the EEOC. Indeed, the determination letter from the EEOC states as follows:

Charging Party alleged that she was discriminated against . . . in that she was demoted during September 1991 from branch manager to assistant branch manager, she was transferred to various branches in the Broward area during July and August 1992 and she was laid off in October 7, 1992 because of her age, 61.

Notably absent from the Determination was any mention of an allegation by Ms. Stone that she was forced to post for a position, discriminatorily not hired for a certain position, denied training, or not told about casual Fridays. To allow Ms. Stone to pursue these additional claims would defeat the purpose of filing a charge of discrimination, which is to trigger the investigatory and conciliatory procedures of the EEOC. See Sanchez, 431 F.2d at 466.

Again, Ms. Stone's EEOC Charge of Discrimination in this case mentioned only her termination, alleged demotion and transfer. Absent from her Charge and the Determination letter

was any allegation that Ms. Stone was forced to post for a position, discriminatorily not hired for a certain position, denied training, or not told about casual Fridays. Because these additional claims exceed the scope of Plaintiff's Charge of Discrimination and because no opportunity was afforded the EEOC to investigate these new allegations, they should be dismissed as a matter of law. See Mulhall, 19 F.3d 586, 589 n. 8 (refusing to consider Plaintiff's Title VII failure to promote claim where EEOC charge mentioned only unequal pay); Isaac, No. 00-0890-CIV, 2002 WL 31086118 at \*10 (precluding plaintiff from maintaining Title VII discriminatory hiring practices claim where EEOC charge omitted such allegations); Simmons, No. 97CV8653, 1999 WL 1893667 at \*10 (barring plaintiff from asserting under Title VII claims of racial discrimination with respect to discipline and an internal investigation where EEOC charge alleged only racial discrimination in performance evaluations, involuntary transfers, and one specific incident of discipline). Summary judgment on these additional claims which are not properly before the Court is appropriate.

**B. Plaintiff's Demotion from Branch Manager to Assistant Branch Manager Claim Should Be Dismissed as Untimely.**

Ms. Stone's claim that she was demoted from a branch manager to an assistant branch manager claim also should be dismissed because it was not filed within the 300-day limitation period under the ADEA. See 29 U.S.C. § 626(d). For a charge to be timely in a deferral state such as Florida, it must be filed within 300 days of the last discriminatory act. Id. Once a charge is filed, only those acts occurring within 300 days prior to the filing of a Charge with the EEOC are actionable. Id.; see also Equal Employment Opportunity Commission v. Joe's Stone Crabs, Inc., 296 F.3d 1265 (11th Cir. 2002) (precluding discriminatory failure to hire claims occurring outside the 300-day period).


In her Charge of Discrimination, Ms. Stone alleged that she was discriminatorily demoted by First Union. In the course of this litigation, Ms. Stone alleged that she "was demoted to the position of assistant branch manager because of her age." (Complaint, ¶ 19). The record demonstrates, however, that the demotion at issue took place more than 300 days prior to the filing of her Charge of Discrimination. Specifically, the EEOC Determination letter explains that Ms. Stone's demotion from branch manager to assistant branch manager took place in September of 1991. Similarly, Ms. Stone's deposition testimony states that placement as an assistant branch manager took place in the Fall of 1991. (Stone Dep., at p. 15). Ms. Stone filed her EEOC Charge of Discrimination on November 30, 1992. (See EEOC Charge of Discrimination). Accordingly, any action allegedly taken against Ms. Stone prior to February 4, 1992, is untimely. Without dispute, the alleged 1991 demotion took place more than 300 days before Ms. Stone filed her EEOC Charge of Discrimination. Accordingly, the subject claim is barred by the applicable time limitations. Id. See also Grayson v. K MART Corp., 79 F. 3d 1086, 1100; Hipp v. Liberty National Life Ins. Co., 252 F.3d 1208, 1219. Because the law precludes Ms. Stone from proceeding with this untimely claim, summary judgment is warranted.

#### IV. CONCLUSION

For the reasons set forth herein, Defendants respectfully request that the Court grant Defendants' Motion for Partial Summary Judgment.

Respectfully submitted this 27<sup>th</sup> day of February, 2003.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
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ARLENE M. STONE, )  
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 Plaintiff(s), )  
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 vs. )  
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 FIRST UNION CORPORATION, et al., )  
 )  
 Defendants. )  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DEFENDANTS' MOTION AND BRIEF IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT have been served on plaintiff via United States Mail, first class postage prepaid, addressed as follows:

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This 27<sup>th</sup> day of February, 2003.

  
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