

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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JACK MITCHELL, : Index No. :301117-2010  
 :  
 Plaintiff, :  
 :  
 v. :  
 :

**COMPLAINT**

BANC OF AMERICA INVESTMENT  
SERVICES, INC., BANK OF AMERICA,  
N.A. and MARC PEREZ,

:

Defendants.

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Plaintiff, Jack Mitchell, by and through his attorneys Ziegler, Ziegler & Associates LLP, as and for his Complaint against defendants Banc of America Investment Services, Inc. ("BAI"), Bank of America. N.A. ("BOA") and Marc Perez ("defendant Perez" or, collectively with BAI and BOA, "Defendants"), states as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff Jack Mitchell ("Plaintiff" or "Mr. Mitchell") asserts claims for employment discrimination and retaliation he suffered during his employment at BOA and/or BAI (hereinafter collectively referred to as the "Bank") under the New York State Human Rights Law, N.Y. Executive Law §§ 290 et seq. ("State HRL"), the New York City Administrative Code §§ 8-101 et seq. ("City HRL") and New York State common law.

2. During Mr. Mitchell's tenure in the Bank's premier banking division, the Bank maintained, supported and propagated a racially biased and discriminatory business allocation system.

3. The Bank based its business allocation system on its belief that existing and prospective white clients of the Bank would not wish to receive banking and investment advice from African-American employees of the Bank.

4. In order to segregate African-American employees from the Bank's current and prospective white clients, the Bank grouped African-American employees into teams with pre-existing bases of chiefly African-American clients and assigned African-American employees to bank branches in low-income areas that were demographically predominantly African-American, including but not limited to Bank branches in Bronx County, New York.

5. The Bank's apartheid system of business allocation created vast inequality in business development and career growth opportunities between the Bank's African-American and white employees.

6. Mr. Mitchell, an African American, was a victim of the Bank's business allocation apartheid system in that he was routinely discriminated against in his employment because of his race and was ultimately fired by the Bank for speaking out against its discriminatory system.

## **PARTIES**

7. Jack Mitchell is an African-American resident of the State of New York and was employed as a premier client manager at the Bank in the State of New York from February 2007 to July 2008.

8. BOA is one of two banking subsidiaries of Bank of America Corporation and represents the surviving entity of a merger with Fleet Bank in 2005. Bank of America Corporation is a worldwide financial services organization which conducts its operations through its bank and non-bank subsidiaries throughout the United States, including in the State of New York. BOA conducts significant business throughout the State of New York through its New York headquarters at One Bryant Park, New York, New York, and through its various banking branches located throughout the State of New York, including without limitation in Bronx County, New York.

9. Bank of America Corporation and its subsidiaries, such as BOA, make up one of the largest banks in the world and holds assets worth several billion dollars.

10. BAI is a Delaware corporation and a wholly-owned subsidiary of BOA. BAI conducts significant business throughout the State of New York through its New York headquarters at One Bryant Park, New York, New York, and through its various banking branches located throughout the State of New York, including without limitation in Bronx County, New York.

11. BAI is a financial services and investment services firm that employs thousands of investment representatives and financial advisors throughout the United States, including within the State of New York.

12. Defendant Perez is an executive at the Bank and, based upon information and belief, a resident of the State of New York.

### **JURISDICTION**

13. This Court has subject matter jurisdiction over Plaintiff's claims under the State HRL statute, City HRL statute and under the common law of the State of New

York. The amount of damages suffered by Plaintiff, exclusive of costs and legal fees, exceeds the jurisdictional limits of this Court.

14. Contemporaneously with the filing of this Complaint, Mr. Mitchell has mailed a copy of this Complaint, along with a letter of explanation, to the New York City Commission of Human Rights and the Office of Corporation Counsel of the City of New York, satisfying the notice requirements of Section 8-502 of the New York City Administrative Code.

15. Venue in the Bronx County Supreme Court is proper because Mr. Mitchell suffered employment discrimination while he was assigned to work in Bank branches in Bronx County.

#### **FACTS**

16. Mr. Mitchell was hired in New York by the Bank as a "Premier Client Manager" in February 2007.

17. Premier Client Managers ("PCMs") work within the Bank's premier banking and investment division in order to develop business relationships with existing and potential Bank clients classified as high net worth individuals, whose investment portfolios the PCMs endeavor to bring under the management of the Bank.

18. A PCM's level of compensation is contingent on the value of those assets he successfully causes to be transferred to accounts managed by the Bank.

19. In order for a PCM to be successful at the Bank, he must be able to interact with high net worth existing and potential Bank clients.

20. It is a business practice of the Bank to assign each newly hired PCM to an existing team of financial advisors.

21. The Bank refers to each grouping of a PCM with financial advisors as a “business development team.”

22. The Bank maintains statistical rankings of each individual business development team's productivity by measuring the value of assets it brings under the financial management of the Bank.

23. Given the Bank’s practice of determining PCM compensation by measuring PCM productivity, it is highly desirable for a PCM to be assigned to a business development team that manages a significant portfolio of assets and thus ranks at or near the top of all of the Bank’s business development teams.

24. Such high-ranking business development teams offer a PCM the best opportunity to develop relationships with high net worth individuals, the target demographic of the Bank’s premier banking and investment division.

25. Equally important to a PCM as being assigned to a high-ranking business development team is being assigned to work within Bank branches located in affluent communities. Such branches grant PCMs the best opportunity to interact and potentially develop relationships with high net worth individuals.

#### **Mr. Mitchell’s Hiring and Tenure at the Bank**

26. Mr. Mitchell was hired by the Bank as part of a group of new PCMs who were assigned to the Bank’s New York office.

27. Mr. Mitchell was the only African American within his PCM hiring group who was assigned to the Bank’s New York office.

28. Upon Mr. Mitchell’s hiring, Mr. Mitchell reported to defendant Perez.

29. At that time, Defendant Perez’s title at the Bank was Market Manager for New York City’s five boroughs.

30. In or about February 2007, defendant Perez was responsible for assigning Mr. Mitchell to an existing team of financial advisors so that Mr. Mitchell could become part of a business development team.

31. In or around February 2007, the Bank's New York office had a total of two African-American financial advisors, both of whom worked in the same business development team.

32. In or around February 2007, defendant Perez assigned Mr. Mitchell, the only African American in his PCM hiring class, to the only existing business development team at the Bank's Manhattan office that contained other African Americans.

33. Given the miniscule percentage of African-American financial advisors and African-American PCMs employed by the Bank in New York and elsewhere, the statistical probability of Mr. Mitchell's random assignment to the business development team that contained the only two African-American financial advisors in the Bank's New York office is so remote that it is practically impossible to calculate.

34. In or about February 2007, Mr. Mitchell joined his assigned business development team and soon thereafter learned that three of the past four PCMs who had been assigned to such business development team had been African Americans.

35. Upon joining his assigned business development team, Mr. Mitchell also learned that the financial advisors assigned to such team were at or near the bottom of the Bank's statistical rankings in terms of producing revenue for the Bank.

36. Mr. Mitchell's deliberate assignment on the basis of his race to such a low-producing business development team placed him at a significant disadvantage in relation to newly hired white PCMs.

37. Mr. Mitchell's assignment to a low-producing business development team directly and negatively impacted his access to high net worth individuals and thus directly and negatively impacted his levels of compensation and of productivity as measured by the Bank.

38. On numerous occasions during Mr. Mitchell's tenure at the Bank, he requested to be transferred to a new business development team. Such requests were routinely denied.

39. Mr. Mitchell's assignment to a business development team comprised exclusively of African Americans and the Bank's repeated denials of Mr. Mitchell's requests for transfer to a different business development team were the direct result of the Bank's racist policy of segregating African-American employees from white employees, a policy based on the Bank's racist belief that its white clients and/or white prospective clients would not wish to do business with the Bank's small number of African-American employees.

**Mr. Mitchell's Bank Branch Assignments as a Further Example of the Bank's Racist Employment Practices**

40. As a PCM at the Bank, Mr. Mitchell was routinely assigned to work within Bank branches in New York City.

41. During Mr. Mitchell's tenure, the Bank maintained numerous branch offices throughout the five boroughs of New York City.

42. Such Bank branches were located in many different communities within New York City.

43. Such communities within New York City covered a wide range of demographics and included, among other differences, vast disparities in racial makeup and average household income.

44. Despite the wide array of available communities containing Bank branches, Mr. Mitchell was repeatedly assigned to work within Bank branches in the South Bronx and Harlem.

45. The community demographics for the Bank branches in which Mr. Mitchell was assigned to work were overwhelmingly African-American in terms of racial makeup and overwhelmingly low-income in terms of average household income.

46. Mr. Mitchell's assignment to Bank branches in low-income areas had a direct and negative impact on his ability to interact with high net worth individuals and thus directly and negatively impacted his levels of compensation and of employee productivity as measured by the Bank.

47. As does the Bank's assignment of Mr. Mitchell to a business development group comprised exclusively of African-Americans, the Bank's assignment of Mr. Mitchell to Bank branches in low-income African-American communities demonstrates the Bank's practice of racist employment policies.

**Retaliation Against Mr. Mitchell for Complaining about the Bank's Racist Employment Practices**

48. On at least four separate occasions between December 2007 and June 2008, Mr. Mitchell registered internal complaints with the Bank concerning the Bank's racist employment policies.

49. During this same period, as the Bank was receiving these complaints from Mr. Mitchell, the Bank was fully aware of numerous identical and nearly identical complaints of racist employment practices from other of its African-American employees around the United States.

50. Despite the widespread nature of complaints such as Mr. Mitchell's against the Bank, the Bank ignored Mr. Mitchell's repeated complaints about its racist employment practices and instead sought a pretext on which to fire Mr. Mitchell, whom they considered to be a malcontent and a troublemaker.

51. In or about July 2008, shortly after Mr. Mitchell had been interviewed by the Bank's outside legal counsel concerning the racism he was experiencing at the Bank, defendant Perez, using the pretext that Mr. Mitchell had committed a minor clerical error in a loan transaction, fired Mr. Mitchell.

52. The actual motive of the Bank in terminating Mr. Mitchell's employment was to retaliate against him for his repeated complaints about the Bank's racist employment practices.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Violation of State HRL)**

53. Plaintiff repeats and realleges paragraphs 1 through 52 as if fully set forth herein.

54. By the acts and practices described above, including but not limited to subjecting Plaintiff to racist employment practices and discriminating against Plaintiff in the terms and conditions of his employment on the basis of his race, the Defendants have acted in violation of the State HRL.

55. The Bank is liable to Plaintiff as an "employer" pursuant to the State HRL.

56. Defendant Perez is liable to Plaintiff for aiding and abetting the discrimination against Plaintiff under the State HRL.

57. Plaintiff is now suffering and will continue to suffer irreparable injuries and monetary damages and damages for physical and mental anguish and humiliation because of the discriminatory conduct of the Defendants.

58. Defendants' discriminatory conduct towards Plaintiff constitutes a malicious, willful and reckless violation of Plaintiff's rights under the State HRL.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Violation of State HRL-Retaliation)**

59. Plaintiff repeats and realleges paragraphs 1 through 58 as if fully set forth herein.

60. By the acts and practices described above, including but not limited to terminating Plaintiff's employment, Defendants retaliated against Plaintiff for reporting and opposing the unlawful employment practices of the Bank.

61. The Bank, as an "employer," is liable to Plaintiff for its retaliation against him pursuant to the State HRL.

62. Defendant Perez is liable to Plaintiff for aiding and abetting such retaliation by the Bank under the State HRL.

63. Plaintiff is now suffering and will continue to suffer irreparable injuries and monetary damages and damages for physical and mental anguish and humiliation because of Defendants' retaliatory conduct.

64. Defendants' retaliatory conduct towards Plaintiff constitutes a malicious, willful and reckless violation of Plaintiff's rights under the State HRL.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Violation of City HRL)**

65. Plaintiff repeats and realleges paragraphs 1 through 64 as if fully set forth herein.

66. By the acts and practices described above, including but not limited to subjecting Plaintiff to unequal employment opportunities on the basis of his race and ignoring Plaintiff's complaints of employment discrimination, the Bank discriminated against Plaintiff in the terms and conditions of his employment on the basis of his race in violation of the City HRL.

67. The Bank, as an "employer," is liable to Plaintiff pursuant to the City HRL.

68. Defendant Perez is liable to Plaintiff for aiding and abetting the discrimination against Plaintiff under the City HRL.

69. Plaintiff is now suffering and will continue to suffer irreparable injuries and monetary damages and damages for physical and mental anguish and humiliation because of Defendants' discriminatory conduct.

70. Defendants' discriminatory conduct towards Plaintiff constitutes a malicious, willful and reckless violation of Plaintiff's rights under the City HRL.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Violation of City HRL-Retaliation)**

71. Plaintiff repeats and realleges paragraphs 1 through 70 as if fully set forth herein.

72. By the acts and practices described above, including but not limited to terminating Plaintiff's employment, Defendants retaliated against Plaintiff for reporting and opposing the unlawful employment practices of Defendants.

73. The Bank, as an “employer,” is liable to Plaintiff for its retaliation against him.

74. Defendant Perez is liable to Plaintiff for aiding and abetting such retaliation under the City HRL.

75. Plaintiff is now suffering and will continue to suffer irreparable injuries and monetary damages and damages for physical and mental anguish and humiliation as a result of Defendants’ retaliatory conduct.

76. Defendants’ retaliatory conduct towards Plaintiff constitutes a malicious, willful and reckless violation of Plaintiff’s rights under the City HRL.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court enter an award:

- (a) declaring the acts and practices complained of herein a violation of the State HRL and City HRL;
- (b) directing Defendants to pay Plaintiff compensatory damages in an amount not less than \$10,000,000 for injury to his person and reputation, for adverse effects on his career and for diminished earning capacity resulting from the discriminatory and retaliatory actions of Defendants that constitute violations of the State HRL and City HRL;
- (c) directing Defendants to pay Plaintiff punitive damages in an amount not less than \$50,000,000 for Defendants’ violation of the City HRL; and

(d) granting such other and further relief as the Court deems  
necessary and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury on all claims.

Dated: New York, New York  
February 11, 2010

ZIEGLER, ZIEGLER & ASSOCIATES LLP

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Christopher Brennan

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