

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE KOELTL

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PATRICIA A. MARTONE,

Plaintiff,

- against -

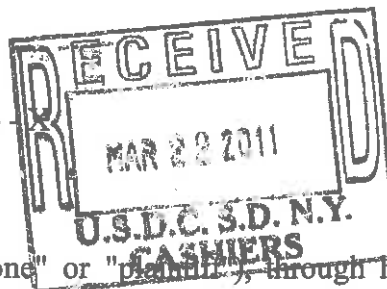
ROPES & GRAY LLP, ROPES & GRAY
POLICY COMMITTEE, and ROPES & GRAY
PARTNERS RETIREMENT PLAN,

Defendants.

11 CIV 1990
REC CASE

COMPLAINT

PLAINTIFF DEMANDS
A TRIAL BY JURY



Plaintiff Patricia A. Martone ("Martone" or "plaintiff"), through her attorneys,

Vladeck, Waldman, Elias & Engelhard, P.C., complains of defendants Ropes & Gray LLP, the Ropes & Gray Policy Committee ("Policy Committee"), and the Ropes & Gray Partners Retirement Plan ("Partners Retirement Plan") (collectively, "Ropes & Gray," "Firm," or "defendants") as follows:

SUMMARY OF CLAIMS

1. Martone is an attorney who has been in practice almost forty years. She built a successful practice in patent litigation, with special expertise in complex litigation and in litigation representing international clients, and in particular, Japanese clients. In 1983, she became a partner in Fish & Neave. Fish & Neave was renowned for its patent litigation practice. In 2005, Fish & Neave merged with Ropes & Gray. Ropes & Gray first exploited her expertise and relationships with clients, then reassigned her responsibilities and clients to younger, male partners and fired Martone.

2. In Martone's experience, no male partner at Ropes & Gray with a similar book of business and reputation was treated the way the Firm treated her. Although concerned about the Firm's actions, Martone began work to rebuild her book of business. She also tried to engage the Firm's executive leadership in a discussion about why its actions undermined not only her business, but the Firm's own interest. The Firm made it clear it would continue to back the younger, male partners at any cost.

3. When these efforts were unsuccessful, she expressly complained about the age and sex discrimination. As an admitted "follow up" to that complaint, in a meeting set by the Chair of the Firm to report on the results of its investigation of her complaint, the Firm fired her.

4. Martone was then 63 years old and had no announced retirement date. The Firm purported to have a mandatory retirement age of 65, which in itself is of questionable legality, but Martone was one of several Fish & Neave partners who had a contractual exception to this policy, providing that they would not have to retire until age 67. When it dismissed her, the Firm pressed Martone to cease the practice of law and accept early retirement with lower benefits.

5. Martone therefore brings this action pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq. ("ERISA"), to remedy unlawful interference with protected retirement benefits. She also brings this action to remedy unlawful discrimination and retaliation in violation of the New York State Human Rights Law, Executive Law § 296 et seq. (the "Human Rights Law"); and the Administrative Code of the City of New York § 8-101 et seq. (the "City Law").

JURISDICTION AND VENUE

6. This Court has jurisdiction over plaintiff's ERISA claim under 28 U.S.C. § 1331.

7. This Court has supplemental jurisdiction over plaintiff's Human Rights Law and City Law claims pursuant to 28 U.S.C. § 1367 because these claims closely relate to the Section 1981 claims, having arisen from a common nucleus of operative facts, such that all claims form part of the same case or controversy.

8. Venue is proper within this district pursuant to 28 U.S.C. § 1391, because defendant regularly does business in the Southern District of New York, and because a substantial part of the events or omissions giving rise to plaintiff's claims occurred within the Southern District of New York.

9. Pursuant to § 8-502(c) of the City Law, prior to filing the Complaint, plaintiff served a copy of this Complaint on the City of New York Commission on Human Rights and the Corporation Counsel of the City of New York.

10. Plaintiff will file a charge of discrimination with the United States Equal Opportunity Employment Commission (the "EEOC"). When plaintiff receives a Right to Sue Notice, she will seek to amend the Complaint to add claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII"). The facts set forth are those relevant to that claim as well, and therefore, this procedure will not prejudice defendant.

PARTIES

11. Plaintiff is a 63 year old woman. She worked in the Manhattan office of Ropes & Gray, and its predecessor Fish & Neave, from 1977 until her employment was terminated in 2010. Plaintiff resides in the borough of Manhattan in the City of New York.

12. Ropes & Gray is a law firm. It is a Delaware-based limited liability partnership with its principal place of business in Boston, Massachusetts. Ropes & Gray has an office at 1211 Avenue of the Americas, New York, New York 10022. It regularly does business in New York.

13. Ropes & Gray was Martone's employer within the meaning of the Human Rights Law and the City Law.

14. The Partners Retirement Plan is an employee benefit plan within the meaning of ERISA.

15. The Policy Committee is a plan administrator with respect to the Partners Retirement Plan within the meaning of ERISA.

FACTS

Martone's Successful Thirty-Seven-Year Practice

16. Martone has been practicing law since 1973. She joined Fish & Neave in 1977 and became a partner in 1983. She was the first woman to become a partner at Fish & Neave, or indeed at any major patent law firm.

17. Martone built a substantial practice. For example, in 2006, Martone's book of business included more than \$10 million in billings.

18. Martone's practice included many international clients, including Japanese and British clients. In 2006, she was made the co-head of Ropes & Gray's international group.

Merger with Ropes & Gray

19. In the fall of 2004, Fish & Neave decided to merge with Ropes & Gray as of January 1, 2005. Upon the merger, Ropes & Gray entered into a Contribution Agreement, dated December 31, 2004, with the Fish & Neave partners, including Martone.

20. Fish & Neave partners had a choice of whether to go with the merged firm, or find a position elsewhere. In the Contribution Agreement, Ropes & Gray offered Martone and eight other senior Fish & Neave partners special distributions and retirement benefits. Martone decided to go with the merged firm in part because of these benefits.

21. Initially, the Fish & Neave partners were part of the Fish & Neave Intellectual Property Group at Ropes & Gray, a name which was dropped in about 2007.

22. At Ropes & Gray, all important management decisions were made by the Policy Committee, a body of Firm partners. It has about nine members, only one of whom is a woman.

23. According to the Firm's partnership agreement, dated April 22, 2003:

The Policy Committee shall have the exclusive power and authority, without requirement for the vote or other action of any other partner, to decide all matters relating to the partnership, its assets and the management and conduct of its business and affairs, including changes in the composition of the Policy Committee, admission and removal of partners, approval of mergers, consolidations, conversions and similar transactions involving the partnership, amendments to this partnership agreement, and all matters which under Delaware law are determined by any or all of the partners unless otherwise provided in the partnership agreement.

24. During the time Martone was a partner, and, on information and belief in prior years, the partners of the Firm were never asked to cast a vote on any issue.

25. The partnership agreement further provides, "No partner . . . shall have any right to access the books and records of the partnership or to obtain other information concerning the partnership's business and affairs except as authorized by the Policy Committee . . ."

26. According to the Firm's website (Ropes & Gray, Firm Administration, <http://www.ropesgrayhiring.com/pages/culture/administration.htm> (last visited Jan. 11, 2011)): "The Ropes & Gray Policy Committee operates much like the board of directors of a corporation. It sets the firm's overall business strategy and makes the firm's most important decisions, including associate compensation, partners' distributions, admission of partners, and appointment of other committees."

27. Thus, ordinary "partners" like Martone had no vote on important management decisions, including compensation and allocation of responsibility among partners.

28. Indeed, Martone was not told what other partners were paid, nor allowed to disclose her compensation to others. The Firm's compensation system was commonly referred to as a "black box" system.

29. The Policy Committee also appoints partners to executive positions to run the firm's practice. For example, it appoints department heads who "have overall responsibility within their particular practice areas for staffing client matters, developing new business opportunities, and training associates." (*Id.*) It appoints an associates' committee and a hiring committee.

30. The Policy Committee also appoints practice group leaders, who had greater responsibility for, and authority over, the practice of which they were the head than the ordinary "partners" in the group. Martone was a member of the intellectual property litigation group, which was headed by a practice group leader during all of the time Martone was at Ropes & Gray.

31. While ordinary "partners" outside of the Policy Committee and other executive positions may be consulted about management decisions, they have no ultimate authority or vote.

Martone Opens the Firm's Tokyo Office

32. In 2007, the Firm opened a Tokyo office. It was the Firm's first foreign office. Members of the Policy Committee told Martone and others that the office was being opened in part to support her substantial Japanese practice in patent litigation.

33. Martone's practice and her reputation in Japan provided the platform for the Tokyo office. Two men, James DeGraw ("DeGraw") and J. Steven Baughman ("Baughman"), were approved by the Policy Committee to be the first resident partners in the Tokyo office.

34. Upon information and belief, in 2007, DeGraw and Baughman were in approximately their early to mid-forties. Upon information and belief, in 2007 DeGraw had been a partner for about four years and Baughman had been a partner for about six years. By contrast, Martone was sixty years old and had been a partner for twenty-four years.

35. In contrast to Martone, neither DeGraw nor Baughman had any prior experience in Japan or pre-existing Japanese clients. Martone introduced them to her clients and taught them how to build and maintain client relationships with Japanese clients. As of the Fall of 2007, she had been working with Japanese clients for ten years.

36. In the summer of 2007, the Chair of the Firm, R. Bradford Malt ("Malt") named Martone US head of the Tokyo office.

37. DeGraw refused to accept Martone's position with respect to the Japan office, in contrast to respect he showed for the authority of men in similar positions at the Firm.

38. In the Fall of 2007, Malt, Martone, and a third partner traveled to Asia for the opening of the Tokyo office and other business meetings. As the visit drew to a close, at a meeting in a hotel lobby in Hong Kong, Malt told Martone in substance that she should return to the United States and let the Tokyo partners have more responsibility in dealing with Japanese clients, including her clients.

39. Members of the Policy Committee convened a meeting in Boston on or about November 15, 2007, attended by DeGraw and Martone. During the course of the meeting,

Malt and Policy Committee Member Jesse J. Jenner ("Jenner") met privately with Martone. Malt told Martone that, while he was not "taking away" her title of US head of the Tokyo office, she was not to use it as an external title. They also admonished her not to use it internally as a "club." Despite subsequent discussion at this and other times, Martone was unable to determine what, if any authority she had with respect to the Tokyo office. Her title became meaningless and it was ignored by others at the Firm working with the Tokyo office.

Having Benefited from Martone's Expertise and Contacts, the Firm Strips her of Responsibility

40. Having benefited from her expertise and contacts to build the Tokyo office, the Firm continued to reassign her authority and clients to younger, male partners.

41. In January, 2008, at Martone's compensation review, Policy Committee Member Jenner told Martone that her work in building the Tokyo office was "too controlling," and chastised her for expecting the office to serve her clients.

42. However, when Martone asked Jenner how she should have handled the situation better, he was unable to provide any response.

43. Martone cannot recall ever hearing Jenner, or any other Policy Committee member, criticize a male partner for being "too controlling."

44. Further, in Martone's observation, it is routine at Ropes & Gray for more junior partners to work on cases brought in to the Firm by male senior partners, and for the senior partner to have ultimate decision making authority over the case.

45. For 2008, Jenner instructed Martone to focus on developing the Firm's presence in Asia and on developing business. Although concerned about his comments and the Firm's actions, she complied with Jenner's direction.

46. In 2008, Martone attracted three cases in which she was lead trial counsel, from two different Japanese clients.

47. Both clients expressed satisfaction with Martone. However, one client expressed dissatisfaction with one of the younger, male partners resident in the Tokyo office, who worked on two of the cases.

48. The Firm made clear that Martone had to defend the work of the Tokyo partners to clients, and to make sure they were employed on her matters in question.

49. In addition in mid-2008, at the request of Malt, Martone began work to explore setting up an office in China.

50. In August 2008, Hiroyuki Hagiwara ("Hagiwara"), another male partner then in his early 40s, was relocated from the New York office to the Tokyo office. Hagiwara had joined Fish & Neave a few years before the merger with Ropes & Gray as an associate. He worked primarily on matters originated by Martone.

51. Hagiwara was elected a partner at Fish & Neave in the months prior to the January 2005 merger with Ropes & Gray. When he was assigned to the Tokyo office, Hagiwara had recently been elected partner. On information and belief, the experience he had gained working on Martone's cases was a significant factor in the decision to make Hagiwara a partner.

52. Before his move to Tokyo, Hagiwara and Martone worked closely together. When the New York office of Ropes & Gray moved to its current location in early 2007, Hagiwara was assigned an office next door to Martone's office.

Discriminatory Allocation of Business Development Leads

53. Beginning in about 2008, Martone had repeated discussions with her practice group leader, William J. McCabe ("McCabe"), noting that opportunities for business

development that came in to the group, such as referrals from other areas of the firm, suitable for a partner of her experience, were assigned to other partners. These partners were all men.

54. McCabe admitted that he was not allocating such opportunities to Martone, claiming that this was because Martone was so good at generating work, he was reluctant to do so. Martone raised this issue in her 2008 Partner Commentary submitted to the Policy Committee for 2008 compensation determinations. She pointed out that her practice group was allocating suitable opportunities to four male senior partners, including Jenner, but not to her. She continued to raise the issue with McCabe, without success.

Interference with Martone's Business Development

55. Although she was concerned about McCabe's and Jenner's statements and actions, Martone worked to follow their direction to focus on business development.

56. In her 2008 year-end Partner Commentary, Martone stated that, as instructed, she had turned over all administrative authority to the partners in the Tokyo office and was focusing on developing business in Japan and pushing forward the effort in China. Martone stated that she expected to spend about eight weeks in Tokyo in 2009, the same amount of time as she had spent there in 2008. She also said she would visit other parts of Asia.

57. In her compensation interview in January of 2009, Jenner expressed agreement with these goals, and stated that Martone should continue to travel to Japan to develop business there.

58. In 2009, Martone continued to travel to Japan and to be involved in the Tokyo office's business development. Hagiwara was now in the Tokyo office.

59. As the year progressed, however, the younger, male partners in the Tokyo office undermined Martone's business development and practice.

60. When Martone attempted to raise concerns about their inappropriate actions, the Firm chastised her and backed the younger men.

61. For example, on one occasion, DeGraw interrupted Martone's litigation "pitch" to an important client prospect, stating that the client should not hire Martone, but should instead hire DeGraw. DeGraw was an intellectual property corporate partner and was not a member of the Firm's Intellectual Property Litigation Group.

62. On a visit to Japan in June 2009, Martone became concerned about inappropriate behavior by DeGraw and Hagiwara at dinner with an important client. The following morning, she discussed her concerns with Jenner, also on the trip, who attended the dinner and observed the conduct of DeGraw and Hagiwara.

63. Jenner suggested that she apologize to the client for the behavior of DeGraw and Hagiwara. Martone followed Jenner's suggestion.

64. However, when Martone informed DeGraw and Hagiwara that she had apologized on their behalf, DeGraw reacted angrily, stating that Martone had "undermined" them.

65. DeGraw stated that Martone should "turn over" all of her client relationships to Hagiwara.

66. On the same trip, Hagiwara admitted to Martone that he was under pressure from the other partners in the Tokyo office to "be his own man" and to limit his work with Martone, including by ensuring that new business from new clients was not assigned to her.

Removal of International Planning Responsibility

67. Similarly, in 2009, the Firm began a Strategic Planning Process for the Asia offices. Martone was initially included, then shut out of the process. In late 2009, Chief

Operating Officer Hugh Simons ("Simons") advised her that Malt had decided that she was not to be involved in Asia planning any more.

Continued Interference with Business Development

68. By Fall 2009, Martone had serious concerns about the stripping of her responsibilities and interference in her practice and the resultant decline in her practice from these actions.

69. She met with two top Policy Committee members: Malt, the chair, John Montgomery ("Montgomery"), managing partner, and Simons, the chief operating officer. She expressed these concerns, and noting that her business had declined from over \$10 million in 2006 to just \$1.4 million for the 12 months ending in August 2009.

70. Martone asked for assistance in addressing the Tokyo partners' interference with her practice. She asked to be permitted to spend two months in Japan restoring her relationships. She also recommended that a senior partner be found to reside in and manage the Tokyo office, and asked to assist in the process of finding that partner.

71. Although no one expressed any factual disagreement with any of Martone's concerns, her suggestions were not followed and her concerns were not addressed.

72. At Martone's compensation review in January 2010, Jenner told her that she could not spend an extended time in Japan. Jenner further stated that Martone could not visit Japan more than twice a year, three times a year at most, and had to limit those stays to two weeks or less.

73. Jenner further stated that new relationships in Japan were to be developed by the partners in the Tokyo office, and admitted that "maybe it wasn't a good thing" for Martone that the Firm opened a Tokyo office.

74. The partners in the Tokyo office continued to interfere with Martone's business development. For example, in the fall of 2009, Martone, Baughman, and Hagiwara met members of the patent department of a Japanese company for dinner. Following the dinner, the general counsel of the company contacted Martone, but not Baughman or Hagiwara. Martone was able to develop an e-mail relationship with the general counsel.

75. In February 2010, Martone traveled to Japan and planned to stop by the general counsel's office to meet with him briefly. The general counsel agreed; however, when Martone informed Baughman and Hagiwara, they insisted that they be included in the meeting so that "the relationship can be turned over to us." The general counsel ultimately did not meet with any of them.

76. Sometime in the first few months of 2010, the Intellectual Property Litigation Group released its Strategic Plan for 2010. For the Tokyo office, Martone was identified as part of the partner team responsible for the following activities: "Continue to expand business opportunities with existing clients"; "Continue efforts to develop new clients"; and, "Further cultivate existing referral relationships with firms." "Integrate into the firm the clients/contacts of Mac Fox [a new lateral partner in the Tokyo office]" and "Seek and execute speaking/writing engagements.."

77. In March 2010 Malt asked Martone why she was spending so much time developing business, and suggested she do "internal marketing" to receive work from other partners at the Firm. Malt suggested that she work with Alan Slobodnick ("Slobodnick"), a consultant to the Firm, on this project. She agreed to do so. Her practice group leader, McCabe, declined to offer Martone any help or suggestions. On information and belief, McCabe told

Slobodnick that Martone's billing rate was a barrier to receiving such work. However, Martone observed that male partners with similar billing rates received internal work.

78. During the course of her discussions with Slobodnick, he told her that the Tokyo partners viewed her as the "Mom."

79. By May 2010, Martone's situation at Ropes and Gray continued to deteriorate. Martone requested a meeting with Malt, Montgomery, and Slobodnick, and provided a written agenda noting her concerns, including that work was being funneled to male partners at her expense. She asked if she was being forced out.

80. The meeting, which took place on May 19, 2010, was not constructive; Malt and Montgomery refused to provide any assistance or support for Martone's practice, other than to talk to McCabe and Jenner. Without investigation, they supported the younger, male partners and chastised Martone on every issue Martone raised. Thus, they agreed that she must not develop Japanese business, because she should leave that to the Tokyo office partners. They said that she would receive her "fair share" of work generated by the Tokyo office; she asked how, if she was "the mom." Malt and Montgomery had no response.

81. On May 27, 2010, Martone met with McCabe for a previously scheduled review of Martone's Individual Partner Plan.

82. McCabe's demeanor was angry from the outset of the meeting. He criticized Martone for not bringing in more Japanese business – precisely the opposite of Malt and Montgomery's direction.

83. McCabe then stated that Martone did not have sufficient trial experience to bring in business and asked how many cases she had tried. Martone was astonished and responded that she had twelve trials. McCabe suggested she was lying.

84. Martone has never seen McCabe question a male partner's credibility when speaking of his trial experience.

85. Martone also told McCabe that she had been directed that new business development in Japan was reserved to the partners in the Tokyo office. McCabe continued to attack her failure to develop Japanese business and threatened to cut off all support for her trips to Japan.

Martone Complains of Discrimination

86. In early June 2010, troubled by these two meetings, Martone wrote a letter to Malt and Montgomery, stating that the Firm's actions constituted unlawful discrimination against her as a 63-year-old woman. She requested that the Firm investigate this complaint and forward the results of that investigation to her.

87. The Firm engaged outside counsel, O'Melveny & Myers LLP ("O'Melveny"), to conduct an investigation of Martone's complaint of discrimination.

88. Diane Patrick ("Patrick"), the Firm's partner responsible for diversity, oversaw Martone's communications with the outside firm.

89. The investigation lasted several months. While it was ongoing, in August 2010, McCabe demanded a detailed justification for a previously approved trip to Japan for Martone to develop business; he had never previously demanded such justification from Martone for a trip to Japan.

90. Martone provided a detailed justification, keyed to the role laid out for her in the practice group's Strategic Plan, but McCabe provided no response.

91. McCabe, Hagiwara, and at least one other younger, male partner continued to undermine Martone's efforts to develop business, communicate with clients, and travel to Japan.

92. Martone passed updated concerns about these more recent discriminatory actions to Patrick, but the conduct of Martone's partners did not change.

93. Martone was asked to turn over information about and responsibility for developing business from three high-value clients and prospective clients to the younger, male partners in the Tokyo office.

94. Hagiwara and Maxwell Fox, a new partner in the Tokyo office who was also a younger man, sought to be included in every discussion taking place in the United States about every client and prospect located in Japan. The Firm allowed them to take an effective ownership interest in all such clients and prospects, to the exclusion of Martone.

95. Despite the ongoing discriminatory treatment, Martone started to grow her practice again. Early in 2010, she succeeded in closing important settlements for a client during the course of a trial. In March, she was instrumental in bringing a significant government enforcement matter to the Firm from one of her clients, which provided substantial work for lawyers in that group. Between July and September 2010, she succeeded in bringing four new patent cases to the Firm. She was lead trial counsel in each of these cases.

Retaliatory Firing

96. In early October 2010, Malt wrote to Martone and asked to meet with her. She asked for the subject of the meeting. He responded: "would like to follow up on your letter to JTM [John T. Montgomery] and me which we referred to Diane Patrick."

97. Thus, Malt admitted in writing that the purpose of the meeting was to follow up on Martone's written complaint of sex and age discrimination.

98. At that meeting, Malt and Montgomery fired Martone.

99. They stated the report from the O'Melveny firm ("Investigation Report") had concluded that the decline in Martone's practice was not due to discrimination and could be plausibly attributed to factors other than discrimination. Martone asked what those factors were. There was no response; Malt said he could not remember. Martone requested a copy of the Investigation Report. Malt told Martone to ask Patrick for a copy, although he stated it might not be possible to provide a copy.

100. Malt further stated that, after reviewing the Investigation Report, they had decided to terminate Martone.

101. They admitted that it was only after they reviewed the Investigation Report that they decided the "economics" of Martone's practice were "unsustainable."

102. Martone pointed out that she had just brought in three cases; the only response was that the Firm would need to discuss with her the reassignment of those cases to other partners after Martone's dismissal.

103. Malt admitted that Martone had opened the Firm's first foreign office and said that she had a "formidable intellect," and "everyone's respect."

104. Malt presented Martone with the outlines of a proposed agreement that would require her to agree to her dismissal, cease the practice of law, and accept a lower retirement benefit. He stated that whether she continued to practice law and compete with the Firm would affect her retirement payments.

105. Malt said Martone would receive a letter from the Firm's lawyer, but suggested that Martone negotiate directly with the Firm concerning the terms of her departure.

106. Martone later again requested a copy of the Investigation Report. The Firm declined to provide her a copy of the report or any part of it.

Refusal to Pay Compensation

107. The compensation of partners at Ropes & Gray is determined in January for the previous year. The Firm provides partners with draws during the year, but the full compensation for the year is not determined and paid until the following January. The result is that a substantial portion of a partner's compensation is not paid until January.

108. At the time she was fired in October 2010, Martone had generated millions of dollars in revenue for Ropes & Gray in 2010; on information and belief, additional billing to her clients during the year generated even more income to the Firm since her departure.

109. Based upon this revenue, Martone's other contributions to the firm in 2010, and her historical compensation, Martone should have received a substantial additional payment for her work in 2010. She received nothing.

Denial of Retirement Benefits

110. The Contribution Agreement entered into on the merger of Fish & Neave and Ropes & Gray contained agreed amounts of money that Martone and the other Fish & Neave partners were entitled to receive. Martone was entitled to a lump sum special distribution as well as ongoing annual benefits, to be administered according to the terms of the Partners Retirement Plan and the Contribution Agreement.¹

¹ Martone does not waive, and expressly reserves, contract and quasi-contract claims arising from the Contribution Agreement.

111. Ropes & Gray maintained a Partners Retirement Plan which provided for ongoing benefits to be paid to partners, including Martone, on retirement.

112. In order to receive her full retirement benefits, Martone had to work at least until January 1, 2013, unless she had the consent of the Policy Committee to an earlier retirement. If she retired at an earlier date with the consent of the Policy Committee, her benefits would be decreased.

113. Martone enjoyed the practice of law and did not wish to take early retirement. Moreover, the benefits to be received from Ropes & Gray upon retirement were important to her financial planning. She therefore intended to work until at least the time she had earned her full retirement benefit.

114. Following her dismissal without cause from Ropes & Gray, Martone moved to another firm and has continued to practice.

115. The Partners Retirement Plan purported to require, as a condition of payment of retirement benefits, that a partner not practice law in competition with the Firm.

116. Although Martone only accepted an offer and moved to another firm after Ropes & Gray fired her, the Firm has stated that it deems her practice competition, and therefore it refuses to provide her the agreed-upon benefits under the Partners Retirement Plan and the Contribution Agreement.

117. By dismissing Martone, the Firm presented Martone with a choice which, according to the Firm's position, would necessarily result in the loss of retirement benefits and other income. She could retire early with a reduction in her retirement benefits, as well as the loss of several years' income, or choose to practice law at another firm, which would necessarily place her in competition with the Firm, and therefore provide the Firm with an excuse to deny

her the lump sum special distribution and annual retirement payment she had been promised in the Contribution Agreement.

FIRST CAUSE OF ACTION

Interference with Protected Benefits Under ERISA

118. Plaintiff repeats and realleges paragraphs 1 through 117 as if fully set forth herein.

119. By the acts and practices described above, defendants have interfered with plaintiff's protected rights in violation of ERISA.

120. Plaintiff is now suffering and will continue to suffer irreparable injury as a result of defendants' conduct, unless and until the Court grants relief.

SECOND CAUSE OF ACTION

Discrimination Under the Executive Law

121. Plaintiff repeats and realleges paragraphs 1 through 120 of this Complaint as if fully set forth herein.

122. By the acts and practices described above, defendant Ropes & Gray has discriminated against plaintiff in the terms and conditions of her employment based on her sex and age in violation of the Human Rights Law.

123. As a result of Defendants' discriminatory acts, Plaintiff has suffered and will continue to suffer irreparable injury, monetary damage, mental anguish, emotional distress, humiliation and other compensable damages.

THIRD CAUSE OF ACTION

Retaliation Under the Executive Law

124. Plaintiff repeats and realleges paragraphs 1 through 123 of this Complaint as if fully set forth herein.

125. By the acts and practices described above, defendants have retaliated against plaintiff for complaining of discrimination in the terms and conditions of her employment based on her sex and age, in violation of the Human Rights Law.

126. As a result of defendant's discriminatory acts, plaintiff has suffered and will continue to suffer irreparable injury, monetary damage, mental anguish, emotional distress, humiliation and other compensable damages.

FOURTH CAUSE OF ACTION

Discrimination Under City Law

127. Plaintiff repeats and realleges paragraphs 1 through 126 of this Complaint as if fully set forth herein.

128. By the acts and practices described above, defendants have discriminated against plaintiff for complaining of discrimination in the terms and conditions of her employment based on her sex and age, in violation of City Law.

129. Defendants knew that their actions constituted unlawful retaliation and/or showed reckless disregard for plaintiff's statutorily protected rights.

130. As a result of defendants' discriminatory acts, plaintiff has suffered and will continue to suffer irreparable injury, monetary damage, mental anguish, emotional distress, humiliation and other compensable damages.

FIFTH CAUSE OF ACTION

Retaliation Under City Law

131. Plaintiff repeats and realleges paragraphs 1 through 130 of this Complaint as if fully set forth herein.

132. By the acts and practices described above, defendants retaliated against plaintiff for complaining of discrimination in the terms and conditions of her employment based on her sex and age, in violation of City Law.

133. Defendants knew that their actions constituted unlawful retaliation and/or showed reckless disregard for plaintiff's statutorily protected rights.

134. As a result of defendants' discriminatory acts, plaintiff has suffered and will continue to suffer irreparable injury, monetary damage, mental anguish, emotional distress, humiliation and other compensable damages.

PRAYER FOR RELIEF

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

(a) declaring the acts and practices complained of herein to be violations of the Human Rights Law, City Law, and ERISA;

(b) enjoining and permanently restraining these violations of the Human Rights Law, City Law, and ERISA;

(c) directing defendants to take such affirmative steps as are necessary to ensure that the effects of these unlawful practices are eliminated and do not continue to affect plaintiff's employment opportunities;

(d) directing Defendants to place Plaintiff in the position she would have occupied but for Defendants' unlawful conduct and making her whole for all earnings and other

benefits she would have received but for defendants' discriminatory and retaliatory treatment, including but not limited to, wages, retirement, and other lost benefits, as well as compensation for adverse tax consequences;

(e) directing defendants to pay plaintiff compensatory damages, including damages for emotional distress, humiliation, and pain and suffering;

(f) directing defendants to pay an additional amount as punitive damages for their willful and/or reckless disregard of plaintiff's statutory rights;


(g) awarding plaintiff such interest as is allowed by law;

(h) awarding plaintiff her reasonable attorneys' fees and costs; and

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

Dated: New York, New York
March 22, 2011

VLADECK, WALDMAN, ELIAS
& ENGELHARD, P.C.

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