

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

X

RYAN PACIFICO,

Plaintiff,

- against -

CREDIT AGRICOLE, CIB, CALYON IN THE AMERICAS,
ROBERT CATALANELLO, and BRIAN ZIRLIN,

Defendants.

X

INDEX NO.:

09100992

SUMMONS

Plaintiff designates

COUNTY OF NEW YORK

as the place of trial

The basis of the venue
is DEFENDANT'S

RESIDENCE

To the above named defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Carle Place, New York

January 9, 2009

FILED

JAN 26 2009

**NEW YORK
COUNTY CLERK'S OFFICE**

Attorney(s) for Plaintiff

LEEDS MORELLI & BROWN, P.C.

One Old Country Road, Suite 347

Carle Place, New York 11514

(516) 873-9550

TO: CALYON IN THE AMERICAS

1301 Avenue of the Americas

New York, New York 10019

BRIAN ZIRLIN

CALYON IN THE AMERICAS

1301 Avenue of the Americas

New York, New York 10019

ROBERT CATALANELLO

CALYON IN THE AMERICAS

1301 Avenue of the Americas

New York, New York 10019

ORIGINAL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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RYAN PACIFICO,

Plaintiff,

-against-

COMPLAINT

CREDIT AGRICOLE, CIB, CALYON IN THE AMERICAS,
ROBERT CATALANELLO, and BRIAN ZIRLIN,

09100992

Defendants.
-----X

Plaintiff, Ryan Pacifico, by his attorneys, LEEDS, MORELLI & BROWN, P.C., complaining of the Defendants herein, alleges, upon knowledge as to himself and his own actions, and upon information and belief as to all other matters, as follows:

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1. At all times hereinafter mentioned, Plaintiff Ryan Pacifico was and still is a resident of the County of Nassau, State of New York. Plaintiff, at all relevant times, was an "Employee" as defined in New York State Executive Law, Human Rights Law, Section 290 et seq. and the New York City Human Rights Law, N.Y.C. Admin. Code Title 8.
2. Upon information and belief, Credit Agricole, CIB is a business entity incorporated under the laws of the Country of France, doing business as Calyon in the Americas ("Calyon"), located at 1301 Avenue of the Americas, New York, New York 10019. Defendants are "employers" as defined in New York State Executive Law, Human

ORIGINAL

Rights Law, Section 290 et seq. and the New York City Human Rights Law, N.Y.C. Admin. Code Title 8.

3. Defendant Robert Catalanello (“Catalanello”), at all relevant times, was an employee of the Corporate Defendants.
4. Defendant Brian Zirlin (“Zirlin”), at all relevant times, was an employee of the Corporate Defendants.

FACTS

5. Plaintiff, Ryan Pacifico (“Pacifico”), a vegetarian, commenced employment with the Corporate Defendants in 2005, as a junior foreign exchange trader.
6. Pursuant to the terms of his employment, Pacifico received a base salary and a bonus based upon the profitability of his currency trades.
7. Throughout his tenure with Calyon, Pacifico performed his duties in an exemplary manner; he received satisfactory scores on all of his employment evaluations; and he always met and exceeded his trading goals.
8. In or about September 2006, Pacifico was assigned the Euro trading book, which covered currency trades involving the Euro.

9. On or about November 29, 2006, Robert Catalanello (“Catalanello”) was hired by Calyon for the position of Head of Foreign Exchange Sales and Trading for the New York Office. Consequently, Catalanello became Pacifico’s supervisor.
10. In or about June 2007, Pacifico was showing a colleague pictures of himself online competing in a triathlon. Catalanello approached, and referring to Pacifico’s biker shorts, said “That’s you? Those are some pretty gay tights. Figures you’d like them.” Catalanello perceived Pacifico to be gay.
11. Following a disagreement with the sales desk, Pacifico attempted to contact Catalanello, who was out of the office. Catalanello ignored his requests to meet and discuss the incident, instead only meeting with the other person involved. Similarly situated non-vegetarian traders and/or traders not perceived to be gay were not treated in such a manner.
12. On or about October 25, 2007, another trader, Brian Zirlin (“Zirlin”) (who would soon be promoted to chief dealer), conducted a trade that was in Pacifico’s currencies. This trade involved substantial risk, and accordingly, the potential for a substantial profit. Zirlin assured Pacifico that if a profit was made from the trade, it would be split with Pacifico. Despite a profit of \$21,000 being made on the trade, nothing was ever added to Pacifico’s account.

13. On or about October 29, 2007, Zirlin conducted another trade in Pacifico's currencies and again promised to split any profit. Despite a profit of \$18,000, nothing was ever added to Pacifico's account.
14. While arranging for a dinner for the New York foreign exchange traders and Calyon's Global Head of Foreign Exchange, Catalanello told the traders that they are all going out to a Brazilian steakhouse. When one asked what Pacifico can eat there, Catalanello replies, "Who the fuck cares? It's his fault for being a vegetarian homo."
15. On or about December 14, 2007, upon Zirlin being promoted to Chief Dealer, Catalanello told him in a room full of all the traders, including Pacifico, "All I know is you have to get Pacifico off this desk."
16. In or about December 2007, Pacifico complained to Zirlin about how Catalanello treated him and that this treatment was affecting his work. Zirlin told Pacifico not to worry about it and that he would take care of the situation. Pacifico told Zirlin that Catalanello called him "a homo" and "gay."
17. In or about January 2008, another trader asked Pacifico to be prepared to call the Global Head of Foreign Exchange for Calyon if a particular currency reached a certain price. Despite not reaching the price, the trader asked Pacifico if he had made

the call. Catalanello responded by saying, "He's probably already on the phone with him, kissing his ass like he always does, homo."

18. In or about January 2008, Catalanello, referring to a triathlon magazine on Pacifico's desk, said to the other traders, "Look everybody, Ryan brought in his homo magazine again for everyone to see."
19. At the end of January 2008, Catalanello told the traders that he is buying them all lunch for a job well done. He then said, "I'm only ordering burgers. If you don't eat meat, too bad. I don't care."
20. On or about February 22, 2008, Pacifico hesitated before setting a price for a large trade of a rare currency pairing. Catalanello told him, in front of the other traders and sales personnel, "Get a set of balls and make a price. Don't always be such a homo."
21. On or about March 6, 2008 the entire trading desk was going out to dinner as a group. Catalanello chose a steakhouse. When another trader asked what Pacifico is going to eat, Catalanello responded, "He doesn't have to come." During a conversation of steakhouses, Catalanello said to Pacifico, "You don't even eat steak dude. At what point in time did you realize you were gay?"

22. After the above dinner, all of the traders went to a bar to meet with traders from another firm. A woman whom Pacifico had never met asked him if he is gay. Before he had a chance to answer, she told him, “[i]t’s okay. I had a brother who was gay and died of Aids.” When he explained that he is not gay, the woman pointed to Catalanello and said, “[h]e just told me you were gay.”

23. On or about Friday March 15, 2008, Zirlin instructed Pacifico to close any open currency positions that he had. Pacifico did so. On Sunday night, Pacifico conducted a short sale trade due to a substantial increase in a currency price. However, the currency then went up, resulting in a loss. The next day, Zirlin berated Pacifico for not following instructions. When Pacifico attempted to point out that he did follow instructions and that Zirlin only told him that he should close his positions before leaving work, Zirlin told Catalanello that he instructed Pacifico not to conduct any trades after hours, despite the fact that this is a standard custom of the industry. Catalanello then yelled at Pacifico about following instructions. Similarly situated non-vegetarian traders and/or traders not perceived to be gay were not treated in such a manner.

24. On or about March 19, 2008, Calyon’s corporate desk called in a deal in Pacifico’s currency. Zirlin told Pacifico that it was going to be a risky deal and that he would handle the trade. The trade was extremely profitable. Once again, none of the profits from the trade were ever put in Pacifico’s account.

25. On or about March 21, 2008, after calling in sick, Zirlin and Donna Hayes from human resources called Pacifico to inform him that he was being terminated. The reasons given for his termination were his failure to increase risk and to cooperate with management's orders.
26. Both reasons alleged by defendants are pretextual. As detailed above, whenever a potential trade in Pacifico's currency involved significant risk, it was taken from him. Moreover, at no time prior to his termination was Pacifico ever informed that he needed to increase his risk or that it was even desired to conduct risky trades.
27. Factors motivating Pacifico's termination include the fact that he was a vegetarian and/or that he was perceived to be gay and/or retaliation because he engaged in a protected activity by complaining about the aforementioned discriminatory treatment.
28. By reason of said Defendants' discriminatory actions against Plaintiff, Plaintiff has suffered a loss of earnings and benefits, future earnings and benefits, great pain, mental anguish and physical injury. Plaintiff is thus entitled to all forms of applicable compensatory damages, equitable relief, and any other damages and/or remedies permissible under law.

CLAIMS FOR RELIEF

29. As more fully set forth above, Defendant Calyon has taken adverse employment actions against Plaintiff, subjected him to a hostile work environment, and/or maintained an atmosphere of adverse actions, due to his perceived sexual orientation and/or his protected activities, in violation of New York State Executive Law § 296, and New York City Human Rights Law, N.Y.C. Admin. Code Title 8.

30. As described above, Defendant Calyon has taken adverse employment actions against Plaintiff, subjected him to a hostile work environment, and/or maintained an atmosphere of adverse actions, due to his being a vegetarian and/or his protected activities in violation of New York State Labor Law § 201-d.

31. Pursuant to the terms of his employment, in addition to his base salary, Pacifico was to receive a bonus based upon the profits earned as a result of trades conducted under the accounts or trading desks he was responsible for.

32. By refusing to credit Pacifico's account for the above trades made on his desk, Defendant Calyon breached its contract with Pacifico, in that he did not receive the full agreed upon bonus, based upon all trades conducted under the accounts or currency pairs for which he was responsible.

33. Defendants Catalanello and Zirlin (collectively, "Individual Defendants") aided, abetted, incited, compelled and/or coerced the aforementioned unlawful conduct in violation of New York State Executive Law § 296, and New York City Human Rights Law, N.Y.C. Admin. Code Title 8.

WHEREFORE, Plaintiff demands judgment against all Defendants, where applicable, in the form of and/or for compensatory, emotional, physical, and punitive damages (where applicable), lost pay, front pay, interest, injunctive relief, and any other damages permitted by law. Plaintiff also demands judgment against Defendants for each cause of action and for all applicable and permissible damages, in an amount to be assessed at the time of trial. It is further requested that this Court grant reasonable attorneys' fees and the costs and disbursements of this action and any other relief to which Plaintiff is entitled. Plaintiff demands a trial by jury.

Dated: Carle Place, New York
January 8, 2009

LEEDS, MORELLI & BROWN, P.C.
Attorneys for Plaintiff
One Old Country Road, Suite 347
Carle Place, New York 11514
(516) 873-9550



RICK OSTROVE

Index No.

Year 2009

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Defendants.

SUMMONS AND COMPLAINT

Leeds Morelli & Brown, P.C.

Attorneys for

Plaintiff

One Old Country Road
Carle Place, NY 11514
(516) 873-9550

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: Signature.....

Print Signer's Name.....

Service of a copy of the within is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

that the within is a (certified) true copy of a
NOTICE OF ENTRY entered in the office of the clerk of the within named Court on 20

that an Order of which the within is a true copy will be presented for settlement to the
NOTICE OF SETTLEMENT Hon. one of the judges of the within named Court,
at
on 20, at M.

Dated:

Leeds Morelli & Brown, P.C.