



Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

JPMorgan Can't Shut Down Banker's Age Bias Suit

By **Hilary Russ**

Law360, New York (November 09, 2010) -- A federal judge has rejected JPMorgan Chase & Co.'s attempt to squash an age discrimination suit before the case goes to trial, saying a jury should decide whether a banker was fired because of his age or because of problematic phone conversations with the municipal derivatives desk.

Judge William Alsup of the U.S. District Court for the Northern District of California on Friday denied a motion for summary judgment by the financial services firm but indicated that a motion for judgment as a matter of law "may possibly be in order" later because evidence at trial "does not always come in the same way the lawyer-prepared declarations pose it on summary judgment."

The suit, removed to federal court in July 2009, was filed by David A. Bloom, who has been an investment banker in the public finance sector for three decades, according to the order.

In 1998, Bloom was recruited to be a vice president by an old acquaintance, Mark Mielo, then head of JPMorgan's not-for-profit health care group. J.P. Morgan Securities Inc. is also named in the suit.

From the time he was hired until 2008, Bloom provided investment banking services for non-profit health care organizations. In 2007, when Bloom was 54, he was promoted to managing director of the health care group, by then a part of JPMorgan's tax exempt capital markets department, according to the order.

In early 2008, Mielo moved up, becoming the investment banking head of the department. Another man, Mike Maloney, was moved up to take over Mielo's position. Bloom became "deputy head" and reported to Maloney, the order said.

Maloney was younger, had less experience and was placed lower in the company than Bloom at the time of the staff changes. Bloom and another employee also each suffered a \$25,000 cut in compensation so that a third, younger employee could be given an extra \$50,000 per year, according to the events as laid out in the order.

In the 2008 restructuring that followed JPMorgan's acquisition of The Bear Stearns Cos. Inc., Bloom was

the only banker over 50 in either J.P. Morgan's healthcare group or Bear Stearns' health care group to not get laid off, the order said.

Five people over 60 lost their jobs, and everyone else who remained was under 50, the order indicated.

Eventually, that September, Bloom's employment was also terminated, his complaint said.

But J.P. Morgan contends that Bloom's termination was related to "troublesome tape recordings" of some of his phone calls that were dredged up in connection with a wide-ranging antitrust probe of the municipal derivatives industry.

Federal officials from several agencies were investigating illegal practices the industry, and J.P. Morgan had initiated its own parallel internal investigation, according to the order.

Bloom and others were called in to meet with attorneys from WilmerHale about recordings of phone calls made to and from the municipal derivatives desk, the order said.

"Until Bloom's statements on the tapes were discovered, he was a valued public finance investment banker," JPMorgan said in its motion for summary judgment.

"Bloom's termination was based solely on these tape recordings" and "age played no role whatsoever in the decision," the motion said.

The tapes supposedly revealed Bloom's professional judgment and compliance with JPMorgan's policy, including an alleged failure to report potentially wrongful conduct and attempts to limit competition on upcoming transactions, the company said.

Attorneys for JPMorgan and Bloom did not immediately return calls seeking comment.

JPMorgan is represented by Howard Rice Nemerovski Canady Falk & Rabkin PC.

Bloom is represented by Kerr & Wagstaffe LLP.

The case is David A. Bloom v. JPMorgan Chase & Co. and J.P. Morgan Securities Inc., case number 3:09-cv-03418, in the U.S. District Court for the Northern District of California.