

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

LEO G. CONNORS,)	CIVIL ACTION
)	
)	NO. 96-2231
Plaintiff)	
)	
vs.)	
)	
CHRYSLER FINANCIAL CORPORATION,)	
CHRYSLER FIRST, INC.,)	
NATIONSBANK CORPORATION,)	
NATIONSCREDIT CORPORATION, JOHN)	
P. TIERNEY and ROBERT A. MAJOR,)	
)	
Defendants)	

TROUTMAN, S.J.

M E M O R A N D U M

In this age discrimination action, plaintiff Leo Connors alleges that he involuntarily retired when defendant Chrysler Financial Corp. sold the assets of defendant Chrysler First, Inc., (CFI), to defendant NationsBank Corp. Connors alleges that his retirement was brought about by the failure or refusal of NationsBank to offer him a position with NationsCredit, the entity created to take over the business functions of CFI, comparable to Connors' position at CFI.

Plaintiff Connors further alleges that the Chrysler defendants undermined or understated his value to CFI and, potentially, to NationsCredit by failing to identify him as a "key" employee who should be retained after the sale. Ultimately, Connors alleges that he was not held out as a

valuable employee by CFI and was not offered a job at NationsCredit because of his age, 66, at the time of the sale of CFI to NationsBank. Thus, Connors asserts that the corporate defendants discriminated against him in violation of the Age Discrimination in Employment Act, (ADEA), 29 U.S.C. §621, et seq., and the Pennsylvania Human Relations Act, (PHRA), 43 Pa.Cons.Stat.Ann. §955(a). In addition, Connors alleges that the individual defendants aided and abetted the alleged age discrimination of the Chrysler and Nations corporate defendants in violation of §955(e) of the PHRA.¹ Finally, plaintiff alleges that the corporate defendants aided and abetted each other in discriminating against him.

Based upon their contention that plaintiff suffered no adverse employment action and that there is no evidence of age-related animus in the corporate defendants' dealings with him, all defendants have moved for summary judgment on plaintiff's remaining claims.

1. Originally, plaintiff had asserted age discrimination claims under both the ADEA and the PHRA against the individual defendants, Tierney and Major, in addition to his aiding and abetting claims against them under §955(e) of the PHRA. By order entered August 30, 1996, (Doc. #20), this Court granted Robert Major's motion to dismiss the age discrimination claims against him under the ADEA and under §955(a) of the PHRA. By order entered October 24, 1996, (Doc. #24), pursuant to a stipulation of the parties, the Court likewise dismissed the ADEA and the PHRA §955(a) claims against John Tierney.

Factual Background²

Leo Connors was employed in various capacities by defendant CFI and its predecessor corporate entities from 1961 through January, 1993, just before NationsCredit assumed the business functions of CFI pursuant to the asset sale by Chrysler Financial to NationsBank.

In 1977, Connors became Chief Financial Officer (CFO) of CFI and continued in that capacity until March, 1992. At that time, Connors stepped down as CFO and assumed the position from which he retired, i.e., Senior Vice President and Director of Executive Projects at CFI. Connors alleges in his complaint that he was, in essence, coerced into accepting the new title and assignment as the result of a campaign against older CFI executives orchestrated by defendant Major, who was then the Chief Executive Officer of CFI, and who later became Chief Operating Officer (COO) of defendant NationsCredit. Connors asserts that he had an exemplary work record, supported by excellent performance reviews, from the time he began working for the Chrysler organization until late 1991, when he was subjected to unjustified criticism by Major, culminating in a "fair" overall rating on his performance review for that year. In addition to complaints concerning his performance, Connors refers

2. The relevant and material facts concerning plaintiff's employment at CFI and his retirement as of February, 1993, are largely undisputed, and to the extent that there are differences in plaintiff's and defendants' versions of events, the facts are set forth in the light most favorable to plaintiff.

to insults by Major, exclusion from essential meetings and failure to credit him for all of his accomplishments during that period.

It appears that Connors first brought his problems with Major to the attention of Robert Ray, Senior Vice President of Human Resources and Administration at CFI, in late October, 1991. (See, Appendix of Record Evidence in Support of NationsBank/NationsCredit Defendants' Motion for Summary Judgment, (Doc. #31), Exh. B, Major Deposition Exh. #3). Ray's notes reveal complaints that Major subjected Connors' staff, and particularly Connors himself, to verbal abuse and unprofessional treatment. (Id.) Connors also complained to Ray that Major had expressed dissatisfaction with the number of hours Connors spent on the job and the amount of vacation he took. (Id.).

The record also reveals that a particularly serious problem between Major and Connors arose in September, 1991, in connection with the extensive preparatory work required for a possible public offering of CFI stock, including the development of a prospectus and future business plans for CFI. In late August, 1991, as memorialized in a September 4, 1991 memo, Major gave Connors the assignment of compiling certain financial information regarding CFI's securitization of second mortgages in general and, more specifically, asked him to report on whether securitizing "National Retail" was a break-even proposition. (Appendix to Chrysler Defendants Motion for Summary Judgment,

(Doc. #28, Exh. A).³ Connors was directed to report on those matters by September 25, 1991. (Id.) In a series of memos dated September 26, October 31, November 25 and November 26, 1991, Major demanded, with increasing urgency and obviously growing exasperation, Connors' report on the status of those matters. (Doc. #31, Exh. A, Connors Deposition. Exh. ##14, 16--18).

Connors responded to two of Major's memos on October 2 and November 25, noting that he had delegated the assignment to one of the employees reporting to him, but that she had had no time to complete it because of other pressing work. (Id., Connors Dep. Exh. ##15, 18). Major, however, found Connors' response to his November 25 memo unacceptable and inadequate. (Id., #18). In addition, Major emphasized that the failure to timely complete the securitization assignment was related to a more general ongoing problem that Major had previously identified, i.e., Connors' failure to cross-train the employees in his department, despite discussions between Connors and Major to the effect that such cross-training was essential. (Id.).

On December 10, 1991, the final date by which Major required the securitization information from Connors, Major signed his 1991 performance appraisal of Connors, in which he assigned Connors a rating of two on a scale of one to five, and

3. It is unclear from the record whether "National Retail" is a particular entity or a general line of business for CFI, since it is written with capital initial letters in the September 4, 1991, memo, but in all small letters in an October 31, 1991, memo. (See, Appendix, Doc. #28, Exh. A, B).

indicated several concerns in addition to Connors' failure to cross-train employees. Major noted, e.g., that Connors had not acceded to his request to train and increase the responsibilities of high potential lower-level employees; that Connors was insufficiently involved in his employees' work; that he did not take a proactive role in planning and problem-solving, and that there was a lack of effective communication within Connors' department that led to reporting problems. (Doc. #28, Exh. Q).

Sometime after Connors first consulted with Ray in October, 1991, discussions were held among Ray, James Norwine, Vice President of Human Resources at Chrysler Financial, Major, and John Tierney, Chairman of Chrysler Financial, concerning Connors' status and options for a change in Connors' position (Volume II, Plaintiff's Exhibits in Opposition to Summary Judgment, (Doc. #37), Exh. 35, Major Dep. at 347--349; Exh. 36, Ray Dep. at 54--62; Exh. 37, Norwine Dep. at 117--118). Such discussions resulted in an agreement, dated March 12, 1992, which provided, inter alia., that (1) Connors would relinquish the CFO position; (2) Connors would assume the "interim" position of Senior Vice President, Director of Executive Projects, reporting to Major; (3) Connors would retain his grade and salary; (4) Connors would be assigned six duties/tasks at the outset, and it was anticipated that the position would provide him with "meaningful work for the foreseeable future." (Volume I, Plaintiff's Exhibits in Opposition to Summary Judgment (Doc. #36), Exh. 9). The relationship between Connors and Major

appears to have improved following execution of the letter agreement by Connors on March 17, 1992. In any event, Connors specifically testified at his deposition that Major did nothing after March, 1992, that he considered discriminatory. (Doc. #31, Exh. A, Connors Dep. at 531). Moreover, Connors testified that nothing Major did prompted his later decision to resign from CFI prior to closing of the asset sale and that Major's upcoming position as COO of NationsCredit was not a factor in Connors' decision not to become an employee of NationsCredit. (Doc. #36, Exh. 33, Connors Dep. at 441, 442).

In the March 12, 1992, letter agreement, as well as in response to his 1991 performance evaluation, and at other times, Connors had projected a tentative retirement date of July, 1993. It appears, however, that he had a different goal in mind with respect to when he would actually cease working at CFI. In connection with his agreement to accept a change in position from CFO to Director of Executive Projects, Connors sought an arrangement whereby he could stop working full-time but would continue to receive his salary until his expected retirement date. (See, Doc. #37, Exh. 35, Major Dep. at 347; Doc. #31, Exh. B, Major Dep. Exh. #3). Several other CFI executives who had encountered difficulties in the later stages of their careers were placed in positions that were later eliminated, entitling those executives to a special "separation package" under the Chrysler "redeployment" plan. (See, Doc. #36, Exh. 33, Connors Dep. at 389--91, 414, 472; Doc. #31, Exh. A, Connors Dep. at 502-

-503 and Connors Dep. Exh. #22). Norwine, with Ray's concurrence, recommended to Tierney that Connors be granted a similar arrangement by placing him in the Director of Executive Projects position, eliminating that position sometime later, and giving Connors a one year salary continuation severance package at that time. (Doc. #37, Exh. 36, Ray Dep. at 66--67). Tierney, however, would not agree to the salary continuation aspect of that suggestion. (Id.; Doc. #28, Tierney Affidavit at 2). Nevertheless, the possibility of eliminating Connors' position as Director of Executive Projects when his enumerated tasks had been completed was apparently not entirely foreclosed. (See, Doc. #31, Exh. B, Major Dep. Exh. #3).

In May, 1992, the management of Chrysler Financial made the decision to sell CFI and began searching for a suitable purchaser. (Doc. #28, Tierney Dep. at 68). Agreement for an asset sale of CFI to NationsBank Corp. was ultimately reached, and provided, inter alia., that all CFI employees actively employed as of the closing date would be offered employment with the purchasing corporation for an initial period of sixty days at the same salary and with substantially comparable duties. (See, Doc. #36, Exh. 27, Business Asset Purchase Agreement, (BAPA) Article X, p. 63). Subsequently, on January 12, 1993, Major sent all current CFI employees, including Connors, a "Q & A" letter regarding the transition from CFI to NationsCredit. Major's letter specifically informed the CFI employees that all of them would be offered a job with NationsCredit. (Id., Exh. 12).

In addition, all employees eligible for retirement prior to closing of the sale, including Connors, received a letter from Garland Archer, CFI Vice President of Compensation and Benefits, setting forth a comparison between the retirement benefits available to a CFI retiree and the benefits such employees could expect if they accepted employment at NationsCredit and later retired from there. (Id., Exh. 13). In the Archer letter of January 13, 1993, the retirement eligible employees were specifically informed that NationsCredit was under no obligation to offer them employment if they retired from CFI prior to the closing date of the sale, and that such employees would be considered CFI retirees only if they elected retirement prior to the closing. (Id.). In other words, any employee who retired from CFI before completion of the sale would receive all CFI retirement benefits, but would not receive an offer of employment with NationsCredit. Conversely, eligible employees who accepted the NationsCredit employment offer and later retired could no longer receive CFI retirement benefits and, when they retired, would be NationsCredit retirees.

Although, as noted, plaintiff Connors had previously projected a retirement date of July, 1993, he decided to retire from CFI prior to the sale to NationsCredit upon review and comparison of the retirement benefits he would receive as a CFI retiree and as a NationsCredit retiree. (Id., Exh. 14; Exh. 33, Connors Dep. at 423, 426, 434). Connors was later asked by Major whether he was interested in accepting a previously discussed

consulting arrangement whereby Connors could elect to retire prior to the closing but continue working for NationsCredit at \$5,000/month until completion of work he had undertaken at CFI in his capacity as Director of Executive Projects, which would likely have kept him working through June, 1993. (Id., Exh. 33, Connors Dep at 400--404;⁴ Doc. #31, Exh. B, Major Dep. at 166 and Major Dep. Exh. #3; Exh. C, Ray Dep. at 42--44). Although Connors declined to accept the consulting arrangement and elected to retire from CFI effective the last day prior to closing of the asset sale, he nevertheless characterized his retirement as "involuntary". (Doc. #36, Exh. 14).

Legal Standards

Under the Age Discrimination in Employment Act, 29 U.S.C. §623(a)(1), (ADEA), it is unlawful for an employer to discriminate against an individual in hiring, discharge, compensation, terms, conditions, or privileges of employment on the basis of age. An age discrimination claim may be established by either direct or indirect evidence. Torre v. Casio, Inc., 42 F.3d 825 (3rd Cir. 1994). Direct evidence, if believed by the trier of fact, proves the existence of the ultimate fact in issue, i.e., an adverse employment action arising from age-based

4. Connors testified that although he recalled a telephone conversation and a later face to face conversation with Major concerning his plans to retire and not continue to work on a consultant basis, he did not recall that compensation was discussed.

animus, without inference or presumption, while indirect evidence requires the trier of fact to infer discrimination based upon the circumstances surrounding the adverse employment action. Id.

When a plaintiff seeks to prove an age discrimination claim by indirect evidence, the shifting burden analysis developed for proof of discrimination claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq., is applicable. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed. 2d 668 (1973); McKenna v. Pacific Rail Service, 32 F.3d 820 (3rd Cir. 1994); Keller v. Orix Credit Alliance, Inc., No. 95-5289, slip op. at 13 (3rd Cir. Nov. 24, 1997). Under such analysis, the plaintiff must first establish a prima facie case by demonstrating that he or she (1) is in the protected class, i.e., is at least 40 years old; (2) was qualified for the position at issue; (3) was not hired or was dismissed despite his or her qualifications; (4) was ultimately replaced, or the position was filled, by a person sufficiently younger to permit an inference of age discrimination. Gray v. York Newspapers, Inc., 957 F.2d 1070 (3rd Cir. 1992). Once the plaintiff proves a prima facie case, and thereby creates an inference of age discrimination, the burden of production shifts to the defendant to articulate a legitimate, non-discriminatory reason for the adverse action. Id. If the employer successfully rebuts the prima facie case, the inference of age discrimination drops out of the case, leaving it to the plaintiff to prove, by a preponderance of the evidence, that the employer's proffered

reason is pretextual and that unlawful discrimination was the real reason for the adverse action. Id.; Torre.

At trial, plaintiff bears the burden of convincing the factfinder that the employer's reason is unworthy of credence and that discrimination on the basis of age was the true reason for the employer's action. The factfinder, however, may find for the plaintiff if the employer's proffered legitimate, nondiscriminatory reason is rejected, since discrimination may then be inferred from the allegations of discrimination in plaintiff's prima facie case. Sempier v. Johnson & Higgins, 45 F.3d 724 (3rd Cir. 1995). A plaintiff resisting a summary judgment motion, therefore, needs to submit evidence which either discredits the employer's purported reason for the adverse employment action or which demonstrates that unlawful discrimination was likely a motivating or determining factor in the adverse employment action. Id.; Keller; Fuentes v. Perskie, 32 F.3d 759 (3rd Cir. 1994); Torre.

To succeed on summary judgment by discrediting the employer's proffered nondiscriminatory reason, plaintiff must do more than simply adduce evidence of a mistake on the part of the employer. Rather, to demonstrate that the employer's explanation is pretextual, plaintiff is required to point to evidence of "inconsistencies or anomalies" in the record "that could support an inference that the employer did not act for its stated reasons." Sempier, 45 F.3d at 731. As most recently and succinctly stated, "In simpler terms, [plaintiff] must show not

merely that the employer's proffered reason was wrong, but that it was so plainly wrong that it cannot have been the employer's real reason." Keller, slip op. at 16.

If a plaintiff seeks to demonstrate that there is sufficient evidence from which a factfinder could infer that an invidious, discriminatory animus was more likely than not a motivating or determinative factor in an adverse employment action, he or she "must point to evidence that proves age discrimination in the same way that critical facts are generally proved--based solely on the natural probative force of the evidence." Id. at 20.

Discussion

This case is somewhat unusual in that the first issue to be determined is whether plaintiff has produced sufficient evidence from which a reasonable factfinder could conclude that an adverse employment action occurred at all. There is no dispute in this matter that plaintiff retired from CFI just before closing on the sale of that entity to NationsBank, at which point CFI ceased to exist and NationsCredit, a subsidiary of NationsBank, assumed the business functions of CFI. Defendants argue, therefore, that plaintiff's claims fail at the outset, since no direct or indirect evidence of discriminatory animus is sufficient to sustain a claim of age bias if plaintiff suffers no loss of employment or other detrimental effect on employment status due to any action taken by the employer.

Plaintiff, however, argues that the retirement letter he submitted states on its face that his decision to retire was "involuntary." Although the letter does not elaborate on that characterization, plaintiff has taken the position in this action that he was forced to retire due to the failure of NationsBank and/or NationsCredit to offer him a job with specific duties, salary and benefits that would begin after the sale. Thus, plaintiff presumably contends that he faced an untenable choice, i.e., retire and take the benefits he had accrued as a CFI employee or take no action prior to the closing in the hope that he would have a satisfactory position with NationsCredit after the sale of CFI was finalized.

In order to assess whether plaintiff's claim can survive defendants' summary judgment motions, therefore, the Court is first required to determine whether plaintiff was subjected to a "constructive discharge," i.e., whether a jury could conclude that defendants' conduct toward the plaintiff was likely to result in such adverse working conditions that a reasonable person would feel compelled to resign. Gray; Goss v. Exxon Office Systems Co., 747 F.2d 885 (3rd Cir. 1984).

Defendants in this action argue that, despite the characterization of his retirement as "involuntary" in his January 29, 1993 letter, plaintiff Connors did not base his decision to retire upon a reasonable belief that he would not have employment at NationsCredit beginning February 1, 1993, or upon a reasonable fear that his salary, benefits and/or working

conditions at NationsCredit would be so disadvantageous as to leave him no choice but retirement. Rather, defendants contend that the evidence of record clearly establishes that plaintiff made a reasoned choice to retire prior to consummation of the asset sale of CFI based upon an accurate assessment that he would be entitled to receive more favorable benefits as a CFI retiree than as a NationsCredit retiree. Defendants contend that the record likewise demonstrates that Connors understood perfectly well that he could report to work for NationsCredit on February 1, 1993, with full assurance that he would perform substantially the same duties as at CFI and for the same salary.

Despite plaintiff's assertions that the conduct of NationsBank officials and Robert Major, a key executive with CFI prior to the sale and with NationsCredit afterwards, demonstrated overt and direct age-based bias, review of the entire record in this matter compels the conclusion that plaintiff has adduced insufficient evidence that he was subjected to an adverse employment action to permit him to proceed to trial on his age discrimination claims. This conclusion, of course, also vitiates plaintiff's aiding and abetting claims, since if there has been no wrongdoing, there can be no colorable claim for facilitating unlawful conduct.

It is apparent from the record that plaintiff retired from CFI precisely because he fully understood that if he did not do so prior to the closing date of the asset sale, when CFI ceased to exist, he would automatically have become a

NationsCredit employee. Consequently, if Connors retired at any time in the future, he would have been eligible for retiree medical and other benefits only from NationsCredit, which were less generous than CFI benefits. (See, e.g., Doc. #36, Exh. 33, Connors Dep. at 398--400; 423; 426--427)⁵. The record cannot be reasonably, or even logically, read to support either a conclusion or an inference that Connors would have simply been unemployed had he not elected to retire from CFI. Neither plaintiff's testimony nor anything else in the record suggests that Connors reasonably believed that he would have been deprived of both a job and all retiree benefits had he simply done nothing prior to February 1, 1993. Rather, it is quite clear that he wished to avoid becoming a NationsCredit retiree, which would have been impossible unless he first became a NationsCredit employee. Thus, notwithstanding plaintiff's assertion that he had no idea what specific job he might be assigned at NationsCredit, there can be no dispute that he knew he would have had a job with NationsCredit had he not decided to retire.

We then reach the question whether plaintiff's contention that the failure of CFI to identify Connors as a "key" employee, and the consequent failure of NationsCredit to offer Connors a specific position via a retention agreement prior to

5. There is no issue in this case concerning the amount of money plaintiff would have received each month as a pension distribution, since there is no dispute that Connors was fully vested in his CFI pension, which entitled him to a fixed amount regardless of his status as a CFI or NationsCredit retiree.

the closing was such burdensome and intolerable conduct that a reasonable employee had no alternative other than termination of employment rather than reporting to work at NationsCredit.

It is true, as Connors notes, that Major helped to facilitate the sale of CFI to defendant NationsBank, and that in the course of those negotiations, Major and others within CFI developed a list of "key" employees, not including Connors, who were so critical to managing the ongoing business functions of CFI that they were offered retention agreements to assure that they would remain with NationsCredit upon completion of the asset sale. Nevertheless, there is no inference of an adverse employment action or of age-related bias from those circumstances.

The record clearly demonstrates that Connors had relinquished the "key" CFO position in March, 1992, prior to any expectation that CFI would be sold less than a year later. Connors sought and received a job with identical salary and benefits, but with limited duties, in the hope, on Connors part, that the job would be considered non-essential and, therefore, could be eliminated once he had completed certain enumerated tasks, or at such time as CFI and Chrysler Financial officials decided they were willing to grant Connors a severance package. There is no dispute that Connors ardently pursued the elimination of his position between December, 1991, and January 29, 1993, when he announced his intention to retire. Plaintiff cannot now sustain a claim for age discrimination because CFI officers

neither fulfilled his hopes for elimination of the Executive Projects position nor reinstated him to "key" employee status during the transition of employees from CFI to NationsCredit.

As noted by the Court of Appeals in Gray, the constructive discharge test is objective. Thus, in deciding the threshold issue of whether an adverse employment action occurred, the Court cannot credit Connors' obvious, and perhaps subjectively legitimate, impression that he was ill-used by CFI as a result of its failure to grant him a severance package prior to his having to make the decision to retire as a CFI employee or become a NationsCredit employee. This was the same decision faced by every other CFI employee aged 55 or over with fifteen years of service at CFI. (Id., Exh. 12). As Connors himself testified, however, the situation which required potential CFI retirees to choose to either retain present retirement benefits by retiring immediately or to accept the new entity's different benefits at a later retirement date is certainly not unusual in the context of the sale of a business, since a "takeover" of the pension plan is "a normal process of an acquisition." (Doc. #36, Exh. 33, Connors Dep. at 427). It may be an extremely difficult decision for a retirement-eligible employee, and might even appear to be a choice between two evils, but the necessity of choosing between retirement and accepting work with a new business entity is certainly not discriminatory under the circumstances of this case, which involved the sale and subsequent dissolution of the former employer.

Plaintiff is not, at bottom, truly complaining of unfavorable or unequal treatment because of his age. Rather, he is seeking to vindicate his personal assessment that he was due more favorable treatment than either younger CFI employees or other employees in the protected class. From his perspective, more favorable treatment in the form of special termination packages had previously been granted by CFI to other older executives who had been less valuable to the company over the years than Connors had been. (See, e.g., Id. at 472--473; Doc. #31, Exh. A at 502--503). An age discrimination action, however, is designed to redress unequal or less favorable treatment of older employees vis a vis their younger colleagues, not perceived inequities between protected employees of comparable age. There can be no inference of age discrimination from defendants' refusal to treat Connors more favorably than other employees.

Finally, despite plaintiff's failure of recollection at his deposition concerning the particulars of the consulting arrangement offered by Major after Connors submitted his resignation, Connors was certainly aware, at least, that he had been offered the opportunity to become a CFI retiree, yet accept work at NationsCredit as an independent, nonemployee consultant. Thus, he actually was offered a situation more favorable than that available to other retirement eligible CFI employees. Connors, however, chose complete retirement rather than to continue to work. Such choice was entirely consistent with the testimony of Connors, as well as all knowledgeable defendants'

witnesses who were deposed in this matter, that Connors was, for an entire year before his retirement, singlemindedly attempting to secure an arrangement which would permit him to collect his full salary for at least a year without working.

In concluding that Connors suffered no adverse employment action, we have fully credited Connors assertions that defendant Major treated him in an insulting and demeaning manner during his last months as CFO at CFI, which led to Connors' decision to relinquish that position and begin his attempts to obtain a severance package.

These assertions, although supported by the record, do not amount to evidence of age discrimination in light of the overwhelming evidence that Connors was not denied employment at NationsCredit, and, therefore, that he was not constructively discharged by a forced retirement based upon no reasonable alternative to loss of both employment and retirement benefits. Similarly, there is no evidence that Connors was faced with a new employment situation likely to be so unpleasant or difficult as to present no reasonable alternative to retirement. As noted, Connors testified that Major's position as COO of NationsCredit was not a basis for his decision to retire. (See, p. 7, supra. for record references).

It appears that plaintiff is attempting to use examples of Major's purported age bias to connect his change in position from CFO to Director of Executive Projects with his contention that age-related bias caused his retirement a year later. This

attempted connection, however, is ineffectual. Any claim that Connors might earlier have had based upon Major's performance demands in the latter part of 1991, whether a jury would find Major's conduct to be reasonable or, as plaintiff contends, calculated to force Connors out of the CFO position, was long foreclosed by the statute of limitations prior to commencement of this action. Consequently, Connors' change in position is not presently actionable, and any purported age bias which may have contributed to it cannot be resurrected as evidence in support of his present claim. Such assertions of discriminatory animus are presently irrelevant because whether Connors points to direct evidence of age bias or relies upon indirect proof of it, he cannot establish the sine qua non of a viable age discrimination action, i.e., that he suffered an involuntary loss of employment or other adverse employment action.

Conclusion

There is no doubt that plaintiff Leo Connors ended his career at age 66 in a manner that he found unsatisfactory in light of a long and largely successful employment history. Beginning in the latter part of 1991, Connors felt unfairly besieged by defendant Robert Major's performance demands and unwillingness to recognize Connors' past achievements. Consequently, Connors actively sought an end to his employment at CFI, but with due recognition of his long and valuable service to the company in the form of a special severance package, i.e., at

least a year's salary prior to his expected July, 1993, retirement, without having to report to work. To that end, Connors agreed to vacate the CFO position to become a CFI Vice President and Director of Executive Projects, a position he hoped and expected would quickly be targeted for elimination, thereby rendering Connors eligible for special severance consideration as an employee whose position was terminated.

Defendant John Tierney, Chairman of defendant Chrysler Financial, refused, however, to agree to grant Connors that extraordinary benefit. Before Connors and other CFI and Chrysler Financial officers working on his behalf could attain his goal of a year's salary without work prior to retirement, an unrelated decision to sell CFI to defendant NationsBank was reached and implemented.

Consequently, in early 1993, Connors was faced with the choice of either accepting a position at NationsCredit, with the same salary and benefits, but which was guaranteed for only six months, or of retiring and receiving a more generous benefits package as a CFI retiree than he would have received had he become a NationsCredit employee and subsequently retired. In the alternative, Connors could have retired from CFI and worked as a consultant at NationsCredit. He was not, however, offered his preferred alternative of a year's salary without having to work, and such a situation was not reasonably likely to be offered to Connors once the sale of CFI was completed. Thus, Connors had to decide whether to retire completely and rely only upon his CFI

retirement benefits, or to accept the CFI retirement benefits as well as a consulting arrangement with NationsCredit, from which he would have received additional money, but which would have required him to continue to report to work. Since CFI would no longer exist as of February 1, 1993, Connors would have had no opportunity to become a CFI retiree if he had rejected either outright retirement or retirement from CFI coupled with the consulting arrangement. Had he simply accepted employment with NationsCredit, he would have been required to forego the more generous CFI retirement benefits and accept less favorable benefits as a NationsCredit retiree if he later decided to retire.

After weighing the economic consequences of retiring before CFI was sold or later becoming a NationsCredit retiree, Connors concluded that he would be better off retiring immediately from CFI rather than accepting employment and retiring at a later date from NationsCredit. Connors may well feel that his retirement was "involuntary" as he characterized it in the letter announcing his retirement, but to the extent that the retirement decision was forced, the coercion arose from economic factors unrelated to any age bias which the defendants may have demonstrated in other contexts.

The foregoing summary of the facts and circumstances related to plaintiff's retirement is based upon the record evidence and the only reasonable inferences that can be drawn from the documents and deposition testimony supplied by the

parties in support of and in opposition to summary judgment. Because there is overwhelming evidence that Connors made a reasonable choice to retire based upon economic factors rather than upon an imminent involuntary termination or upon having to enter an employment situation likely to be so intolerable that a reasonable person would see no alternative other than leaving the job, Connors has failed to either establish the most basic element of a claim for age-based employment discrimination, or to demonstrate that there are material issues of fact in dispute with respect to whether he can establish an adverse employment action. On the other hand, plaintiff's purported evidence of discriminatory animus amounts to nothing more than speculation and innuendo, not reasonable inferences from the record. Summary judgment in favor of defendants is appropriate, therefore, on all of plaintiff's remaining claims.

An order granting defendants' summary judgment motions and entering judgment in their favor follows.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

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P. TIERNEY and ROBERT A. MAJOR,)	
)	
Defendants)	

TROUTMAN, S.J.

O R D E R

AND NOW, this day of December, 1997, upon consideration of the motions for summary judgment of defendants, Chrysler Financial Corporation, Chrysler First, Inc. and John Tierney (Doc. #27), and of defendants NationsBank Corporation, NationsCredit Corporation and Robert Major, (Doc. #29), upon consideration of plaintiff's response thereto, and upon careful review of the entire record, **IT IS HEREBY ORDERED** that defendants' motions are **GRANTED**.

IT IS FURTHER ORDERED that judgment is entered in favor of all defendants and against plaintiff Leo Connors.

S.J.