

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK, COUNTY OF NEW YORK

CANDICE LUE, an individual,

Plaintiff

V.

JPMORGAN CHASE & CO. a Delaware Corporation; ALEX KHAVIN, an individual; FIDELIA SHILLINGFORD, an individual; JOHN VEGA, an individual; HELEN DUBOWY, an individual; PHILIPPE QUIX, an individual; THOMAS POZ, an individual; CHRIS LIASIS, an individual; MICHELLE SULLIVAN, an individual; and DOES 1 - 10, inclusive,

Defendants

Civil Action No.: 16 CV 3207 (AJN) (GWG)

Affidavit in Opposition/Response to
"Declaration of **Kimberly Dauber**
in Support re: 89 Motion for Summary
Judgment – (Docket # 97)"

I, pro se Plaintiff, Candice Lue hereby oppose/respond in good faith and under sworn oath to Declarant, Kimberly Dauber's ("Dauber") Declaration in support of the Defendants' Motion for Summary Judgment as follows:

STATEMENT

The only reasons I could fathom that Kimberly Dauber would sign off on this falsified Declaration are 1) job security and 2) financial reasons.

On the morning of October 31, 2014 when I went for the interviews that Kimberly Dauber, my hiring manager (with emphasis), had set up for me to meet with members of the Counterparty Risk Group (Exhibit O – IM conversation with HR), Defendant Thomas Poz, whom I was slated to meet with first, had called out sick. So, Kimberly Dauber who I thought at the time was so sweet,

came to “keep me company” to pass the time until it was the time slated for the next interviewer, Kenneth Ng, my second/third¹ of three predecessors, to interview me.

During that time, Kimberly Dauber and I chatted and lamenting, Kimberly Dauber told me how she had lost most of her 401k savings due to the 2008 market crash. Eight months after this conversation, in June 2015, Kimberly Dauber was struck with another tragedy when her husband suddenly died. In lieu of flowers, Kimberly Dauber asked that money be sent to a fund she had set up for her son’s college education. (It pains me to write/reveal this but I have no choice.)

I. ARGUMENT

One of the best proofs that I have in this lawsuit to show that in the two years prior to me, the only Black analyst to have joined the Counterparty Risk Group (“CRG”) headed by Defendant Alex Khavin (“Khavin”), that Khavin was cognizant of not making any of the non-Black analysts and/or associates feel demeaned by making them feel as if the taking of the minutes for the Monthly Governance Meeting was solely the task of any one of them to do is an email response dated February 4, 2015 from Kimberly Dauber. The subject of this said email was: “RE: Minutes and Documents for Extended Team Meeting” and the full content stated: “*Every analyst and/or associate on this team has been the minute taker of our **Extended meetings** at some time during the last 2 years. I don’t think this is a function that is specifically written out in job duties because it’s an adhoc function. However, Alex would pick a different person each time during our meetings. Most recently, it was understood² that the reporting analyst would handle it. I’m fine with including additional analysts to assist you with this*” (Exhibit A – JPMorgan Chase 002366 attached to Kimberly Dauber’s Declaration).

¹ Kenneth Ng had moved out of the Credit Reporting Risk Analyst role and Thomas Monaco took over the said role. However, after Thomas Monaco’s abrupt departure, Kenneth Ng had to reassume the role.

² “*Understood*” – the operative word. Due to how Khavin treated me as the help/house slave in the November and December 2014 and the January 2015 Monthly Governance Meetings (Am. Compl. ¶ 172), no further explanation was needed.

However, as is obvious in Statement #s 3, 4 & 5 of Kimberly Dauber's Declaration, in Dauber's quest to shield the Defendants, JPMorgan Chase & Co., et al and to reinforce the lie ("The Baruch Horowitz Lie")³ that Baruch Horowitz, the first of my three non-Black predecessors, exclusively performed the employment racially discriminatory tasks of the taking of the minutes for the Monthly Governance Meetings and the printing, collating, stapling of each of the team members' presentation materials and the lugging of the said presentation materials to the said Monthly Governance Meetings, etc., Dauber is now claiming that: "*by 'extended meetings' (in the subject and body of the said email dated February 4, 2015), I was referring to non-governance meetings, such as our Technology Initiatives meeting and Investment Risk Process meetings, at which the task of taking minutes was rotated among the analysts and associates.*"

This about face statement by Kimberly Dauber is categorically false. I have personally attended the Technology Initiatives Meeting which was hosted by the Newton Tech Team and was also attended by Defendants Philippe Quix, Alex Khavin, Thomas Poz, Fidelia Shillingford and sometimes one or two other Counterparty Risk Group analysts/associates throughout the course of my tenure in the Counterparty Risk Group and the minutes were **never** "*rotated among the analysts and associates*" as Dauber is now trying to abandon the statements she made in her February 4, 2015 email to disingenuously and mendaciously claim. The Counterparty Risk Group's analysts and associates had no responsibility for taking such minutes for meetings held by groups outside of the Counterparty Risk Group.

Further, Kimberly Dauber's said February 4, 2015 email response to both Defendant Fidelia Shillingford ("Shillingford") and myself, Plaintiff Candice Lue, was in response to Shillingford's email time stamped 1:38 PM (Exhibit A – JPMorgan Chase 002367 attached to Kimberly Dauber's Declaration) which solely was in regards to "the responsibility of document collection and minutes taking for **our monthly governance meeting**" as per the first sentence which states: "*Hi Kim, I*

³ (Horowitz Dec., ¶¶ 2-6.; Khavin Dec., ¶¶ 10-11, 16; Dauber., ¶¶ 4-5; Shillingford Dec., ¶¶ 10)

*have discussed with Alex and she is ok with the proposal that we continue to rotate the responsibility of document collection and minutes taking for **our monthly governance meeting**.*"

In the Asset Management Counterparty Risk Group ("CRG"), the "Monthly Governance Meeting" is also referred to as the "Extended Team Meeting" and both names have been used interchangeably (Exhibit NN). The Monthly Governance Meeting is referred to as the Extended Team Meeting because it has a longer length of time (on average, at least 45 minutes to an hour longer) than the usual CRG Team Meeting.

For the fourteen (14) months that I worked in the CRG, the only meeting I have heard referred to as the "Extended Team Meeting" is the Monthly Governance Meeting. And, in responding to Shillingford's email, Kimberly Dauber was well aware, due to practices and group custom, that the "Extended Team Meetings" is specifically synonymous with the Counterparty Risk Group's Monthly Governance Meetings not to "non-governance meetings".

The only minutes the Counterparty Risk Group is responsible for taking, is the minutes at its own Monthly Governance Meeting/Extended Team Meeting and that is where the minutes was rotated among all the analysts and associates *"during the last 2 years"*, (prior to Plaintiff, Candice Lue's hire) where *"Alex would pick a different person each time during our meetings"* (Kimberly Dauber's email dated February 4, 2015 - Exhibit A - JPMorgan Chase 002366 attached to Kimberly Dauber's Declaration).

As a matter of fact, to totally dispel Dauber's disingenuous and mendacious statement that *"by 'extended meetings', I was referring to non-governance meetings, such as our Technology Initiatives meeting and Investment Risk Process meetings, at which the task of taking minutes was rotated among the analysts and associates"* (Declaration Statement # 3), I have provided in Exhibit NN, Dauber's initial and direct email response (Email dated February 4, 2015 and time stamped 2:04 PM - Exhibit NN) to Shillingford where Dauber not only listed out the said duties that Shillingford spoke about in her email *"for our monthly governance meeting"* (Exhibit A –

JPMorgan Chase 002367 attached to Kimberly Dauber's Declaration) but Dauber also clearly stated that these said "*monthly governance meeting*" duties were for "*our⁴ monthly extended meetings*", the name interchangeably used for "Monthly Governance Meeting".

With that said, because the **only** other name that the Monthly Governance Meeting is referred to and used interchangeably with, is the "Extended Team Meeting/*Monthly Extended Meetings*", Dauber's email response was understood by myself and the other two analysts who were copied on the said email. Further, there was no "*collecting the documents, taking the minutes and PDF/save documents in the shared folder for our monthly extended meetings*"⁵ for people from other groups such as the Tech team. (I respectfully refer the Court to other emails in Exhibit NN where the "Monthly Governance Meeting" is exclusively referred to as "Extended Team Meeting".)

In light of the aforesaid and pursuant to Rule 56(d) of Federal Rules of Civil Procedure – "When Facts Are Unavailable To The Nonmovant" which states: "*If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order*" and *St. Mary's Honor Center v. Hicks*, 509 U.S. at 511 which states "*In order to rebut the inference of discrimination, the employer must articulate, through admissible evidence, a legitimate, nondiscriminatory reason for its actions. The employer's burden is one of production, not persuasion; the ultimate burden of persuasion always remains with the plaintiff*", if Declarant Kimberly Dauber and/or Defendants, JPMorgan Chase & Co., et al cannot produce any such emails as I have provided in Exhibit NN, to prove that the Technology Initiatives meetings and/or the Investment Risk Process meetings were also referred to as "Extended Team Meetings", then I respectfully ask that the Court reject Kimberly Dauber's disingenuous and mendacious statement # 3 of her Declaration that states: "*by 'extended meetings', I was referring to non-governance*

⁴ "**Our**" meaning Counterparty Risk Group's.

⁵ As stated in Dauber's said email dated February 4, 2015 and time stamped 2:04 PM (Exhibit NN). And, the "shared folder" was the Counterparty Risk Group's shared folder.

meetings, such as our Technology Initiatives meeting and Investment Risk Process meetings, at which the task of taking minutes was rotated among the analysts and associates”.

Baruch Horowitz

In response to Statement # 4 of Kimberly Dauber’s Declaration, Baruch Horowitz⁶ is not my only predecessor. Up to the date of my retaliatory termination, I was the fourth person to have filled the Reporting Analyst position in the Counterparty Risk Group. My additional two (2) predecessors, Kenneth Ng (Exhibit L-1) and Thomas Monaco came after Baruch Horowitz went on disability leave (¶ 107 of my Amended Complaint, Khavin Dec., ¶ 12, 16; Dauber Dec., ¶ 5; Shillingford Dec., ¶ 11). However, like the plague, the Defendants, JPMorgan Chase & Co., et al, are avoiding to mention these two predecessors because just like Baruch Horowitz, neither of them was ever exclusively assigned the employment racially discriminatory task of taking the minutes for the Monthly Governance Meetings and/or the tasks of printing, collating, and stapling 13 copies of each of the team members of the Counterparty Risk Group’s presentation materials (one copy for each member of the team), and the emailing and lugging of the said presentation materials to the monthly team meeting. The aforesaid statement of Baruch Horowitz not being my only predecessor can also be verified by way of the fallacious, pretextual and retaliatory “performance improvement plan” (PIP) that Shillingford put me on (Exhibit C) where she stated: *“previous analysts who performed the job were able to solely perform the tasks within the time period at a point when it was much less streamlined (very manual)”*.

Thomas Monaco was hired to take over the Reporting Analyst position from Kenneth Ng⁷. However, I was voluntarily informed by **Kimberly Dauber**⁸ herself and team members who

⁶ I do not think that Baruch Horowitz is of sound mind (“Affidavit in Opposition/Response to Declaration of Baruch Horowitz in Support re: 89 Motion for Summary Judgment” and “Response/Opposition to “Defendants Undisputed Material Fact # 18” – Affidavit in Response/Opposition to Defendants’ Statement of Undisputed Material Facts under Local Civil Rule 56.1”) and I think he is being disgracefully, whether by their wealth or otherwise, exploited by Defendants, JPMorgan Chase & Co., et al.

⁷ Kenneth Ng was supposed to be moved over to the Credit Analysis side of the group after training Thomas Monaco but because Thomas Monaco left he had to stay in the Reporting Analyst position.

interviewed me for the Reporting Analyst position and believe, and on that basis allege, that Thomas Monaco resigned after just two months on the job due to being overwhelmed with work and not having a work/life balance (§ 107 – Am. Compl.). With that said, my predecessor, Kenneth Ng, was exclusively working in the Reporting Analyst position when I was hired.

Statement # 5 of Kimberly Dauber's Declaration clearly shows that Defendants, JPMorgan Chase & Co., et al are trying to negate the fact that I had a total of 3 non-Black predecessors, Baruch Horowitz, Kenneth Ng and Thomas Monaco for the Counterparty Risk Group Reporting Analyst role by making it seem that the Reporting Analyst position was open from June to November 2014, from the time of Baruch Horowitz's alleged departure for disability leave to the time of my hire in the Counterparty Risk Group, in an attempt to make their mendacious statements about Baruch Horowitz exclusively taking the minutes and doing the printing, etc., plausible.

However, as per Kimberly Dauber's email (Exhibit A - JPMorgan Chase 002366 attached to Kimberly Dauber's Declaration), when referring to the minutes taking at the Extended Team Meetings/Monthly Governance Meetings, she stated: "***Most recently, it was understood that the reporting analyst would handle it***". Meaning that, the Reporting Analysts, **who previously reported to her**, were never exclusively assigned to taking the monthly meeting minutes prior to my hire and, it is also interesting to note that no where in that said email did Kimberly Dauber mention anything about the printing, etc. of presentation materials by the Reporting Analyst for all the members of the Counterparty Risk Group because those tasks never existed prior to my hire.

With All Due Respect, Kimberly Dauber Is A Liar

It first came to my attention that Kimberly Dauber is a liar when I found an email from her to Alex Khavin in a batch of the duplicate copies of emails that I received from the Defendants'

⁸ In a meeting during the first half of 2015 with the analysts and associates, Kimberly Dauber revealed that after Thomas Monaco left she communicated with him and he told her he got a job outside of the financial industry in the city (NY, NY).

attorneys' office on March 21, 2017. This email was in response to Khavin's request to Kimberly Dauber for feedback for my 2015 mid-year performance review.

The lies in Kimberly Dauber's email response to Khavin were so shocking that I had to spend the evening (after work) putting together a repudiation for those said lies to send to the Defendants' attorneys (Exhibit OO).

II. CONCLUSION

In light of the foregoing, unless Declarant, Kimberly Dauber and/or Defendants, JPMorgan Chase & Co., et al can produce any such emails as I have produced in Exhibit NN to prove that the Technology Initiatives Meeting and/or the Investment Risk Process meetings were also referred to as "Extended Team Meetings" and unless Declarant, Kimberly Dauber and/or Defendants, JPMorgan Chase & Co., et al can make factual evidence available, as I have made available in Exhibit K, to prove that like me, Plaintiff, Candice Lue who is Black, my non-Black predecessor, Baruch Horowitz was exclusively assigned the tasks of taking the minutes for the Monthly Governance Meetings and the tasks of printing, collating, and stapling 13 copies of each of the team members of the Counterparty Risk Group's presentation materials (one copy for each member of the team), and the emailing and lugging of the said presentation materials to the monthly team meeting, then I respectfully ask that the Court, pursuant to Rule 56(d) of Federal Rules of Civil Procedure – "When Facts Are Unavailable To The Nonmovant" which states: "*If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order*" and St. Mary's Honor Center v. Hicks, 509 U.S. at 511 which states "*In order to rebut the inference of discrimination, the employer must articulate, through admissible evidence, a legitimate, nondiscriminatory reason for its actions. The employer's burden is one of production, not*

persuasion; the ultimate burden of persuasion always remains with the plaintiff", reject statement #s 3, 4 & 5 of Kimberly Dauber's Declaration.

In addition, Kimberly Dauber's Declaration was submitted in bad faith and pursuant to 18 USC § 1621 and 56(h) of the Federal Rules of Civil Procedure – "Affidavit or Declaration Submitted in Bad Faith" which states: "*If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court — after notice and a reasonable time to respond — may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions*", Kimberly Dauber and Defendants, JPMorgan Chase & Co., et al's attorneys should be punished to the full extent of the law for lying under penalty of perjury.

DATED: July 28, 2017

CANDICE LUE

Candice S.M. Lue

Signature

[REDACTED]

Address

[REDACTED]

City, State, Zip Code

Sworn to before me this 28th day of July, 2017

Frank D. Rotelli

Notary Public

FRANK D. ROTELLI
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 9/26/2017
License # 2292270

