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ANDREW ROSS SORKIN

Former Morgan Stanley Broker Sues Over Arbitration Policy

By SUSAN ANTILLA OCT. 1, 2015

A former broker at Morgan Stanley has filed a class-action race-discrimination complaint against the company, accusing it of making “an end-run around the civil rights laws” with a new policy that bars employee participation in class actions and forces civil rights claims into private arbitration.

Kathy Frazier, who is currently a broker at UBS Financial Services in Honolulu, according to regulatory records, said in her complaint that African-Americans were underrepresented in the ranks of brokers at Morgan Stanley and were paid “substantially less” than their counterparts.

According to the complaint, she was “constructively discharged” in 2013 from her job as a broker at the company’s Honolulu branch, where she had worked since 2007.

Ms. Frazier previously worked at Goldman Sachs and Merrill Lynch and has an economics degree from Amherst College and a master’s degree in business administration from the University of Pennsylvania’s Wharton School of Business, according to the complaint.

Instead of changing what Ms. Frazier referred to as “entrenched discrimination” at the company, Morgan Stanley “has sought to quietly institute mandatory arbitration and a class action waiver,” according to the complaint, which was filed on Wednesday in United States District Court in San Francisco.

James Wiggins, a spokesman for Morgan Stanley, said, “We categorically reject the notion that prompt individual arbitration and resolution of disputes in front of professional, unbiased arbitrators, which is encouraged by federal law, discriminates against employees.”

In early September, Morgan Stanley sent an email to employees outlining new policies that would deny them access to certain court proceedings unless they opted out by Friday. Ms. Frazier’s lawsuit was filed on the eve of that deadline.

In what the company calls the “expansion” of an internal dispute resolution program, court will be eliminated as an option for all workplace claims and employees will be barred from taking part in class-action lawsuits.

Employees with discrimination claims, including harassment, retaliation, gender and race claims, will be required to have their cases heard at private arbitration run by JAMS, a for-profit company that provides dispute resolution services.

The revised version of Morgan Stanley’s so-called Convenient Access to Resolutions for Employees, or CARE, program, requires all employees in the United States to use arbitration for disputes.

Previously, it applied to “most workplace claims” of what are known as registered employees – those who hold licenses to do their jobs, according to correspondence from Morgan Stanley to its employees.

Linda D. Friedman, a lawyer for Ms. Frazier, said the company had not previously demanded that civil rights claims be heard in arbitration. Ms. Friedman said that Morgan Stanley had told one of her California clients

that the changes did not apply in that state, where employee protection laws are stringent and courts take a close look at so-called negative consent policies akin to Morgan Stanley's recent opt-out offer.

Morgan Stanley also offers employees informal resolutions and mediation run by JAMS, according to a company guidebook. Mediators must destroy all documents and notes when the process is completed, and "there will be no record" of the mediation other than the identities of the parties, the terms of any resolution and the name of the mediator, the guidebook said.

The new policies do not apply to claims for workers' compensation benefits, unemployment benefits, claims under the National Labor Relations Act or claims by an employee who was working as of May 20, 2015, and previous opted out of the firm's arbitration agreement, according to the guidebook.

Mr. Wiggins, the Morgan Stanley spokesman, said employees were given 30 days to opt out from the time of the email and that the new program "benefits all parties by offering an impartial, confidential, cost-effective and timely mechanism for resolving employment disputes."

In its email to employees, Morgan Stanley said that records of employees who failed to submit the form "will reflect that you have consented and agreed to the terms of the arbitration agreement and the arbitration provisions of the CARE guidebook."

Ms. Friedman, who represented female stockbrokers in the 1996 "boom-boom room" case against Smith Barney, said that she had begun to contact Morgan Stanley brokers who either "did not read what was sent to them by H.R. or did not understand it."

Many employees are likely to wind up bound by the new policy without even realizing it, she said. Smith Barney is now part of Morgan Stanley.

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