

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT

_____)
 BRIAN D. BIXBY,)
 Plaintiff,)
))
 v.)
))
 BURNS & LEVINSON, LLP)
 Defendant.)
 _____)

Docket No. _____

COMPLAINT

INTRODUCTION

1. This case is an age discrimination and retaliation and contract action by a partner at a Boston law firm that demoted and marginalized him because of his age, then retaliated against him when he engaged in the protected activity of complaining about age discrimination.

2. Plaintiff Brian Bixby is a highly experienced and well-respected lawyer. He is an expert on estate planning, fiduciary administration, and probate court litigation, among other areas. He is a partner in the Defendant law firm of Burns & Levinson, LLP (“Burns & Levinson” or “the Firm”). Since joining Burns & Levinson as an already established practitioner in his field in 1996, Mr. Bixby has consistently been one of the Firm’s top producers of business. For two decades, he served as Chair or Co-Chair of the Firm’s Private Client Group. His work has earned him numerous recognitions, honors, and awards from outside the Firm, as well as appointments to other positions of responsibility in the field.

3. Historically, the Firm had had a Retirement Policy (“Old Policy”) that automatically converted all equity partners into Senior Partners at the beginning of the calendar year following their sixty-seventh (67th) birthday. A Senior Partner had the (lesser) rights and benefits of a “Contract Partner” as defined by the B&L Partnership Agreement, which provides that, unlike Equity Partners, Contract Partners do not have a right, inter alia, to vote or receive notice of votes. Under the terms of the Old Policy, after turning seventy-two (72) an equity partner would automatically become a Senior Counsel and could, with the Firm’s agreement, remain associated with the Firm until the end of the calendar year in which they turned seventy-five (75), at which time they would have to retire.
4. In 2018, a new policy, the “Transition to Retirement Policy,” was put in place that eliminated mandatory retirement and did not automatically lessen the rights of an equity partner at age sixty-seven (67).
5. In 2020, the year Mr. Bixby turned sixty-seven (67) years old, the Firm’s management began to illegally target him for discrimination based on his age.
6. Without any process at all, and despite the fact that he had successfully led the Private Client Group for decades, the Firm stripped Mr. Bixby of his position as Co-Chair, effectively demoting him and beginning a campaign to push him to retire. The Firm contends that the decision to remove Mr. Bixby was made by the Executive Committee. Not only did these actions violate Massachusetts anti-discrimination laws, they also violated the Firm’s own Transition to Retirement Policy. The only contemporaneous explanation for the demotion provided by the Firm’s then long-time Managing Partner David Rosenblatt was, “it’s time.”

7. Mr. Bixby's demotion meant that he lost control of how and whether new clients are accepted and how his matters are staffed. His diminished status and authority within the Firm have interfered with his relationship with other partners, associates, staff, and clients, as well as impacting the amount of new business he is able to bring in. The latter has, in turn, threatened his eligibility for coverage under the Firm's very valuable 2016 Rainmaker Policy, which ties eligibility to the amount of business brought in by covered attorneys.
8. Mr. Bixby vigorously protested the Firm's discrimination against him through internal governance structures, expressly stating that he believed he was being discriminated against based on his age. When these efforts yielded no results, Mr. Bixby retained counsel and, after efforts to address his concerns were again fruitless, filed a complaint with the Massachusetts Commission Against Discrimination ("MCAD").
9. Burns & Levinson responded to Mr. Bixby's protests by retaliating against him in numerous ways. One important way in which he has experienced retaliation is in his compensation, where the Firm has taken advantage of an opaque and secretive process for determining profit allocations to pay him less than other similarly situated lawyers, relative to the business that he originates and the work he performs at the Firm.
10. The Firm has also violated its obligations under its own antidiscrimination and Transition to Retirement Policies.

PARTIES

11. Plaintiff Brian Bixby is a seventy-one-year-old man residing in Cohasset, Massachusetts.
12. Defendant Burns & Levinson is a limited liability partnership based at 125 High Street in Boston, Massachusetts, in Suffolk County.
13. At all times relevant to this complaint, Mr. Bixby worked for Burns & Levinson.

JURISDICTION AND VENUE

14. This complaint arises pursuant to M.G.L. c. 151B, §§ 4(1B), 4(4), and 4(4A); M.G.L. c. 93, § 103; and the common law.
15. This court has jurisdiction to address this matter pursuant to, *inter alia*, M.G.L. c. 212, § 3.
16. Venue is proper pursuant to M.G.L. c. 151B, § 9, because Defendant's unlawful discrimination and retaliation against Mr. Bixby occurred in Suffolk County.

EXHAUSTION OF ADMINISTRATIVE REMEDIES AND TIMELY FILING

17. On April 1, 2021, Mr. Bixby filed a complaint relating to this matter with the Massachusetts Commission Against Discrimination.
18. Burns & Levinson moved to dismiss his claim at the MCAD for lack of jurisdiction, arguing that as an Equity Partner, Mr. Bixby is an "employer" rather than an "employee" for the purposes of antidiscrimination law and, therefore, he does not have the protections of M.G.L. c. 151B and the Age Discrimination in Employment Act.
19. The MCAD denied the Firm's motion to dismiss after the issues it raised were fully briefed. It considered the Firm's arguments and reviewed relevant firm documents including the Partnership Agreement and found that based on an evaluation of the "touchstone [question] of control," which governs the determination of whether a person is an employer or an employee entitled to the protections of the antidiscrimination laws, Mr. Bixby "is an employee for purposes of M.G.L. c. 151B because he lacks the requisite control of an employer."
20. Mr. Bixby withdrew his complaint on May 1, 2023, to file this civil suit. Although he was initially prepared to submit to the jurisdiction of the MCAD, the MCAD informed him in January 2023 that its investigation would not be completed within eighteen months of Mr.

Bixby's MCAD complaint, due to MCAD's workload. In order to file this suit within the statute of limitations for a discrimination complaint, Mr. Bixby withdrew his MCAD complaint.

21. The parties executed a Tolling Agreement, and an agreement to extend that tolling agreement, to preserve all claims as of May 11, 2023, to enable the parties to try to arrive at a negotiated resolution and avoid litigation.

FACTS

Governance of the Firm

22. The Firm is organized as a limited liability partnership under the laws of Massachusetts.
23. The Firm is currently governed by its Second Amended and Restated Agreement of Partnership, originally effective as of November 18, 2003, and most recently amended as of April 1, 2008 (“the Partnership Agreement”).
24. The Firm has about seventy-eight partners. Of these, approximately half are equity partners, including Mr. Bixby.
25. According to the Partnership Agreement, paragraph 4.1, “the management and governance of the Partnership and implementation of [the Partnership Agreement is] vested in [an] Executive Committee,” which has “final authority on all Partnership matters, including, inter alia, the following:”
 - a. To formulate and administer Partnership billing policies and practices;
 - b. To determine the hiring of associates and set associate compensation;
 - c. To make all decisions and take all required actions concerning the Partnership’s pension plans;
 - d. To permit or prohibit any partner or employee from serving as a director of any organization or acting as a trustee, executor or other fiduciary; and

- e. To set draw policy for the Partnership.
26. The Executive Committee also makes recommendations to the Partnership on all other significant Partnership matters, as set out in paragraph 4.1, including inter alia, the following:
- a. the amount of the capital contributions to be made by new and existing equity partners;
 - b. proposed amendments to the Partnership Agreement;
 - c. proposed changes to the scope or nature of the practice, including acquisition or disposal of premises; merger with other law firms, the making of changes to the structure of the Partnership, the introduction of new partners and elevation of income partners to equity partners, and the branching or affiliation of the Partnership with another law firm; and
 - d. the creation or acquisition of a business or venture ancillary to the practice of law.
27. In practice, even where a question is subject to a vote of the partnership, in nearly all circumstances, decisions for the Firm are made by the Executive Committee, and votes of the partnership are functionally rubber stamps.
- a. For example, the Executive Committee announced the creation of an Income Partner Program in July 2023. The Executive Committee indicated that it had implemented certain components of the Program but noted that aspects of the Program were “subject to approval of the equity partners.” A meeting of the equity partners was convened later that month “to discuss and vote” on those aspects of the Program. There were very few questions asked and very limited discussion before a vote was taken.
 - b. The Executive Committee makes all decisions about who should be proposed as a partner and who should be elevated to equity partnership.

Only those firm attorneys who are proposed by the Executive Committee are subject to a vote.

- c. On information and belief since 2018, the partnership has never had a close vote on anything and has, in practice, simply adopted the recommendations of the Executive Committee.
- d. On information and belief, for at least the last 10 years, any person proposed for partnership by the Executive Committee has been approved by the partnership.

- 28. The Partnership Agreement provides that “all actions of the Executive Committee taken in accordance with this Agreement shall be binding upon the Partnership unless rejected by the negative vote of not less than [67%] of the Equity Partners.”
- 29. On information and belief, the Partnership has never held a vote to reject an action of the Executive Committee.
- 30. The Partnership Agreement vests “general responsibility for day-to-day operations” of the Firm in a Managing Partner, who “preside[s] at all meetings of the Executive Committee, the Allocations Committee and of the Partnership.”
- 31. The Partnership Agreement provides that the Executive Committee is comprised of the Managing Partner and six other equity partners.
- 32. Each year, the Firm provides equity partners with certain financial information, including the annual revenue of matters brought into the firm by each partner (commonly referred to as “origination credits”) and the portion of the firm’s annual profits allocated to each equity partner (that partner’s “allocation”).

33. Compensation decisions for all partners are made by an Allocations Committee, which is comprised of the members of the Executive Committee and three other equity partners elected by the equity partners in the Firm.
34. The members of the Executive Committee make up the majority of the members of the Allocations Committee.
35. The Allocations Committee's determinations of compensation are not made according to any fixed formula or rule.
36. Once the allocation determination has been made, it is "final and binding on all partners" and there is "no procedure for appeal."
37. The considerable general authority that the Managing Partner exercises over all partners at the Firm gives him a dominant role on both the Executive Committee and the Allocations Committee.
38. Although, nominally, the Managing Partner is elected for a two-year term, Managing Partner David Rosenblatt served in this role for approximately twenty-five (25) years, until May 2023.
39. Mr. Bixby was not a member of the Executive Committee or Allocations Committee during any part of the relevant time period for this complaint and has not been on either committee for more than 10 years.
40. Mr. Bixby cannot set Firm policy, can only effect promotion decisions by voting on actions recommended by the Executive Committee, and plays no role in setting the remuneration of Firm lawyers.

Practice Group Chairs

41. The Firm is organized into various “practice groups” or “practices,” focusing on different types of legal work (for instance, Intellectual Property, Real Estate, Life Sciences, Employment, or Automotive).
42. The Executive Committee appoints one or more partners at the Firm to serve as Chair or Co-Chairs of different practice groups or practices (“Chairs”).
43. Chairs exercise significant responsibilities within their practice group. These responsibilities include reviewing and approving requests to open new client matters, staffing cases in the practice group, monitoring attorney and paralegal workloads, collecting and providing annual feedback to practice-group associates and paralegals, making recommendations about hourly billing rates, and holding (or not holding) practice group meetings. Chairs also have more informal roles as sounding boards for fellow partners and associates and as conduits between the practice group and the Firm.
44. A Chair is a prestigious, powerful, and highly sought-after position within the Firm and is viewed as such in the broader legal and client communities.
45. Being designated a Chair increases an attorney’s ability to attract and maintain clients.
46. Chairs have regular meetings with the Managing Partners and have access to firm data and information that is not provided to all other partners or other attorneys at the firm.
47. Current Chairs at the Firm clearly identify themselves as such on the Firm website and in promotional materials.
48. Twenty-six attorneys at the Firm currently have the title “Chair” or “Co-Chair.”
49. When partners are designated Chairs, the Firm typically publicizes this, usually describing the role of Chair as an “important management role” (or similar terms).

Mr. Bixby's Background

50. Mr. Bixby received an A.B. from Brown University in 1974 and a J.D. from Northeastern University in 1977.
51. Mr. Bixby is an expert in estate planning and fiduciary administration, including negotiation, mediation, conciliation, probate court litigation, appeals, family law, guardianships, and conservatorships.
52. Mr. Bixby has been an equity partner at the Firm since he joined the Firm in 1996.
53. Prior to joining the Firm, Mr. Bixby practiced at the law firm Ropes & Gray and at a firm he co-founded, Cuddy Bixby.
54. During his time at Burns & Levinson, Mr. Bixby has consistently been one of the highest-producing partners. For each of the past twenty-five years he has been among the eight partners at the Firm with the highest number of origination credits.
55. Mr. Bixby has been recognized as an accomplished member of the bar by the larger legal community as well. He has been named to the list of Best Lawyers in America every year since 2010 and a Massachusetts Super Lawyer every year since 2004. In December 2021, he was featured by Massachusetts Lawyers Weekly as a "Go To Lawyer" for Trusts and Estates.
56. In February 2020, Mr. Bixby was appointed by the Supreme Judicial Court of Massachusetts to the Client Security Board, which consists of seven members of the Massachusetts bar who serve as public trustees of the Clients' Security Fund. Starting in 2023, he began serving as the Board's Treasurer.

57. Mr. Bixby is a member of the exclusive American College of Trust and Estate Counsel (ACTEC), a national non-profit organization founded in 1949. In January 2023, he was asked to co-chair ACTEC's Will/Trust Contest Sub-Committee.
58. Mr. Bixby's colleagues at the Firm have said that he has the most experience, expertise, reputation, and gravitas among all the lawyers in the Private Client Group. They have praised his mentorship and called him an "absolute trailblazer" in the area of fiduciary litigation.

Mr. Bixby's Time as Chair

59. Mr. Bixby became Chair of the Private Client Group at Burns & Levinson shortly after joining the Firm in 1996, at the time when practice groups were first created at the Firm. He continued in this role for more than two decades.
60. Fiduciary litigation became a significant area of business for the Firm during and due, in large part, to Mr. Bixby's time as Chair.
61. As Chair of the Private Client group, Mr. Bixby provided leadership in myriad ways, including by providing support and guidance to members of the practice group, providing mentorship, and attorney-development to members of the practice group. He actively sought and secured speaking, networking, and publishing opportunities for other members of the practice group,
62. Mr. Bixby placed a heavy emphasis on mentoring during his service as Chair, frequently dedicating significant time to the development of the group's partners and associates.
63. Many attorneys who are or have been partners in the Private Client Group came to the Firm because Mr. Bixby actively recruited them.

64. Many attorneys who are or have been partners in the Private Client Group have been actively mentored by Mr. Bixby.

Mr. Bixby's Demotion by the Firm

65. At the beginning of 2020, the Firm's Private Client practice group had three Chairs: Mr. Bixby, Partner # 1, and Partner # 2.

66. The Firm does not have any Policy about how many people can be Chair of a practice group. Currently, the Firm has practice groups with anywhere from one to four Chairs.

67. Meeting notes indicate that on February 5, 2020, the Firm's Executive Committee held a meeting at which it was decided to remove Mr. Bixby from his role as Chair of the Private Client practice group and to replace him with attorney Partner # 3.

68. Meeting notes indicate that Partner # 3 was present at this meeting, because she was, at the time, a member of the Executive Committee.

69. Mr. Bixby was not present at this meeting and had no idea that his removal as Chair was being discussed.

70. The minutes of the meeting provide no justification for Mr. Bixby's demotion, besides a statement that "the time was appropriate" for the change to be made to "take over the leadership from Brian Bixby who has been in this role for more than twenty years."

71. Partner # 3 did not speak to Mr. Bixby about replacing him as Chair until sometime in May 2020. She was not in the Firm's offices during March and April 2020 due to the COVID-19 pandemic.

72. Mr. Bixby's performance as Chair had been at a more than an acceptable level.

73. Prior to notifying him that he would be removed as practice group Chair, Mr. Bixby had not been made aware of any concerns with his performance as Chair.

74. Mr. Bixby did not wish to leave the Chair position at the time he was notified he was being removed as Chair.
75. Meeting notes indicate that on May 6, 2020, the Executive Committee held a meeting at which Partner # 3 reported that Mr. Bixby did not wish to leave the Chair position.
76. Partner # 3 also told the Committee that Mr. Bixby's "memory was slipping." She also speculated that Mr. Bixby "fears approaching retirement."
77. On May 22, 2020, Mr. Bixby had a meeting with Managing Partner Mr. Rosenblatt to protest the proposed demotion.
78. On May 22, 2020, when Mr. Bixby asked about the reason for the decision, Mr. Rosenblatt stated, "it's time." Mr. Bixby understood this to be a reference to his age.
79. On May 27, 2020, Mr. Bixby was permitted to address the Executive Committee and request to keep his position as Practice Group Chair. No member of the Executive Committee commented in response to Mr. Bixby's remarks. According to notes, after Mr. Bixby left the meeting, it was mentioned that Mr. Bixby "[had] already suggested that this is age based" and had conveyed the feeling that he was "being put out to pasture." One member of the Executive Committee "suggest[ed] that [they] wait until his 70th birthday next year."
80. At no time during or in the immediate aftermath of his meetings with Mr. Rosenblatt or the Executive Committee was Mr. Bixby provided with any specific or general criticisms of his performance as Chair to explain his removal from the role.
81. Beginning in June 2020, multiple announcements were made within the Firm that Mr. Bixby would "step down" from the Practice Group Chair position, at the end of the year.

82. In a June 11, 2020, memorandum distributed to Firm partners, Mr. Rosenblatt announced that “the Executive Committee had appointed Partner # 3 to serve as a Co-chair of the Private Clients Group, effective July 1 [and would] join existing chairs Brian Bixby, Partner # 2 and Partner # 1 as co-chairs of the Group. Brian will step down as a co-chair at the end of the year and we thank him in advance for all his hard work and good service as a co-chair of the group over many years.”
83. The June 11, 2020, memorandum was how Mr. Bixby learned that he was “stepping down.” Mr. Bixby had never stated that he would “step down.”
84. Although he was nominally to remain Chair through the end of 2020, as of July 1, 2020, Mr. Bixby was no longer treated by the Firm as holding this role.
85. Mr. Bixby was officially removed by the Firm from his position as Co-Chair of the Private Client Group as of January 1, 2021. All of the Chairs of the Private Client Group since Mr. Bixby’s removal are more than five (5) years younger than Mr. Bixby; most are significantly younger still.
86. On information and belief, no other Practice Group Chair at the Firm has ever been removed from his or her position involuntarily.
87. In August of 2021, Partner # 2 chose to step down as Chair and was replaced as Chair by Partner # 4.
88. In May of 2023, Partner # 1 left the Firm. She was replaced as a Chair by Partner # 5 and Partner # 6, as Assistant Chair.
89. The current Chairs of the Private Client Group are Partner # 3, Partner # 4, and Partner # 5 and Partner # 6 serves as Assistant Chair.
90. On information and belief, Partner # 3 is in her fifties.

91. On information and belief, Partner # 1 is in her fifties.
92. On information and belief, Partner # 4 is in her forties.
93. On information and belief, Partner # 2 is in her fifties.
94. On information and belief, Partner # 5 is approximately 60 years old.
95. On information belief, Partner # 6 is in her forties.

The Rainmaker Policy

96. As of June 1, 2016, the Firm adopted a Rainmaker Retention and Recruitment Plan (“the Rainmaker Policy”) in order “to recognize the unique contribution of existing equity partners who consistently originate large, reasonably profitable amounts of business for the Firm.” Mr. Bixby was one of three partners given this policy at that time.
97. On information and belief, five equity partners currently are covered by the Rainmaker Policy, of which Mr. Bixby is one.
98. The Rainmaker Policy establishes that the Firm will pay annual premiums for a life insurance policy for top-producing partners.
99. The annual premium for Mr. Bixby’s policy is currently approximately \$85,000. Mr. Bixby is taxed on this premium as income.
100. In order to be covered by the policy, partners must bring in at least \$2 million per year for ten years. If, during the ten-year period, a participant’s originations decrease below \$2 million in any two years, or if the participant’s practice is “at any time, not reasonably profitable,” the partner may be required to pay the annual premium in order to continue in the plan.

101. Mr. Bixby has fully satisfied the policy's requirement for each of the years that the policy has been in place, but he will not be entitled to the full benefit of the policy until he is fully vested.
102. The face value of the policy in the event of death is approximately one million dollars at this time. The policy also has a cash value should it be surrendered.
103. Mr. Bixby's demotion from the role of Chair threatens his ability to attract and retain enough business to remain covered by the Rainmaker Policy.
104. Implicit in the Rainmaker Policy is the participant's remaining at the firm, in the same status and with the same support.
105. With the exception of Mr. Bixby, all partners covered by the Rainmaker Policy are Chairs of practice groups.
106. Mr. Bixby relied on the provisions of the Rainmaker Policy in deciding to spend the remainder of his career at the Firm, which is the intent of the policy.
107. Mr. Bixby relied on the grant to him of the Rainmaker Policy and did not move his practice to another firm. Because Mr. Bixby is now over seventy years old, it would be extremely difficult for him to move his practice to another firm and obtain the same benefits as he could have obtained six or eight years ago.

The Transition to Retirement Policy

108. In 2018, the Firm adopted a Transition to Retirement Policy ("TRP"), replacing the Old Policy governing retirement. The Transition to Retirement Policy outlines the process by which partners at the Firm actively participate in and help guide decision-making about when and how to approach their plans to cut back on their practice and/or retire from the firm.

109. According to the Transition to Retirement Policy, an equity partner of the Firm who is sixty-seven years old or older is designated a “Senior Partner.” Upon becoming a Senior Partner, that partner and the Managing Partner, or other representatives of the Executive Committee, meet to discuss the partner’s general transition and retirement plans.
110. The Transition to Retirement Policy provides that, “*if desired by the Senior Partner* or otherwise warranted, additional meetings will occur as needed to develop a detailed Transition Plan. If no Transition Plan is to be entered into at that time, follow up discussions will occur with the Senior Partner, at least annually.” (Emphasis added.)
111. The paramount objectives of the TRP are (1) uninterrupted service to clients that is both high-caliber and sufficiently profitable to meet the Firm’s financial goals, and (2) treating the Senior Partner fairly.
112. The Transition to Retirement Policy makes clear that the Firm has no mandatory transition or retirement age and that becoming a Senior Partner does not create a presumption that there will be an immediate or even imminent retirement.
113. Senior Partners, whether or not they are Equity Partners, are still to be invited to and welcome to participate in all partner meetings to which other partners of the same category (Equity or Non-Equity) are invited.
114. The Transition to Retirement Policy envisions that, at some point, a “Transition Plan” will be developed through dialogue and consensus and put into writing.
115. According to the Transition to Retirement Policy, a “key to a successful transition to Retirement is constructive discussion and planning.”
116. Burns & Levinson presented the Transition to Retirement Policy to Mr. Bixby in 2018 as a policy that would ensure that he and other high-producing partners could work at the

Firm as long as they wanted to. Mr. Bixby relied on the Transition to Retirement Policy in deciding to spend the remainder of his career at the Firm.

117. Since then, however, no discussion or conversation of the sort envisioned in the Transition to Retirement Policy ever took place regarding Mr. Bixby's plans for retirement. Nor was any "Transition Plan" ever developed.
118. The Transition to Retirement Policy also includes specific alternative procedures to be followed in cases when, despite "best efforts," consensus cannot be reached on the terms of a Transition Plan. These procedures include the appointment of a three-member Transition Plan Panel including one member selected by the Senior Partner and one member selected by mutual agreement of the Senior Partner and the Executive Committee.
119. These alternative procedures were never invoked in Mr. Bixby's case.

The Antidiscrimination Policy

120. Burns & Levenson's Attorney Policy Manual provided to Mr. Bixby states that "it is the policy of the Firm to provide equal employment opportunity at all times without regard to ... age" as well as other protected characteristics. The Policy provides that "it is the goal of the Firm to promote a workplace that is free of unlawful discrimination ... and will not tolerate any retaliation against any individual who, in good faith, has reported (whether informally or formally) a violation of this policy."
121. The Antidiscrimination Policy goes on to state that the Firm will "respond promptly to reports of discrimination, harassment and retaliation" and "will promptly investigate" any alleged violations of the policy.
122. Following his demotion, Mr. Bixby conveyed his concern to the Managing Partner and the Executive Committee that his demotion was discriminatory. He also reached out to the

Firm’s Human Resources personnel to ask for resources related to age discrimination. The Firm’s Attorney Policy Manual states that its antidiscrimination and antiretaliation policy “applies to all employment practices of the Firm.” It also states that “because the Firm takes allegations of unlawful discrimination, harassment and retaliation seriously, we will respond promptly to reports of discrimination, harassment and retaliation.”

123. The Attorney Policy Manual encourages reporting “if any Firm employee believes that ... there has been a violation of this policy, he or she should notify [certain key personnel in Human Resources and Firm management].”

124. The Attorney Policy Manual states that “[w]hen the Firm is notified of an alleged violation of this policy, it will promptly investigate the allegation in a fair and expeditious manner.” It also provides that, “[w]hen the Firm has completed its investigation it will, to the extent appropriate, inform the person reporting the violation and the person alleged to have committed the violation of the result of that investigation.”

125. On information and belief, Burns & Levenson did not conduct any investigation of Mr. Bixby’s complaint of age discrimination, or his subsequent complaints of retaliation.

Effects of Mr. Bixby’s Demotion

126. Since being demoted as Practice Group Co-Chair, Mr. Bixby has very little ability to manage his own practice. For example,

- a. If Mr. Bixby wishes to bring in a new case, he must seek approval to do so.
- b. If Mr. Bixby needs assistance from other lawyers and/or paralegals, he must seek approval to obtain that assistance and has little to no input as to which other employees will be assigned to assist him.

- c. Even if Mr. Bixby has the assistance of another firm attorney in a matter, that person can be, and in some cases has been, removed from the matter and instructed not to provide further assistance.
 - d. If a firm employee indicates that they cannot meet established case deadlines or need to be removed from working on a case because of other work demands, Mr. Bixby has no authority to prevent that from occurring.
127. Mr. Bixby had no authority to intervene to negotiate with key members of the Private Client Group practice in an effort to keep them at the Firm and his request to assist with this effort when members of his practice group were leaving the Firm was ignored.
128. Mr. Bixby had no authority to prevent departing partners from engaging in improper efforts to solicit his clients and his effort to obtain assistance in enforcing the ethical rules from the Firm was ignored.
129. Since his demotion from Practice Group Chair, Mr. Bixby has found himself largely unable to make decisions about firm support for his cases.
130. As Chair of the Private Client Group, Mr. Bixby often conveyed the fact that he was Chair to potential new clients, which helped him to convince them to retain him to represent them.
131. Due to his demotion, some current and potential clients have had the impression that Mr. Bixby is phasing out his practice.
132. When Mr. Bixby was Chair of the Private Client group, he was always able to bring in any new client or business that he wanted to take.
133. In terms of Firm hierarchy, Mr. Bixby is subject to the decision making and control of the Managing Partner, the Executive Committee, and the Allocations Committee.

134. On several occasions since being demoted, Mr. Bixby has been prevented from opening a new matter by one of the current practice group Chairs, who decided that the matter was too small or unimportant.
135. Mr. Bixby has also been told by members of Firm Management that he cannot represent an existing client in a new matter.
136. The firm support received by Mr. Bixby since being demoted has also declined. Mr. Bixby is not able to select the associates who will work with him on his matters. Although Mr. Bixby recognizes some improvements in recent months, particularly since May of 2023, it is not unusual for his work to be delayed or forgotten, negatively affecting the volume of work he is able to do and his relationship with clients.
137. During a meeting in April 2023, Mr. Bixby was asked by Managing Partner Paul Mastrocola, “Is this [the Firm] a place you want to be?”
138. Mr. Bixby has the very clear impression that Firm leadership wants him to leave the Firm or retire and leave his clients behind.

Mr. Bixby’s Compensation from 2019 to 2022

139. In 2019, before his demotion and complaints about discrimination, Mr. Bixby was the fifth highest producing partner at B&L in terms of the amount of monies he brought in to the Firm as case originations. His compensation allocation for 2019 represented 37.4% of his origination credits for that year. Among the ten top-producing partners at the Firm that year, the average compensation allocation represented 38.2% of each partner’s origination credits for the year. Mr. Bixby’s allocation, expressed as a percentage of origination credits, was approximately the same as the average allocation across the ten top-producing partners.

140. In 2020, Mr. Bixby was again the fifth highest producing partner in terms of monies brought in as case originations. His compensation allocation for 2020 was set in early 2021, the year after Burns & Levinson announced his demotion as practice group co-chair and when Mr. Bixby filed a complaint at the Massachusetts Commission Against Discrimination. Mr. Bixby's 2020 compensation represented 38.2% of his 2020 origination credits; this was significantly lower than the average among the ten top-producing partners at the Firm. Among this group, the average 2020 compensation represented 42.8% of each partner's origination credits for that year. In 2020, all but one of the other highest producing partners received a higher percentage of their origination credits than Mr. Bixby received. Had Mr. Bixby been paid at the average rate in 2020, his compensation would have been approximately \$85,000 more than he received.
141. In 2021, Mr. Bixby was the sixth highest partner at the Firm in terms of monies brought in as case originations. His compensation for 2021 represented 35.6% of his origination credits for that year. Among the ten top-producing partners at the Firm, the average 2021 compensation allocation represented 39.8% of each partner's origination credits for that year. Had Mr. Bixby been paid at the average rate in 2021, his compensation would have been approximately \$85,000 more than he received.
142. In 2022, Mr. Bixby was again the fifth highest partner at the firm in terms of monies brought in as case originations. His compensation for 2022 represented 29.2% of his origination credits for that year. Among the ten top-producing partners at the Firm, the average 2022 compensation represented 35% of each partner's origination credits for that year. Had Mr. Bixby been paid at the average rate in 2022, his compensation would have been approximately \$197,000 more than he received.

143. In every year of allocations following his demotion, Mr. Bixby was undercompensated as compared to similarly situated partners.

| Year | Average percentage of originations allocated to top-producing partners | Percentage of originations allocated to Mr. Bixby |
|-------------|---|--|
| 2019 | 38.2% | 37.4% |
| 2020 | 42.8% | 38.2% |
| 2021 | 39.8% | 35.6% |
| 2022 | 35% | 29.2% |

144. From 2019 to 2022, B&L allocated to Mr. Bixby each year a percentage of his origination credits that was incrementally lower than the average for the top-producing partners. In 2019, Mr. Bixby's compensation was 98% of what he would have been paid at the average rate – closely aligned with what the firm paid to its ten top-producing partners on average. In 2020 and 2021, Mr. Bixby's compensation was only 91% of what he would have been paid at the average rate. In 2022, his compensation was only 83% of what he would have been paid at the average rate, departing even further from what the Firm paid to its ten top-producing partners on average.

145. In contrast, Partner # 3's allocation percentage, which had been lower than Mr. Bixby's before she was elevated as Chair, increased after the firm announced her elevation as practice group Co-chair. In each of the years following her elevation and Mr. Bixby's demotion, her allocation percentage was higher than Mr. Bixby's.

Evidence of Retaliatory Motive by Firm Leadership

146. In or around December of 2020, when he was continuing to object to the Firm's treatment of him and indicated that if his concerns were not addressed he intended to file a discrimination complaint at the Massachusetts Commission Against Discrimination, the Firm's General Counsel, Jeff Martin responded by saying that Mr. Bixby pursuing his claim is "really not going to be good for [Mr. Bixby]" and that "it really is a folly to go down that path."
147. On February 9, 2022, Mr. Bixby met with the Firm's then Co-Managing Partners, Paul Mastrocola and David Rosenblatt, regarding his 2021 allocation, in accordance with the Firm's policies regarding the allocation process. During that meeting, Mr. Bixby expressed his frustration and confusion as to his 2021 allocation percentage.
148. During the February 9, 2022, meeting, the only explanation offered by Mr. Mastrocola and Mr. Rosenblatt was that the allocation percentages are also influenced by "citizenship" and "leadership." Mr. Bixby understands this response as a reference to the fact that he has complained about discrimination and pursued this complaint of discrimination and retaliation at the Massachusetts Commission Against Discrimination.
149. On March 10, 2023, Mr. Bixby met with Managing Partner Paul Mastrocola and Executive Committee member Partner # 7, regarding his 2022 allocation. During that meeting, Mr. Bixby said that his allocation was not consistent with other partners with comparable production numbers. He noted that his production had increased substantially over the prior year, and yet his pay as compared to 2021 did not reflect that increase. Mr. Mastrocola and Partner # 7 did not provide any specifics about how Mr. Bixby's allocation was arrived at and said only that firm profits were flat and expenses were up; this explanation does explain

why other similarly situated partners received a higher percentage of their originations than Mr. Bixby did.

150. In a meeting during the spring of 2022, a member of the Private Client Group was discussing how the firm determines compensation. During that meeting, then Private Client Group Co-Chair Partner # 1 made a comment the one problem was that a “certain person hasn’t retired yet,” clearly referencing Mr. Bixby. This meeting was attended by many partners in the Private Client Group.

Lack of Diversity and Representation at Burns and Levenson

151. On information and belief, the Firm has no equity partners as old or older than Mr. Bixby.
152. On information and belief, in the last five years at least four older partners have been pressured to leave the firm and have left the firm. None has moved their practice to another firm.
153. At the time of the filing of this complaint, the Firm has no Black equity partners and has only one Asian equity partner. The Firm has only one Black income partner.
154. The Firm has not been able to retain the few attorneys of color that have practiced at the Firm. In 2023, the Firm had a highly skilled Black attorney leave the firm after not being put forward for equity partnership by the Executive Committee. This attorney has expressly stated that “of course” she would have wanted to become an equity partner. A white attorney with similar skills and production numbers was made an equity partner.
155. The Firm has also seen the departure of a number of women equity partners, several of whom have expressed concern about equal pay and the support for and of women at the Firm.

CAUSES OF ACTION

156. For all counts that follow, the Plaintiff hereby realleges and incorporates by references the facts and allegations contained in the preceding paragraphs of this pleading as if fully set forth therein.

COUNT I

Violation of G.L. c. 151B, § 4(1B) – Age Discrimination

157. The Firm unilaterally demoted Mr. Bixby from his role as Chair of the Private Client Group.
158. Mr. Bixby's performance as Chair was at a more than acceptable level, and the Firm did not suggest otherwise at the time when they made and publicized the decision to demote him.
159. The Firm's demotion of Mr. Bixby was carried out in a manner that contravened the Firm's own Transition to Retirement Policy.
160. The Firm replaced Mr. Bixby as Chair with a substantially younger individual.
161. The Firm's actions constitute age discrimination in violation of G.L. c. 151B, §4(1B).
162. Mr. Bixby's demotion has affected his ability to attract and retain clients, indirectly threatening his continuing eligibility for the Firm's Rainmaker Policy.
163. As a result of the Firm's discriminatory treatment, Mr. Bixby has suffered lost compensation, reputational harm, and significant emotional distress.

COUNT II

Violation of G.L. c. 151B, § 4(4) and § 4(4A) – Retaliation

164. After Mr. Bixby complained of age discrimination and filed a complaint at the Massachusetts Commission Against Discrimination, the Firm allocated to Mr. Bixby each year a percentage of his origination credits that was incrementally lower than the average

for the top-producing partners, treating him substantially less favorably than other high-earning partners at the Firm.

165. Following his complaints of age discrimination, Mr. Bixby has been marginalized, has received less Firm support for his work and even had work he wanted to bring in declined by the Firm.
166. Leaders of the Firm expressly stated it was “really not going to be good” for Mr. Bixby to file a complaint at the Massachusetts Commission Against Discrimination and justified decreasing his compensation based on alleged deficiencies in his “citizenship” and “leadership.”
167. These actions by the Firm constitute retaliation in violation of G.L. c. 151B, §4(1B).
168. As a result of the Firm’s retaliation, Mr. Bixby has suffered lost compensation, reputational harm, and significant emotional distress.

COUNT III

Violation of G.L. c. 93, § 103 (Massachusetts Equal Rights Act) – Age Discrimination

169. The Firm unilaterally demoted Mr. Bixby from his role as Chair of the Private Client Group.
170. Mr. Bixby’s performance as Chair was at a more than acceptable level, and the Firm did not suggest otherwise at the time when they made and publicized the decision to demote him.
171. The Firm’s demotion of Mr. Bixby was carried out in a manner that contravened the Firm’s own Transition to Retirement Policy.
172. The Firm replaced Mr. Bixby as Chair with a substantially younger individual.

173. The Firm's actions constitute age discrimination in violation of G.L. c. 93, § 103, which guarantees Mr. Bixby's rights to make and enforce contracts, including his rights and benefits under the Burns & Levinson Partnership Agreement and associated policies ("Contracts").
174. Mr. Bixby's demotion has affected his ability to attract and retain clients, indirectly threatening his continuing eligibility for the Firm's Rainmaker Policy.
175. As a result of the Firm's discriminatory treatment, Mr. Bixby has suffered lost compensation, reputational harm, and significant emotional distress.

COUNT IV

Violation of G.L. c. 93, § 103 (Massachusetts Equal Rights Act) – Retaliation

176. After Mr. Bixby complained of age discrimination and filed a complaint at the Massachusetts Commission Against Discrimination, the Firm treated him differently (and worse) in awarding his compensation allocations as compared to other similarly situated partners at the Firm.
177. Following his complaints of age discrimination, Mr. Bixby has been marginalized, has received less Firm support for his work, and even had work he wanted to bring in declined by the Firm.
178. Leaders of the Firm expressly stated it was "really not going to be good" for Mr. Bixby to file a complaint at the Massachusetts Commission Against Discrimination and justified decreasing his compensation based on alleged deficiencies in his "citizenship" and "leadership."
179. These actions by the Firm constitute retaliation in violation of G.L. c. 93, § 103.

180. As a result of the Firm’s retaliation, Mr. Bixby has suffered lost compensation, reputational harm, and significant emotional distress.

COUNT V

Breach of Contract – Transition to Retirement Policy

181. The Firm’s Transition to Retirement Policy (TRP) forms part of Mr. Bixby’s Contracts with the Firm.

182. The TRP mandates “constructive discussion” and “best efforts” towards developing “consensus” as to the terms of a “detailed” Transition Plan that “balances the needs, goals, and desires” of a Partner preparing to retire with those of the Firm.

183. The TRP also mandates specific alternative procedures for when consensus on a Transition Plan cannot be reached.

184. In Mr. Bixby’s case, the Firm had no discussions with Mr. Bixby, developed no plan, and made no good faith effort to accommodate Mr. Bixby’s needs, goals, and desires. Nor did it apply its own alternative procedures for cases in which consensus cannot be reached.

185. These omissions by the Firm constitute a breach of its Contracts with Mr. Bixby.

186. As a result of the Firm’s breach, Mr. Bixby has suffered lost compensation, reputational harm, and significant emotional distress.

COUNT VI

Breach of Contract – Antidiscrimination Policy

187. The Firm’s Antidiscrimination Policy forms part of Mr. Bixby’s Contracts with the Firm.

188. The Antidiscrimination Policy states that “[i]t is the policy of the Firm to provide equal employment opportunity at all times, without regard to ... age” as well as other protected characteristics. The Policy provides that “it is the goal of the Firm to promote a workplace

that is free of unlawful discrimination ... and will not tolerate any retaliation against any individual who, in good faith, has reported (whether informally or formally) a violation of this policy.”

189. Burns & Levinson discriminated against Mr. Bixby by demoting him from the Chair position and retaliated against him by reducing his compensation and reducing the support he received for his work.
190. These actions by the Firm constitute a breach of its Contracts with Mr. Bixby.
191. As a result of the Firm’s breach, Mr. Bixby has suffered lost compensation, reputational harm, and significant emotional distress.

COUNT VII

Reliance

192. Burns & Levinson adopted the Rainmaker Policy in 2016 with the intention of incentivizing a small number of high-producing equity partners, including Mr. Bixby, to remain at the Firm.
193. Implicit in the terms of the Rainmaker Policy was that Mr. Bixby would continue to enjoy the same terms and conditions of his employment, including the continuation of his status as Practice Group Chair, because those conditions were important to being able to remain eligible for the policy and reap its rewards.
194. Burns & Levinson adopted the Transition to Retirement Policy in 2018 with the intention of ensuring that Mr. Bixby and other partners could work there as long as they wanted to and were capable of doing so.
195. Mr. Bixby was sixty-three (63) years old in 2016 and sixty-five (65) years old in 2018. He remained at Burns & Levinson because he believed the Transition to Retirement Policy

would allow him to work there under the same conditions for as long as he wanted and was able to and because he believed he would receive the full benefit of the Rainmaker Policy.

196. Mr. Bixby relied on the existence of the Rainmaker Policy and did not move his practice to another firm when he was still sixty-five or younger, when he could have obtained an equally advantageous position.

197. Because Mr. Bixby is now over seventy years old, it would be extremely difficult for him to move his practice to another firm and obtain the same benefits as he could have obtained six or eight years ago.

198. Of the four older partners that Burns & Levinson has pressured to leave in recent years, none has moved their practice to another firm.

199. In adopting the two policies, Burns & Levinson represented to Mr. Bixby that he would receive the policies' benefits until he was ready to retire, with the intention of inducing him to remain at the Firm.

200. Mr. Bixby reasonably relied on Burns & Levinson representations and chose to stay at the Firm.

201. Mr. Bixby has suffered a detriment by staying at Burns & Levinson because the Firm's discriminatory treatment has caused him lost compensation, reputational harm, and significant emotional distress.

WHEREFORE, Plaintiff requests that the Court order:

- A. judgment for Plaintiff and against Defendant;
- B. that Plaintiff be awarded compensatory and punitive damages in an amount to be determined at trial;
- C. that Plaintiff be awarded reasonable attorneys' fees, costs, expenses, and interest;
- D. that Plaintiff be awarded all other damages as permitted by applicable law;
- E. that Defendant pay interest on any judgment entered as required by law; and
- F. such other relief as this Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted,
Brian Bixby
By his attorneys,

/s/ Inga Bernstein

Inga S. Bernstein (BBO# 627251)
Niamh Gibbons (BBO# 711002)
ibernstein@zalkindlaw.com
ngibbons@zalkindlaw.com
Zalkind Duncan & Bernstein LLP
65A Atlantic Avenue
Boston, MA 02110
(617) 742-6020

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