

# NBT confident that ex-CEO's lawsuit will fail

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On Wednesday, Jan. 22, an order dismissing the \$8.1 million lawsuit filed against the National Bank and Trust Company of Norwich, and its holding company, NBT Bancorp, Inc. from state court was executed by Broome County State Supreme Court Justice Stephen Smyk. **Richard A. Roth**, with the law firm of Gordon, Hurwitz, Butowsky, Weitzen, Shalov and Wein in New York City, counsel for NBT, stated that "the decision is sound" and expects that it will be upheld on appeal.

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In the lawsuit filed last September, Donald Stone, president and chief executive officer of NBT through Jan. 1991, seeks damages for causes of action that include breaches of Stone's severance package and employment contract, fraud, misrepresentation, age discrimination, and the intentional infliction

of emotional distress.

Stone announced plans to both appeal the decision in state Appellate Court, and commence a federal suit charging NBT with age discrimination. According to Stone's attorney, Robert Pearl of Rochester, Smyk's decision was a "legal error" based on a general release of claims signed by Stone and NBT. "We have 30 days to file an appeal from the date of Smyk's order of dismissal," said Pearl. "We have drafted the appeal already." Pearl added that the federal suit will be filed this week.

**Roth** believes, however, that New York State law is not in Stone's favor. "Don Stone entered into a three-week period negotiating a very favorable package and agreement with NBT. No one held a gun to his head."

The release Stone signed did not specifically mention age discrimination, according to both Pearl and Joseph Butare, the current CEO of NBT. But Butare has said that the release is generally inclusive, covering all claims. At issue is the difference between federal and state laws regarding signed agreements releasing employers from claims of age discrimination.

According to Pearl, the federal law requires that age discrimination be specifically mentioned in the signed agreement, otherwise the release does not preclude such a claim. New York State law, however, does not currently require specific mention of age discrimination. "Last time this was interpreted at the state level," said

Pearl, "the federal law had not yet changed." He added that he believes NYS will change the interpretation of state law to reflect the federal law.

*"Stone contributed significantly to the growth and financial success of NBT. The bank made some unbusinesslike decisions, and Stone has the right to feel aggrieved," said Stone's attorney, Robert Pearl.*

**Roth** is confident that any action brought by Stone in any forum will fail. "Pearl will be trying to tell the [state appellate] court ignore the current law," said **Roth**, "but the law is the law. And there are more difficulties in a federal action than a state action. I'm confident that the federal case will be dismissed."

Pearl asserted that **Roth's** view was slanted. "It is not the state laws that have to be changed," he said, "but the interpretation of the laws. Stone is absolutely intent on continuing this suit. An additional cause of action has been filed for non-payment of a compensation plan that was agreed to before litigation began. We are prepared for

the resolution to take a long time."

According to Pearl, the "sanctionable conduct" statements are a "joke." Pearl doesn't know whether NBT has been subject to other age discrimination claims, "but we intend to find out during discovery," Pearl added, "Stone contributed significantly to the growth and financial success of NBT. The bank made some unbusinesslike decisions, and Stone has the right to feel aggrieved."

**Roth** estimated that Stone "has nine months to perfect his appeal, but I believe it will be dismissed." The EEOC (Equal Employment Opportunity Commission) procedures will also be dismissed, in **Roth's** view, and he believes the federal suit won't make it past initiation. "I don't expect anything to go to trial," he asserted. "The only remaining issue will be whether Stone's lawsuits are frivolous and will rise to the level of sanctionable conduct."

Sanctionable conduct, **Roth** explained, means that there must be a reasonable basis to commence a federal action. He does not believe that Stone has a reasonable basis, and so could be subject to sanctions from the court.