

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF PUERTO RICO

3  
4 RANDOLFO RIVERA SANFELIZ,

5 Plaintiff,

6 v.

CIVIL NO. 00-1485 (RLA)

7 THE CHASE MANHATTAN BANK,  
8 et al.,

9 Defendants.

10 **ORDER DENYING MOTION AND CROSS-MOTION FOR SUMMARY JUDGMENT**  
11 **REGARDING PLAINTIFF'S STOCK AND STOCK OPTION CLAIM**

12 Defendants The Chase Manhattan Bank, successor to The Chase  
13 Manhattan Bank, N.A., and The Chase Manhattan Corporation ("Chase  
14 Corp."), collectively referred to as ("Chase") have moved the court  
15 to enter summary judgment dismissing plaintiff's stock option claim.

16 Part of the claims asserted in this case include a cause of  
17 action for specific performance or damages for breach of contract  
18 pertaining to certain stock and stock options grants awarded to  
19 plaintiff under Chase's 1996 Long-Term Incentive Plan ("the Plan").<sup>1</sup>

20 As grounds for its motion, Chase essentially argues that  
21 plaintiff: (1) forfeited his right to stocks under the Plan, by  
22 voluntarily resigning from his employment with Chase; (2) was  
23 forewarned that by rejecting employment with Chase's successor he  
24 would be regarded as having voluntarily resigned and thereby waived

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26 <sup>1</sup> Third Amended Complaint (docket No. 4) Third Cause of Action.

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3 his right to stock under the Plan; and (3) is not entitled to  
4 remedies under Puerto Rico law because New York law governs any  
5 claims arising under the Plan.

6 Along with his opposition, plaintiff also moved for summary  
7 judgment in his favor claiming his entitlement to the stock and stock  
8 option awards and contesting the interpretation given by Chase to the  
9 terms of the Plan and related documents to the effect that his  
10 termination was "voluntary".

11 **THE FACTS**

12 Plaintiff, Randolfo Rivera Sanfeliz, was employed by Chase in  
13 one of its Puerto Rico dependencies from February 25, 1974 until June  
14 1, 1998.

15 On April 21, 1998, Chase Bank informed Rivera that it would sell  
16 its assets and operations in Puerto Rico to Banco Bilbao Vizcaya  
17 ("BBV") the going concern would not cease operating, and BBV would  
18 offer employment to some of Chase Bank's employees.

19 On April 21, 1998 plaintiff was advised that he had been  
20 designated as eligible for a special bonus program established to  
21 assist in the sale transition process and which provided incentives  
22 to certain individuals who remained with Chase or BBV after the sale  
23 had finalized.

24 On April 21, 1998 BBV offered Rivera employment which guaranteed  
25 his same salary, a performance bonus, Christmas bonus, and other  
26 benefits. The job proposal included a Project Completion Bonus of

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3 \$139,000.00, equivalent to a one-year salary, provided, *inter alios*,  
4 that plaintiff continued working for BBV for at least 90 days  
5 subsequent to the closing date.

6 Chase advised plaintiff that if he chose not to accept  
7 employment with BBV, it would be deemed that he voluntarily resigned  
8 his employment and would consequently forfeit his right to exercise  
9 the stocks and stock option grants issued to him under the Plan.

10 Plaintiff declined BBV's employment offer. Rather, he sought and  
11 obtained employment with FirstBank Puerto Rico instead.

12 On June 1, 1998, plaintiff submitted his resignation letter  
13 effective that same day.

14 Chase ceased its operations in Puerto Rico on October 1, 1998.

15 Thereafter, plaintiff requested to exercise the stock and stock  
16 option grants awarded to him on January 2, 1997 and January 20, 1998.

17 On August 26, 1999 plaintiff's request was denied because he had  
18 been offered and had declined continued employment with BBV and had  
19 thereafter voluntarily resigned - thus forfeiting the opportunity to  
20 exercise any stock under the Plan.

21 **THE PLAN**

22 Effective May 21, 1996, Chase adopted its 1996 Long-Term  
23 Incentive Plan which allowed for the granting of various types of  
24 stock and stock options awards for selected key employees, including  
25 plaintiff.  
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3 The Plan was created for the purpose of "encourag[ing] selected  
4 key employees... to acquire a proprietary and vested interest in the  
5 growth and performance of the Company, to generate an increased  
6 incentive to contribute to the Company's future success and  
7 prosperity and to attract talented individuals."

8 The Plan was filed with the Securities and Exchange Commission  
9 and is not subject to any provisions of the Employee Retirement  
10 Income Security Act ("ERISA").

11 Pursuant to the Plan, on January 21, 1997, plaintiff was granted  
12 a Non-Qualified Stock Option Award Agreement ("1997 Award Agreement")<sup>2</sup>  
13 and on January 20, 1998, with a Restricted Stock Award Agreement  
14 ("1998 Award Agreement").<sup>3</sup> Each of these two awards was accompanied  
15 by a document which described its particular terms and conditions  
16 which, together with the 1996 Long-Term Incentive Plan, provided the

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18 <sup>2</sup> On January 21, 1997, plaintiff was granted an award of 1,000  
19 shares of common stock to vest and become exercisable in accordance  
20 with the following schedule: (1) 333 shares on January 21, 1998, (2)  
21 333 shares on January 21, 1999, and (3) 334 shares on January 21,  
22 2000. Pursuant to the vesting schedule of the aforementioned Non-  
23 Qualified Stock Option Award Agreement, on June 1, 1999, the date of  
24 Rivera's resignation, there were 333 shares of exercisable vested  
25 stock in plaintiff's favor.

26 <sup>3</sup> On January 20, 1998, plaintiff was granted a total of 274  
shares of restricted stock, to vest in accordance with the following  
schedule: (1) 68 shares on January 25, 1999, (2) 68 shares on January  
25, 2000, (3) 69 shares on January 25, 2001, and (4) 69 shares on  
January 25, 2002. Pursuant to the vesting schedule of the Restricted  
Stock Award Agreement of 1998, at the time of plaintiff's resignation  
on June 1, 1999, there were no exercisable vested stocks in  
plaintiff's favor.

pertinent rules for the implementation and exercise of stock awarded under the Plan.

**APPLICABLE LAW**

Both the 1997 and 1998 Terms and Conditions contain an identical choice-of-law clause providing that New York law would govern any claim arising thereunder.<sup>4</sup> Plaintiff has not challenged this contract provision. Hence, we conclude that plaintiff may not assert claims related to the aforementioned stock option and stock option grants based on Puerto Rico legal provisions, i.e., breach of contract pursuant to art. 1054 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31, § 3018<sup>5</sup> (1990); specific performance, arts. 1049-1051 and 1077 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31, §§ 3013-3015 and 3052;<sup>6</sup> lost profits;<sup>7</sup> or resolution of the contract with alternative economic damages<sup>8</sup> as well as pain and suffering.<sup>9</sup>

Rather, we shall examine the validity of plaintiff's claims under the pertinent New York legal principles.

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<sup>4</sup> Section 6 of the 1997 Terms and Conditions and Section 5 of the 1998 Terms and Conditions provide that the Agreements as well as the Terms and Conditions "shall be governed by the laws of the State of New York."

<sup>5</sup> Third Amended Complaint ¶ 36.

<sup>6</sup> Third Amended Complaint ¶ 37.

<sup>7</sup> Third Amended Complaint ¶ 38.

<sup>8</sup> Third Amended Complaint ¶ 39.

<sup>9</sup> Third Amended Complaint ¶ 39.

**STOCK OPTIONS**

Stock options have been described as follows:

Stock options are a form of bonus or incentive compensation. A stock option is the right to buy shares of stock at a specified price within a specified period of time. The option price typically is set at the time of the grant and does not change over the option period. ... The exercise of the stock options often gives the optionee the privilege of obtaining shares on a large scale at less than the market price, amounting to a lucrative bonus.

5A William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations* § 2137.30 (footnotes omitted).

Payment of a bonus will be determined in accordance with the terms of the plan bestowing payment thereof. Thompson v. Saatchi & Saatchi Holdings (USA), Inc., 958 F.Supp. 808, 825 (W.D.N.Y. 1997); Markby v. PaineWebber Inc., 650 N.Y.S.2d 950 (1996); Weiner v. Diebold Gp., Inc., 568 N.Y.S.2d 959, 960 (1991). "An employee's entitlement to a bonus is governed by the terms of the employer's bonus plan." Hall v. United Parcel Serv. of Am., Inc., 556 N.Y.S.2d 21, 27 (1990).

Contrary to earned compensation, payment of a bonus which falls within the discretion of the employer is subject to forfeiture. Thompson, 958 F.Supp. at 825; Weiner, 568 N.Y.S.2d at 961. See also, Int'l Bus. Mach. Corp. v. Martson, 37 F.Supp.2d 613, 617 (S.D.N.Y.

1999) (forfeited stock options not deemed earned compensation); Markby, 650 N.Y.S.2d at 954 ("New York State courts recognize a long standing policy against the forfeiture of earned but undistributed wages.").

"Though the law does not favor forfeiture, courts will enforce it if the parties agreed to it.'" Kreiss v. McCown De Leeuw & Co., 131 F.Supp.2d 428, 436 (S.D.N.Y. 2001) (citing 220 West 42 Assoc. v. Ronbet Newmark Co., 375 N.Y.S.2d 255 (1975)).

**ARBITRARY AND CAPRICIOUS STANDARD**

Pursuant to New York legal principles, denial of stock option benefits will be reviewed under an arbitrary and capricious standard if the person or persons responsible for making the determination are given full authority thereof under the terms of the applicable plan.

Under New York law, if an employee is part of a "plan" that gives a "committee" sole discretion to interpret the plan and determine whether the employee is entitled to benefits under the plan, a court can review such determinations to see whether they were made fraudulently, in bad faith, or arbitrarily.

Lucente v. Int'l Bus. Mach. Corp., 262 F.Supp.2d 109, 114 (S.D.N.Y. 2003); Onanuga v. Pfizer, Inc., 369 F.Supp.2d 491, 497 (S.D.N.Y. 2005); Sarnoff v. Am. Home Prods. Corp., 666 F.Supp. 137, 138 (N.D.Ill. 1987) (applying New York law).

1 CIVIL NO. 00-1485 (RLA)

Page 8

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3 In Gehrhardt v. Gen. Motors Corp., 581 F.2d 7, 11 (2<sup>nd</sup> Cir.  
4 1978), the court ruled that where the contract provided that  
5 management would be "the sole judge" of the applicable separation  
6 category this "decision could be set aside by the court only if  
7 appellant could sustain the heavy burden of establishing that the  
8 challenged benefit decision was the result of bad faith, fraud, or  
9 arbitrary action."

10 Plaintiff in this case has not alleged that Chase's  
11 determination regarding his termination of employment was in any way  
12 prompted by ill motive or fraud. Thus, it is plaintiff's burden to  
13 establish that the challenged decision was arbitrary. That is, absent  
14 evidence to support a finding that the classification given to  
15 plaintiff's separation as voluntary resulted from either fraud or bad  
16 faith on the part of Chase, the court must decide whether Rivera has  
17 "adduced sufficient evidence to enable a reasonable jury to conclude  
18 that the classification was arbitrary." *Id.* at 11.

19 In order "[t]o establish that the decision was arbitrary, the  
20 plaintiff must show either the absence of any rational factual basis  
21 for the decision, or that the decision was made without reference to  
22 the relevant facts and contractual provisions." Sarnoff, 666 F.Supp.  
23 at 139. "[T]he test is not whether [defendant] might have justifiably  
24 classified appellant differently but whether a rational basis existed  
25 for the classification it did make". Gehrhardt, 581 F.2d at 13.

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1 CIVIL NO. 00-1485 (RLA)

Page 9

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3 Accordingly, plaintiff in this case is "obligated to demonstrate  
4 the absence of any rational factual basis for [Chase's]  
5 classification or that [Chase] in fact made its decision without  
6 reference to relevant facts and contractual provisions." Gehrhardt at  
7 12.

8 The court's role, however, is a limited one in that it may not  
9 substitute its judgment for that of Chase. It is not enough that the  
10 determination is perceived as incorrect or that the court would have  
11 reached a different result. "As the Second Circuit ruled almost three  
12 decades ago, 'If the decision is supported by a reasonable basis, the  
13 court may not substitute its judgment for that of the employer on the  
14 disputed factual issues.'" Onanuga, 369 F.Supp.2d at 497 (*citing*  
15 Gehrhardt, 581 F.2d at 11).

16 In Sarnoff, plaintiff demanded the right to exercise his stock  
17 option award which his former employer had determined was forfeited  
18 under the covenant not to compete provision previously signed by  
19 plaintiff. According to the court, "[t]he question under New York  
20 Law is not the scope or degree of the competition, or even whether  
21 competition actually existed, but rather only whether the Committee's  
22 decision that competition existed was the result of fraud, bad faith,  
23 or arbitrary action. Although the competition between [plaintiff] and  
24 defendant was minimal, this Court cannot substitute its judgment for  
25 that of the Committee." *Id.* at 139 (internal citations omitted).  
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3 In Gehhardt, 581 F.3d at 11, the court further noted that  
4 "[u]nder this standard it is not enough to persuade a judge or jury  
5 that the decision may have been incorrect. If the decision is  
6 supported by a reasonable basis the court may not substitute its  
7 judgment for that of the trustees (here GM's management) on the  
8 disputed factual issues... The test, therefore, is not what the court  
9 would have done under the circumstances but whether, viewing the  
10 evidence most favorably to appellant, it can be concluded that no  
11 reasonable basis existed for GM's decision." (Internal quotation  
12 marks and citation omitted).

#### 13 DISCRETION UNDER CHASE'S PLAN

14 The Plan provides that "[t]he Committee, in its sole discretion,  
15 will determine the terms and conditions to be included in any Award  
16 Agreement relating to stock option, which terms and conditions may  
17 include provisions restricting or terminating a Participant's right  
18 to exercise an option following termination of employment or other  
19 forfeiture provisions."<sup>10</sup>

20 Except in cases of retirement, death or job elimination,<sup>11</sup> the  
21 options granted by the aforementioned awards end immediately upon the  
22 employee's voluntary termination of employment.<sup>12</sup>

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23 <sup>10</sup> 1996 Long-Term Incentive Plan p. 5.

24 <sup>11</sup> The 1998 Terms and Conditions also include total disability.

25 <sup>12</sup> The 1997 Terms and Conditions section 3(a), in pertinent  
26 part, provides:

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3 The Terms and Conditions for both awards further provide that it  
4 is within the discretion of the Human Resources Director to establish  
5 under which circumstances job elimination will constitute either  
6 involuntary termination allowing the grantee to retain the rights  
7 conferred under the grant or voluntary termination resulting in the  
8 forfeiture thereof.

9 In this regard, the 1997 Terms and Conditions Section 3(d)  
10 provides:

11 Termination as a result of job elimination. If the  
12 employment of the Grantee involuntarily terminates... as a  
13 result of job elimination **as determined by the Director**  
14 **Human Resources in his sole discretion,** then all  
15 outstanding Options will become exercisable...

16 (Emphasis ours).

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19 As of the date that employment terminates for  
20 any reason, except for Retirement, Death or Job  
21 Elimination... the Option shall terminate  
immediately.

22 The 1998 Terms and Conditions section 2(a), in pertinent part,  
23 reads:

24 As of the date that employment of a Grantee  
25 terminates for any reason except for Retirement,  
26 termination as a result of a job elimination,  
total Disability or death... any unvested  
Restricted Stock awarded under the Agreement  
shall be forfeited immediately.

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3 Similarly, the 1998 Terms and Conditions Section 2(c) reads:  
4 Termination as a result of job elimination. If the  
5 employment of the Grantee involuntarily terminates as a  
6 result of job elimination **as determined by the Director**  
7 **Human Resources in his sole discretion**, then any unvested  
8 shares of Restricted Stock will vest...

9 (Emphasis ours).

10 Based on the foregoing, it is evident that plaintiff's  
11 entitlement to his 1997 and 1998 awards was conditioned upon his  
12 continued employment with Chase. By way of exception, these documents  
13 allow for preservation of the rights granted thereunder in the event  
14 of involuntary termination due to job elimination. However, it is  
15 clear that the determination regarding job elimination for purposes  
16 of qualifying for this exception is vested in the Human Resources  
17 Director "in his sole discretion".

18 No evidence has been presented thus far in this case  
19 establishing the grounds underlying Chase's conclusion that  
20 plaintiff's rejection of employment with a third-party constituted  
21 voluntary termination in order for the court to be in a position to  
22 assess its reasonableness.<sup>13</sup> In other words, there are no facts  
23 currently before us to allow us to reach a determination as to

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25 <sup>13</sup> This does not mean that private entities must keep  
26 comprehensive records as public agencies do. The court is free to  
receive such evidence. Gehrhardt, 581 F.2d at 12.

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3 whether or not the decision at issue was indeed arbitrary and  
4 capricious.

5 **WAIVER**

6 Chase further contends that, prior to his resignation, plaintiff  
7 was made aware of the consequences affecting his stock option rights  
8 should he decline an employment with BBV, therefore, knowingly  
9 forfeited any claim thereunder.

10 In support of this proposition, Chase points to a Q&A sheet  
11 handed out to its employees on or about April 21, 1998 which, in  
12 pertinent part, indicated:

13 What happens to our Value Shares employee stock options?

14 If you were granted Value Shares on December 17, 1996  
15 and/or December 16, 1997 and accept a job with BBV, you  
16 will retain the right to exercise any of these stock  
17 options on the same terms and conditions as if you  
18 continued working for Chase to the end of the 10 year  
19 option term. The same conditions will apply for any  
20 employee who is not offered a comparable job with BBV.

21 **(Employees who are offered a job with BBV but do not accept**  
22 **it will forfeit their rights to the options on the date**  
23 **their employment with Chase ceases).** Any employee still  
24 holding Vision Shares must exercise them within 90 days of  
25 the date of the date employment with Chase ceases.

26 (Emphasis in original).

1 **CIVIL NO. 00-1485 (RLA)**

Page 14

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3 Although plaintiff concedes having received this information,<sup>14</sup>  
4 he questions Chase's interpretation of the Plan which conditioned his  
5 acceptance of employment with a third-party as grounds for its  
6 classification of his termination as voluntary, thereby resulting in  
7 forfeiture of the stock and stock option rights. Additionally,  
8 plaintiff claims that even assuming *arguendo* that Chase's  
9 construction of the Plan was correct, the employment offer with BBV  
10 was not to a "comparable" position within the meaning of the Plan  
11 because it allegedly entailed a significant cut in benefits.

12 "A waiver is the intentional relinquishment of a known right  
13 with both knowledge of its existence and an intention to relinquish  
14 it. Such waiver must be clear, unmistakable and without ambiguity."  
15 Onanguga v. Pfizer, Inc., 369 F.Supp.2d 491, 499 (S.D.N.Y. 2005)  
16 (internal quotation marks and citations omitted). Given plaintiff's  
17 challenges to Chase's interpretation of the Plan provisions with  
18 respect to the voluntariness of his termination of employment, we

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21 <sup>14</sup> Plaintiff attempts to argue that this provision did not apply  
22 to the stock options he held. However, plaintiff is precluded from  
23 arguing lack of notice regarding forfeiture based on his own  
24 allegations. At ¶ 13 of the Third Amended Complaint plaintiff averred  
25 that "[o]n that same April 21, 1998, Chase Bank informed its  
26 employees that those who were offered a job by the BBV but did not  
accept it would be regarded as having 'voluntarily resigned' and  
**forfeited the rights to stocks and stock options granted by Chase  
Corp.**" (Emphasis ours). At no time did plaintiff qualify that his  
advance knowledge was limited to the Value Shares and not to the  
stock awards claimed in the complaint.

1 **CIVIL NO. 00-1485 (RLA)**

Page 15

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3 find the record lacking any support to conclude that he waived his  
4 rights to the stock and stock option grants.

5 **CONCLUSION**

6 Based on the foregoing, we conclude that there is not sufficient  
7 evidence in the record at this time for us to ascertain whether or  
8 not Chase's determination regarding the voluntariness of plaintiff's  
9 departure was arbitrary or capricious. Further, we find no waiver of  
10 plaintiff's rights under the Plan.

11 Accordingly, the Motion Requesting Summary Judgment of  
12 Plaintiff' Stock Option Claim filed by Chase (docket No. **83**)<sup>15</sup> and  
13 plaintiff's Memorandum in Opposition and in support of Plaintiff's  
14 Cross-Motion for Partial Summary Judgment (docket No. **99**)<sup>16</sup> are hereby

15 **DENIED.**

16 IT IS SO ORDERED.

17 San Juan, Puerto Rico, this 27<sup>th</sup> day of October, 2006.

18  
19 S/Raymond L. Acosta  
RAYMOND L. ACOSTA  
20 United States District Judge

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<sup>15</sup> See, Chase's Reply (docket No. **114**).

25 <sup>16</sup> The Motion to Strike Plaintiff's Cross-Motion for Summary  
26 Judgment filed by Chase (docket No. **106**) is **DENIED**.