

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

HENRY AUFFARTH, MARSHALL PERRIN,
COSTAS ZIOZIS, CARL BRONSTEIN, JOSEPH
BARNETT, and LAWRENCE GORE,

Plaintiffs,

- v -

INDEX NO. 600800/10

HERALD NATIONAL BANK,

Defendant.

Administrative Order:

By letter dated August 6, 2010, counsel for the plaintiffs requests a transfer of this action to the Commercial Division pursuant to Uniform Rule 202.70. This application is timely. Defendant's counsel originally served the Request for Judicial Intervention (RJI) on the plaintiffs on July 16, 2010, marking the case commercial. However, defendant's counsel made changes to the RJI before filing it, marking it non-commercial, and notified plaintiffs' counsel of those changes on August 4, 2010.

This action arises from defendant's alleged failure to pay the plaintiffs, former Vice Presidents and Managing Directors of the defendant bank, salary and other compensation. The complaint asserts claims for breach of contract and violations of the New York Labor Laws. Uniform Rule 202.70 (b) (1) provides that actions in which the principal claims are for "breach of contract or fiduciary duty, fraud, misrepresentation, business tort . . . where the breach or violation is alleged to arise out of business dealings" will be heard in the Commercial Division, provided the \$150,000 monetary threshold for New York County is met or equitable or declaratory relief is sought. Specifically included within this category are claims for breach of an employment agreement. Defendant's counsel does not actually object to a transfer to the Commercial Division, and only takes issue with plaintiffs' counsel's characterization of his conduct in changing the RJI after service. Therefore, plaintiffs' request for a transfer to the Commercial Division is granted.

The Motion Support Office is directed to randomly reassign this case from I.A.S. Part 10 (Gische, J.) to a Justice of the Commercial Division. (A motion to sever claims and stay discovery was fully submitted in Room 130 on August 9, 2010.)

Dated: August 9, 2010

ENTER: Sherry Klein Heitler A.J.

HON. SHERRY KLEIN HEITLER

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION