

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JAMES P. DOLLARD IA Part 13  
Justice

	x	Index Number <u>23099</u> 2002
DAWN BANTUM		Motion Date <u>February 19,</u> 2003
- against -		
AMERICAN STOCK EXCHANGE, LLC, et al.		Motion Cal. Number <u>7</u>
	x	

The following papers numbered 1 to 27 were read on this motion by the defendants Heights Partners, Inc. and Lawrence Polatchek, pursuant to CPLR 3211[a][7], to dismiss the complaint and the cross claims interposed against them by the co-defendants the American Stock Exchange LLC, Eric S. Brown and Richard T. Chase; cross motion by the defendant Richard T. Chase, pursuant to CPLR 3211[a][7], to dismiss the complaint; and, cross motion by the defendants American Stock Exchange, LLC and Eric S. Brown, pursuant to CPLR [a][7] and [e], to dismiss the complaint.

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Upon the foregoing papers it is ordered that the motion and cross motions are determined as follows:

**A. The Allegations of the Complaint**

The plaintiff Dawn Bantum ("Bantum") commenced this action alleging sexual harassment and gender discrimination. The defendant Lawrence Polatchek ("Polatchek") is a principal of the defendant Heights Partners, Inc. ("Heights"). Bantum alleges that Polatchek, individually, is a member of the defendant the American

Stock Exchange, LLC ("Amex"), and represents Heights on the Amex trading floor.

The defendant Eric S. Brown ("Brown") is a staff attorney for Amex's Enforcement and Investigation Division. The defendant Richard T. Chase ("Chase"), is Amex's Executive Vice President of Member Firm Regulation. Brown and Chase allegedly refused to take action in response to Bantum's complaints of sexual harassment, failed to inform Bantum of their investigation of her complaints, and failed to take timely corrective action against Polatchek or Heights.

The first cause of action is based on a violation of the Human Rights Law (see, Executive Law § 296[2], [6], [7], [13]).<sup>1</sup> The

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Executive Law § 296[2][a] provides, in pertinent part:

It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation..., because of the...sex...of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof....

Executive Law § 296[6] provides:

It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any acts forbidden under this article, or to attempt to do so.

Executive Law § 296[7] provides:

It shall be an unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he or she has opposed any practices forbidden under this article or...has filed a complaint, testified or assisted in any proceeding under this article.

Executive Law § 296[13] provides, in pertinent part:

It shall be an unlawful discriminatory practice (i) for any person to discriminate against, boycott or blacklist, or to refuse to buy from, sell to or trade with, any person, because of the...sex of such person... (ii) or

second cause of action patterns the first, and is based upon violations of the Administrative Code of the City of New York (see, Administrative Code of City of New York ("Administrative Code) § 8-107[4], [6], [7], [18]).<sup>2</sup> Amex is alleged to be a place of public accommodation within the meaning of the Human Rights Laws (see, Executive Law § 292[9]; Administrative Code § 8-107[4]).

Bantum, the first black female floor broker in the history of Amex, is one of the few female brokers on the Amex floor. In the performance of her work, she executes client orders or receives quotes for clients of her employer, a competitor of Heights and Polatchek. In March, 2000, while on the Amex trading floor, Polatchek began making sexual advances toward Bantum by blowing in her ear, staring at her, and informing her about his romantic relations with another woman who also worked on the Amex floor.

In the same month, Polatchek approached Bantum who was wearing a skirt, placed his foot/shoe between her legs and stated "Hi Sweetie. I wish my shoes were as shiny as mirrors." In May, 2000, Polatchek asked Bantum whether a "B" on her identification badge stood for "bitch." On October 31, 2000, Polatchek approached Bantum from behind, leaned against her back, shoved a pen between her legs in the area of her crotch, removed it, sniffed it and stated "Ahhh." Allegedly, his comment and gestures were witnessed by three other persons and, when Bantum made an outcry, Polatchek replied "You should take it as a compliment."

Upon the occurrence of the October 31, 2000 incident, Bantum reported Polatchek to an Amex floor official who failed and/or refused to report the incident to anyone else. On the following day, Bantum contacted the National Association of Securities Dealers ("NASD"), which promised to conduct an investigation. Ultimately, Bantum's complaint was referred to the defendant Brown who, in December, 2000, contacted Bantum to set up a meeting, which did not occur until February, 2001.

In or about April, 2001, Brown informed Bantum that he had met with Polatchek who denied the allegations, but because he was able to corroborate her allegations, Amex would go forward with her

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for any person wilfully to do any act or refrain from doing any act which enables such person to take such action....

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Generally, the relevant provisions of the Administrative Code pattern those of the Executive Law. Both statutes are herein collectively referred to as "the Human Rights Laws."

complaint. Brown warned Bantum that she should make sure that she really wanted to pursue her claim as it would create "problems" for her on the floor, and people might raise "bad stuff" about her. Worried about retaliation, Bantum told Brown she would think about it.

Two weeks later, Bantum contacted Brown and informed him that she did want to pursue her complaint. After hearing nothing for a month, in April/May, 2001, Bantum contacted Brown who informed her that he had not reached any conclusion, but he was going to meet with Polatchek's attorney. Despite repeated attempts to find out the status of the investigation, Brown heard nothing until early 2002, when Brown told Bantum to contact the defendant Chase, as her complaint had been removed from his desk. Brown also told Bantum to "demand some answers because I don't have any." When Bantum reached Chase the following day, he informed her that he understood her frustration, but "This is like a Peyton Place. We're doing the best that we can." Two days later, Chase informed Bantum that he had no answers for her.

Bantum contacted other Amex officials to note that her complaint had been pending for one and one-half years and to ask what was being done but, generally, received no satisfactory response. During this time, Polatchek continued to stare at Bantum and, if one of her trades broke up, he laughed loudly so everyone could hear. In addition, Bantum found that other traders and some specialists refused to deal with her or broke up her trades. One male who observed Polatchek's conduct on the floor stated to her "you should have a restraining order against that guy [Polatchek] because this is ridiculous."

## **B. The Answer and Cross Claims**

The defendants Amex, Brown and Chase interposed answers asserting numerous affirmative defenses, including: failure to state a cause of action; Amex is not a place of public accommodation; Amex attempted to correct unlawful harassment; Brown and Chase did not engage in or aid or abet the purported harassment; Amex, Brown and Chase participated in an Amex enforcement proceeding and are absolutely immune from suit; Polatchek and Heights caused the delay in the Amex enforcement proceedings; and, Chase did not employ or supervise Bantum or Polatchek.

Amex, Brown and Chase also interposed cross claims for contribution against Polatchek and Heights, alleging obstructionist and dilatory conduct during Amex enforcement proceedings. They assert that upon receiving Bantum's complaint in November, 2000,

they conducted an investigation and interviews, and the matter was referred to Amex's Enforcement Department. They advised Bantum that an investigation and enforcement process would be lengthy as a result of due process concerns and, when Bantum indicated she wished to move forward with her complaint, they did so.

Thereafter, they assert that Polatchek and/or his attorney delayed depositions and, it was not until July 3, 2001, that Polatchek was deposed under oath. During that deposition, Polatchek denied that any other formal complaints or charges had been brought against him relating to improper physical or verbal conduct.

After further investigation, Amex attempted to settle the matter by recommending the imposition of unspecified sanctions upon Polatchek. On May 3, 2002, Polatchek's attorney advised Brown that Polatchek would accept the recommended sanctions, subject to review of the settlement document. Due to further delays by Polatchek and/or his attorney, it was not until August 20, 2002 that Brown received from Polatchek an executed stipulation of settlement. In September, 2002, Amex learned that, in fact, Polatchek and Heights had been named as defendants in a separate action filed by another woman in the Southern District of New York, and were represented by the same attorney and firm who represented Polatchek during the Amex enforcement proceeding (and in this action).

To date, Polatchek and Heights have not interposed any answer to the complaint or the cross claims.

### **C. The Motion and Cross Motion**

In their motion to dismiss the complaint pursuant to CPLR 3211[a][7], Polatchek and Heights assert that the complaint fails to state a cause of action against them as: (1) they do not constitute an owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation within the meaning of the respective statutes and, instead, were competitors of Bantum and her employer; (2) the alleged incidents were not sufficiently severe or pervasive as to alter the conditions of employment or create an abusive working environment; (3) in any event, there is no allegation that Heights was involved in the alleged incidents; (4) there are no allegations of any adverse actions taken against Bantum to support the claim of retaliation; (5) there are no allegations of any form of blacklisting or commercial boycott within the meaning of the statutes; and, (6) there are insufficient allegations of aiding and abetting and, in any event, an individual cannot aid and abet his own conduct.

In support of their motion to dismiss the cross claim, Polatchek and Heights contend that there is no right to contribution for a violation of the Human Rights Laws.

In support of their cross motions to dismiss, Amex, Brown and Chase contend that: (1) because Amex is a self-regulated organization under the Securities and Exchange Commission ("SEC"), they are entitled to absolute immunity for their actions during the investigation and enforcement proceeding; (2) even assuming that immunity does not attach, the allegation that they failed to properly investigate and remedy the situation fails to state a cause of action; (3) as they did not actually participate in the primary discriminatory conduct, they cannot be held personally liable for aiding and abetting the discrimination; and, (4) as they do not employ Bantum or Polatchek, and Amex is not a place of public accommodation, the complaint fails to allege any cause of action for discrimination or retaliation.<sup>3</sup>

Amex, Brown and Chase also assert that contribution from Polatchek and Heights is permitted under the relevant statutes, and Polatchek and Heights had a duty to cooperate during the investigation and enforcement proceeding.

Bantum opposes the motion by Polatchek and Heights, contending that: (1) the complaint adequately alleges claims of discrimination by Polatchek and Heights, and by Amex, Brown and Chase who failed to properly investigate and respond to her claims of sexual harassment; (2) Amex is a place of public accommodation and Polatchek and Heights are member-owners or member-lessees of Amex within the meaning of the statutes; (3) Polatchek, as a principal of Heights, necessarily acted on behalf of Heights when he engaged in the discriminatory conduct; (4) the issue of whether the alleged harassment rises to the level of a hostile work environment cannot be determined upon a motion to dismiss; (5) the allegations of retaliation are sufficient; (6) Polatchek and Heights aided and abetted the conduct of Amex, Chase and Brown in failing to provide a work environment free from harassment; and, (7) Polatchek and Heights did discriminate against, boycott and blacklist her by breaking up her trades and encouraging others to refuse to trade with her.

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Polatchek and Heights also contend that the cross claims should be dismissed as Amex, Brown and Chase cannot be liable for failure to properly investigate internal complaints of harassment, and Amex does not constitute a place of public accommodation.

With respect to the cross motions by Amex, Chase and Brown, Bantum asserts that: (1) the immunity doctrine applies only to investigations into violations of rules pertaining to securities transactions, and not to investigations of sexual harassment; (2) Amex, Brown and Chase are liable for Polatchek's sexual harassment as a result of his relationship with Amex, and their employment by Amex, which constitutes a place of public accommodation; (3) Brown and Chase aided and abetted the discriminatory conduct of Polatchek and Heights by failing to properly investigate her claim and take remedial action, which allowed Polatchek to continue his discrimination and harassment; and, (4) Amex is responsible for the conduct of its members, and is liable for their retaliatory conduct.

#### **D. Decision**

Although the defendants Amex, Chase and Brown have interposed answers to the complaint, their cross motions are predicated solely on CPLR 3211, as is the motion by Polatchek and Chase. On a motion to dismiss pursuant to CPLR 3211, the court must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (see, Sokoloff v Harriman Estates Dev. Corp., 96 NY2d 409, 413). The question is not whether the party pleading the claim will ultimately prevail, but whether the claim states a cause of action (see, Williams v Aliano, 246 AD2d 592).

##### **1. The Public Accommodation Issue**

In support of their claim that Amex is "distinctly private" and, thus, exempt from application of the public accommodation portions of the Human Rights Laws, the defendants submit documents relating to the organization of Amex and assert that: the Amex trading floor is not open to the general public; access to the trading floor is limited to member firms; their registered employees and members and guests of members; and, applicants seeking membership in Amex must be fingerprinted, submit numerous financial and personal disclosure documents, and meet minimum capital requirements. Finally, the defendants note that membership in Amex is limited to 864 seats and, as a result it differs from Comex.

The Human Rights Laws prohibit discrimination in any place of public accommodation, which broadly encompasses public services and conveniences (see, Totem Taxi, Inc. v New York State Human Rights Appeal Bd., 65 NY2d 300, 305, recons. denied, 65 NY2d 1054; see,

also, Executive Law § 296[2]; Administrative Code § 8-107[4]). By its terms, Executive Law § 296[2] applies to "any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation" (see, Totem Taxi, Inc., supra; see also, Administrative Code § 8-107[4] [using same terms]). The relevant statutes expressly impose liability only on the person who actually commits the discriminatory act (see, Totem Taxi, Inc., supra; see also, State Div. of Human Rights ex rel. Cottongim v County of Oneida, 71 NY2d 623, 633).

Although an exemption exists for places which are "distinctly" private, the persons seeking the benefit of the exemption have the burden of establishing that the exemption applies to them and, generally, the issue is one of fact (see, Cahill v Rosa, 89 NY2d 14; New York State Club Ass'n, Inc. v New York, 69 NY2d 211, aff'd, 487 US 1; D'Amico v Commodities Exch., 235 AD2d 313, 314; see also, Executive Law § 292[9]; Administrative Code § 8-102[9]).

The Appellate Division, First Department has held that the trading floor of the commodities exchange known as the COMEX constitutes a "place of public accommodation," as it engages in trading by virtue of federal law, an individual desirous of pursuing a career in that area has little choice but to use its trading floor, and the Executive Law itself provides that the definition of public accommodation is to be interpreted liberally (see, D'Amico v Commodities Exch., Inc., supra). The Appellate Division, Second Department has, implicitly, determined that the New York Stock Exchange constitutes a place of public accommodation (see, Blum v New York Stock Exch., Inc., 298 AD2d 343, lv denied, \_\_\_ NY2d \_\_\_, 2003 NY LEXIS 59 [1/16/03]).

The defendants have failed to meet their burden of demonstrating that Amex does not constitute a place of public accommodation within the meaning of the relevant statutes (see, D'Amico, supra). Moreover, although Polatchek and Heights claim that they cannot constitute a place of public accommodation, the complaint clearly alleges that Polatchek is a member of Amex, and represents Heights while trading on the Amex floor. In view of Polatchek's membership status in Amex, and Heights' inability to act other than through Polatchek during trading, he and Heights are properly characterized as a member-owners, member-lessees, or member-proprietors of Amex.

Accordingly, the defendants' motion and cross motions to dismiss the complaint on the ground that Amex does not constitute a place of public accommodation, and that Polatchek and Heights do

not constitute persons falling within the meaning of the statutes, are denied.

## 2. The Immunity Issue

Amex, Brown and Chase assert that in accordance with the rules of Amex and the SEC, Amex conducts disciplinary proceedings when a member or person affiliated with a member is suspected of violating federal securities laws, the Exchange Constitution, or rules and regulations promulgated under that law. They assert that during disciplinary proceedings, the Amex Enforcement staff function in a prosecutorial capacity and, as a result, they are entitled to absolute immunity for actions which fall within the scope of their regulatory or general oversight functions.

When acting as a self-regulating organization, Amex, Brown and Chase are entitled to immunity from suit when they engage in conduct consistent with the quasi-governmental powers delegated to them pursuant to the Exchange Act and the regulations and rules promulgated thereunder (see, D'Alessio v New York Stock Exch. Inc., 258 F.3d 93, writ denied, 534 US 1066). Amex, Brown and Chase bear the burden of establishing that they are entitled to immunity from suit (see, D'Alessio, supra). The determination of whether immunity attaches depends upon the nature of the governmental function being performed, and immunity is particularly appropriate where Amex performs a function that would, otherwise, be performed by the SEC (see, D'Alessio, supra).

As Bantum properly notes, the cases relied upon by Amex, Chase and Brown concern investigations and disciplinary proceedings relating to violations of the Securities and Exchange Act of 1934 and related federal statutes (see, e.g., MFS Secs. Corp. v New York Stock Exch., Inc., 277 F.3d 613, cert. denied, \_\_\_ US \_\_\_, 122 S. Ct., 2592 [2002]; Gugliaro v New York Coffee, Sugar & Cocoa Exch., \_\_\_ F. Supp. \_\_\_, 1997 US Dist LEXIS 2718 [SDNY 3/11/97]).

Here, Amex, Chase and Brown have failed to proffer any evidence that their investigation of a claim of sexual discrimination and harassment falls within the scope of quasi-governmental powers delegated to Amex pursuant to the Securities and Exchange Act. Moreover, the case law clearly indicates that the manner and reasonableness of an investigation into a discrimination claim may be critical to the resolution by courts or juries, of the issue of employer/employee or other discrimination under Title VII and the Human Rights Laws (see, e.g., Father Belle Community Ctr. v New York State Div. of Human Rights, 221 AD2d 44, 53-54, lv denied, 89 NY2d 809; see, also, Bennett v Progressive Corp., 225 F. Supp.2d 190, 206, 210-15; Brice

v Security Operations Sys., Inc., \_\_\_ F. Supp. \_\_\_, 2001 US Dist LEXIS 1856 [SDNY 2/26/01]; Duviella v Counseling Serv., \_\_\_ F. Supp \_\_\_, 2001 US Dist LEXIS 22538 [EDNY 11/20/01], aff'd, 52 Fed. Appx. 152; Hayut v State Univ. of New York, 127 F. Supp. 2d 333, 341).

Thus, Amex, Brown and Chase have failed to meet their burden of demonstrating that absolute immunity attaches to their investigation of violations of the Human Rights Laws, or that such an investigation absolutely immunizes those who, themselves, are alleged to have practiced discrimination through the conduct of the investigation. Accordingly, the cross motions to dismiss on the ground of absolute immunity are denied.

### 3. Sufficiency of The Allegations Of The Complaint

#### \_\_\_\_\_ a. Hostile Work Environment and Retaliation

Contrary to the claims of Polatchek and Heights, the allegations of the complaint are not based upon a violation of Executive Law § 296[1], concerning employer/employee discrimination, or upon a Title VII hostile work environment claim centered upon the conduct of an employer (compare, e.g., Duviella v Counseling Serv., supra). Instead, Bantum's claims of discrimination and retaliation are based upon those sections of the Human Rights Laws which proscribe the discriminatory conduct of or retaliation by "any person" (see, Executive Law §§ 292[1], 296[2], [6], [7], [13]; Administrative Code §§ 8-102[1], 8-107[4], [6], [7], [18]). Thus, the fact that none of the defendants employed or supervised Bantum is irrelevant for purposes of the subsections of the Human Rights Laws at issue.

In any event, case law arising within the context of employee/employer discrimination indicates that the determination of whether a workplace is hostile is based on the totality of the circumstances, including "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance" (Novak v Royal Life Ins. Co., 284 AD2d 892, quoting, Harris v Forklift Sys., 510 US 17, 23). Thus, whether a workplace is hostile is generally one of fact.

Here, Bantum's complaint is sufficiently detailed to state a claim that she was required to endure an environment which was severely and pervasively hostile and, upon filing her complaint with Amex, was retaliated against by Polatchek and Heights, as well as by other brokers/members (see, e.g., Gregory v Daly,

243 F.3d 687, 693; Duviella v Counseling Serv., 2001 US Dist. LEXIS 22538, supra). Similarly, the complaint is sufficiently detailed to state a claim that Amex, Brown and Chase had knowledge of, acquiesced in or subsequently condoned the discriminatory conduct of Polatchek and Heights by failing to follow through with her complaint in a timely fashion, and in failing to timely impose any sanction so as to encourage and condone further discrimination and retaliation by other brokers/members (compare, Father Belle Community Ctr. v New York State Div. of Human Rights, 221 AD2d at 53-54).

Accordingly, the motions and cross motions to dismiss the complaint based upon failure to state a cause of action for hostile work environment or retaliation are denied.

#### b. Aiding and Abetting Liability

The Human Rights Laws provide that it is unlawful for a person to, inter alia, aid or abet any conduct prohibited by the statute (see, Executive Law § 296[6]; Administrative Code § 8-107[6]). Courts have interpreted this language to require a showing that the defendant actually participated in the conduct giving rise to the claim of discrimination (see, Brice v Security Operations Sys., Inc., 2001 US Dist. LEXIS 1856, supra, citing, e.g., Tomka v Seiler Corp., 66 F.3d 1295, 1317).

Aiding and abetting liability therefore requires that the aider and abettor share the intent or purpose of the principal actor, and there can be no partnership in an act where there is no community of purpose (see, Brice v Security Operations Sys., Inc., supra, quoting, New York Times Co. v New York, Comm. on Human Rights, 79 Misc.2d 1046, 1049, aff'd, 49 AD2d 851, aff'd, 41 NY2d 345). Consequently, to find that a defendant actually participated in the discriminatory conduct requires a showing of "direct, purposeful participation" (see, Brice, supra, quoting, Cerrato v Durham, 941 F. Supp. 388, 396).

With respect to aiding and abetting liability, the New York Court of Appeals has recognized that a party can be found liable if the conduct reinforces the very discriminatory practices which the federal and state anti-discrimination laws were meant to eliminate (see, Rodolico v Unisys, 189 F.R.D. 245, 251-52, citing, National Org. for Women v State Div. of Human Rights, 34 NY2d 416, 421).

The allegations of the complaint sufficiently allege purposeful discrimination by Polatchek and Heights, and an intent to further the discrimination and frustrate any remedy which Amex might have provided by failing to cooperate with the Amex

investigation. As these allegations are sufficient for aiding and abetting liability, this Court need not reach any issue concerning whether it is possible for Polatchek and Heights to aid and abet their own actions (see, e.g., Duviella v Counseling Serv., 2001 US Dist LEXIS 22538 supra; see, also, Bennett v Progressive Corp., 225 F. Supp.2d at 214 supra).

Moreover, with respect to Amex, Brown and Chase, the complaint sufficiently alleges that in failing to properly investigate the discrimination complaint and to timely impose a remedy, they conducted a sham investigation and thereby aided and abetted the discriminatory conduct by Polatchek and Heights, as well as the subsequent retaliation by those defendants and other member/brokers on the trading floor. The complaint also sufficiently alleges that Amex, Brown and Chase had knowledge of, acquiesced in, or subsequently condoned the discriminatory and retaliatory conduct of Polatchek, Heights and other broker/members, which directly impacts on the connected claims of a hostile work environment and retaliation (compare, Father Belle Community Ctr. v New York State Div. of Human Rights, 221 AD2d at 56 supra; Bennett v Progressive Corp., 225 F. Supp.2d at 210 supra).

Accordingly, the defendants' motion and cross motions to dismiss the complaint insofar as it alleges aiding and abetting liability, are denied.

#### c. Boycott Liability

The Human Rights Laws are directed at curbing, in particular, types of business practices that involve the concerted use of economic means to disadvantage the trade or commercial activities of a member of a targeted group (see, Scott v Massachusetts Mut. Life Ins. Co., 86 NY2d 429, 435; see also, Executive Law § 296[13]; Administrative Code § 8-107[18]). In sum, they are intended to curb types of "economic warfare" used as part of a scheme to injure a New York resident or domestic corporation in national or international business because of ethnicity, gender or other protected status (see, Scott, supra).

The absence of evidence of a formal boycott or blacklisting campaign will not be fatal to a discrimination claim under the relevant Human Rights Laws provisions (see, Scott, supra at 436). For example, evidence establishing that a defendant engaged in a pattern of conduct that commercially disadvantaged only members of a protected class may be sufficient to defeat a summary judgment motion (see, Scott, supra).

Contrary to the claim of Polatchek and Heights, the allegations of the complaint are sufficient to state a cause of action under the boycott provisions of the Human Rights Laws. The complaint sufficiently alleges a concerted use of economic means to disadvantage trading by Bantum, and female brokers in general, on the Amex trading floor (see, e.g., Feggoudakis v New York State Div. of Human Rights, 230 AD2d 739). Accordingly, the motion by Polatchek and Heights to dismiss the complaint insofar as it asserts boycott liability, is denied.

#### 4. Contribution Cross Claims

Notwithstanding the fact that there is no statutory or federal common law right to contribution under Title VII (see, Northwest Airlines, Inc. v Transport Workers Union, 451 US 77), the Federal District Court for the Eastern District of New York has held that a cross claim for contribution may be interposed within the context of a sexual discrimination claim under the Human Rights Laws (see, Rodolico v Unisys Corp., 189 F.R.D. at 250-52).

This court agrees with the analysis conducted in Northwest Airlines, Inc. v Transport Workers Union of America, *supra*. Moreover, the cross claims adequately state causes of action for contribution under the Human Rights Laws. As a result, the motion by Polatchek and Heights to dismiss the cross claims for contribution is denied.

#### **Conclusion**

Accordingly, based upon the papers submitted to this court for consideration and the determinations set forth above, it is

ORDERED that the motion by the defendants Heights Partners, Inc. and Lawrence Polatchek to dismiss the complaint and the cross claims interposed against them by the co-defendants the American Stock Exchange LLC, Eric S. Brown and Richard T. Chase is denied; and it is further

ORDERED that the cross motion by the defendant Richard T. Chase to dismiss the complaint is denied; and it is further

ORDERED that the cross motion by the defendants American Stock Exchange, LLC and Eric S. Brown to dismiss the complaint is denied.

Dated: April 3, 2003

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J.S.C.