

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Scarpulla, J.P., González, Rodriguez, Higgitt, Hagler, JJ.

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GLENN JUDSON,
Plaintiff-Appellant,

Index No. 652185/21
Case No. 2025-04984

-against-

ELLIOTT MANAGEMENT CORPORATION, et al.,
Defendants-Respondents.

Menken Simpson & Rozger LLP, New York (Jason J. Rozger of counsel), for appellant.

Akin Gump Strauss Hauer & Feld LLP, New York (Richard J. Rabin of counsel), for respondents.

Order, Supreme Court, New York County (Mary V. Rosado, J.), entered on or about July 7, 2025, which granted defendants’ motion for summary judgment dismissing the complaint, unanimously modified, on the law, to deny the motion with respect to plaintiff’s third cause of action for retaliation under the New York City Human Rights Law, and that cause of action reinstated, and otherwise affirmed, without costs.

Plaintiff failed to raise a triable issue of fact as to whether age discrimination played any part in defendants’ reasons for terminating him, as there is no evidence showing he was treated differently or less well than similarly situated, younger employees (*see e.g. Hudson v Merrill Lynch & Co., Inc.*, 138 AD3d 511, 516 [1st Dept 2016], *lv denied* 28 NY3d 902 [2016]). Stray remarks made by the chief technology officer, defendant Oleg Olovyannikov, to a different employee about plaintiff not being “young and energetic” do not support an inference of discrimination under the

circumstances (*see Serdans v New York & Presbyt. Hosp.*, 112 AD3d 449, 450 [1st Dept 2013]). Moreover, after his termination, plaintiff's work was delegated to another employee who was seven years his senior, plaintiff was terminated by a manager who was older than he, and defendants provided data that the average employee age slightly rose after plaintiff's termination (*see Sedhom v SUNY Downstate Med. Ctr.*, 201 AD3d 536, 537 [1st Dept 2022]; *Kosarin-Ritter v Mrs. John L. Strong, LLC*, 117 AD3d 603, 604 [1st Dept 2014]).

The court properly dismissed plaintiff's hostile work environment claim, as his basis for the claim was that Olovyannikov made disparaging remarks about women and Indian employees to other employees in the office. Assuming *arguendo* that these allegations are true, plaintiff cannot establish a hostile work environment based on protected traits that he does not share and comments that were not made to him (*see Williams v New York City Hous. Auth.*, 61 AD3d 62, 80 [1st Dept 2009], *lv denied* 13 NY3d 702 [2009]).

Defendants proffered legitimate, nondiscriminatory reasons for terminating plaintiff's employment, as the individual defendants and additional supervisors testified to plaintiff's unsatisfactory performance on a key project over the course of months, including dissatisfaction that predated plaintiff's internal complaint of discrimination to the human resources department on behalf of one of his supervisees (*see Cadet-Legros v New York Univ. Hosp. Ctr.*, 135 AD3d 196, 202-203 [1st Dept 2015]). However, plaintiff raised an issue of fact as to whether those reasons were pretextual or whether his termination was motivated at least in part by retaliatory animus for relaying the complaint. The temporal proximity of plaintiff's complaint to human resources to his own termination three months later, together with the other submitted evidence, raises

an issue of fact as to a causal connection between the protected activity and the adverse action (see *Herskowitz v State of New York*, 222 AD3d 587, 588 [1st Dept 2023]). While Olovyannikov, who was responsible for plaintiff's termination, claims to have not known about plaintiff's complaint until after he terminated plaintiff, circumstantial evidence raises an issue of fact as to whether Olovyannikov was aware that plaintiff had engaged in protected activity earlier than he claimed. Credibility determinations are for the jury (see *Franco v Hyatt Corp.*, 189 AD3d 569, 572 [1st Dept 2020]). Further evidence of pretext was presented by plaintiff, including plaintiff's positive performance review in 2017, and the fact that no other employee lost their job because of the purported lack of progress with the key project.

We have considered the remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: June 30, 2026

A handwritten signature in black ink, reading "Susanna Molina Rojas". The signature is fluid and cursive, with the first name "Susanna" and last name "Rojas" clearly distinguishable.

Susanna Molina Rojas
Clerk of the Court