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

PRESENT: LOUIS B. YORK Justice PART 2

Index Number : 113585/2008
CHIN, AMY
VS.
HOUSING AUTHORITY
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

FILED

JUL 12 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 7/7/11

LOUIS B. YORK J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2
----------X
AMY CHIN,

Plaintiff,

-against-

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

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Consolidated Action Index No.: 113585/2008

LOUIS B. YORK, J.:

This action arises out of plaintiff Amy Chin's claims that she was subject to discrimination, retaliation and an alleged hostile work environment, based on her race/ethnicity, national origin and gender, in violation of both the New York State Human Rights Law (NYSHRL) and the New York City Human Rights Law (NYCHRL). Plaintiff's two complaints, 113585/2008 and 105143/2009, are consolidated for this action. Defendant New York City Housing Authority (NYCHA) moves, pursuant to CPLR 3212, for an order granting summary judgment dismissing plaintiff's complaints in this consolidated action.

BACKGROUND AND FACTUAL ALLEGATIONS

Plaintiff started her employment with NYCHA in 1981, when she was hired as an Assistant Accountant. In 1991, plaintiff filed a complaint with NYCHA's Department of Equal Opportunity (DEO) because she believed that she was not being considered for

managerial positions due to her national origin, which is Chinese. The DEO did not find that plaintiff's complaint was legitimate.

In 1993, plaintiff was promoted to the managerial M-1 title of Administrative Accountant in the Disbursements Division of the Financial Operations Department.[1] Plaintiff's official title was the Supervisor of Reports and Accounts.

In 2001, plaintiff was supervised by Ahmad Thabet (Thabet), who was the M-2 Assistant Director of the Control Section of the Disbursements Division of the Financial Operations Department. In 2001, plaintiff filed a complaint with the DEO against Thabet, alleging that he harassed her based on her gender and national origin. The DEO did not find a basis for plaintiff's complaint.

In August 2003, Thabet was promoted to an M-3 Deputy Director of the Disbursements Division position. Plaintiff claims that, in December 2003, she verbally asked Thabet to be promoted to his M-2 position. Plaintiff alleges that Thabet told her that she had to wait for a replacement Director of the Financial Operations Department to be hired, before any changes could be made. The director being replaced, Michael Pagani (Pagani), had retired shortly after Thabet's promotion. Pagani allegedly told plaintiff that he recommended her to replace

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[1]The designations "M-1", "M-2", etc. are civil service titles which generally coincide with an increase in salary and responsibility.

Thabet.

In March 2004, plaintiff wrote a letter to Thabet and again requested a promotion to the M-2 title. Thabet states that he informed plaintiff that, at the time, there was no open position, and, even if there was a position, it was not his decision as to who would fill it. Affidavit of Ahmad Thabet (Thabet Affidavit), ¶ 12. According to plaintiff, Thabet called her into his office and told her to stop complaining and that as a Chinese woman, plaintiff did "not have the power or influence that White, Jewish or Italian employees have." Affidavit of Amy Chin (Chin Affidavit), ¶ 27. Thabet, who is of Egyptian descent, denies making these remarks.

In April 2004, the interim Director, Kirit Panchamia (Panchamia) transferred Bernard Pigott (Pigott) to Thabet's M-2 title and budget line. According to NYCHA, this was an administrative transfer. Pigott was an M-2 level managerial position in another department and was being moved to plaintiff's department. He did not receive a raise for this lateral move. According to Panchamia, there was no vacancy filled with the Pigott transfer. Panchamania also states that he did not know that plaintiff wanted to be promoted to the position of Assistant Director of the Control Section. Panchamia further notes that Thabet did not appoint Pigott to this position. Pigott was transferred because Panchamia believed that "Pigott could provide

valuable assistance to Mr. Thabet" and "Pigott had had a personality clash with his supervisor." Affidavit of Kirit Panchamia (Panchamia Affidavit), ¶ 4.

Plaintiff notes that Pigott is White. She believes that he was not as qualified as she was for the position.

In October 2004, plaintiff again complained to Thabet that she had been "singled out as a Chinese woman, from any consideration for promotion." Chin Affidavit, ¶ 26. Thabet claims that plaintiff did not mention how "Pigott serving in this role was evidence of my discriminatory treatment of her." Thabet Affidavit, ¶ 20.

In October 2004, NYCHA's newly appointed controller, Jeffrey Pagelson (Pagelson), approved a proposed transfer of plaintiff so that she would assume managerial responsibility of the Petty Cash and Employee Expenses Unit. Pagelson believed that plaintiff "was capable of assuming this important responsibility and that she would provide the proper oversight to ensure the integrity of this payment and reimbursement system." Affidavit of Jeffrey Pagelson (Pagelson Affidavit), ¶ 7. Plaintiff objected to this transfer and title change, as she saw this new assignment as a lower level job. Thabet and Pagelson decided not to transfer plaintiff.

In November 2004, Pagelson and Aaron Mittelman (Mittelman), Deputy Director of the Treasury Division, asked plaintiff if she

would transfer to the Treasury Division and create a unit similar to the one she currently managed. Pagelson states that this transfer would have been a "path for [plaintiff's] future advancement." Pagelson Affidavit, ¶ 9. Plaintiff told Pagelson that she would rather stay in her department, that she felt like she would be more beneficial in her department, and hoped to be promoted within the department. Pagelson Affidavit, Exhibit B, at 2. Plaintiff felt like this second transfer opportunity was also more like a demotion.

In November 2005, Pagelson transferred plaintiff out of the Accounting and Fiscal Services Department and into the Operations Department, which was another NYCHA department entirely. Plaintiff, two other managerial employees, and nine other employees, were transferred from the Accounts Payable Division to the Operations Department, all at the same time. Pagelson decided to restructure the Accounting and Fiscal Services Department and felt that this department would not have a negative impact if plaintiff was transferred out. Pagelson noted that his past experiences with plaintiff and her unwillingness to change confirmed that plaintiff was inflexible about the needs of the department. Pagelson stated that he did not need another manager in plaintiff's section and that he did not "perceive plaintiff to have good leadership skills." Pagelson Affidavit, ¶ 12. Pagelson continued that he decided as early as the end of

2004 that he felt that plaintiff was a good candidate to transfer out of the department.

On November 21, 2005, plaintiff was notified that she would have to report to the Manhattan Management Office, located at 1980 Lexington Avenue, New York, New York. NYCHA contends that, as a result of this transfer, there was no change in plaintiff's salary, benefits, managerial level or title.

In December 2005, plaintiff complained to the Chairman of NYCHA and to human resources, claiming that her transfer was discriminatory and clearly retaliatory. Plaintiff also complained to Thabet, who allegedly told her that she was a Chinese trouble maker for making her complaints. Thabet denies these statements.

Plaintiff took a leave of absence and started her new work location in March 2006. Since then, NYCHA has failed to promote plaintiff or transfer her back to her old location and department. Plaintiff contends that NYCHA has not promoted her or transferred her due to her ethnicity, gender, age and/or in retaliation for filing a discrimination claim. Plaintiff gives examples of many other people who were promoted and why she believes that she is more qualified than they are. For instance, plaintiff describes the following:

> Mr. Pagelson promoted Anna Geller (white) as M-1 Provisional Administrative Manager in Account Payable. Geller has no accounting degree. He also decided to retain Bernard Pigott as Assistant Director provisional

> Administrative Staff Analyst, and Mario Calandruccio (-1) provisional Administrative Manager over all accountants in Accounts Payable (both only with a GED certified/no accounting or college degree, but both are white).
> After I filed the lawsuit, Mr. Pagelson decided to promote a bookkeeper Hector Lung (a Vietnamese-Chinese/with no college degree) to be a Manager (M-1) over the accountants. He also promoted an (Asia-Indian) Ram to be in charge of clerical staff ... .

Chin Affidavit, ¶¶ 59-60.

When Pigott retired in 2007, plaintiff believes that it was she who was entitled to his job, not his replacement, Simona Nicu (Nicu). Plaintiff claims that she is being retaliated against and subjected to a hostile work environment in her current position by her supervisor, Hector Ramos (Ramos). Plaintiff states that in her new position, she is supervised by a lower level employee and she is given an excessive amount of work not even in her field. For instance, plaintiff claims that she was acting as a contract administrator for heating, sewer and roof repairs contracts, and given highly technical work which should have required a background in plumbing.

Among other things, Ramos allegedly gave her the least desirable location in the office to work. Ramos also purportedly did not allow plaintiff to take time off to visit her father in the hospital. She states that she is not being treated like a manager and is subject to microscopic scrutiny. Ramos allegedly made comments about her, saying that there was a little old lady in the office. Ramos purportedly said that Chinese food is

greasy and told plaintiff that she has a Chinese accent. And sometimes the coworkers, they're talking about Chinese food. Sometimes they say Chinese food is too much greasy." NYCHA's Exhibit S, Chin TR, at 118.

In February 2006, plaintiff commenced an employment discrimination action in federal court against NYCHA. Plaintiff alleged that NYCHA discriminated and retaliated against plaintiff on the basis of race and/or national origin, in violation of 42 USCS § 1981 and the NYSHRL and NYCHRL. *See Chin v New York City Housing Authority*, 575 F Supp 2d 554 (SD NY 2008). The court granted NYCHA's motion for summary judgment dismissing the federal claim. It did not address the state or city claims.

In October 2008, plaintiff commenced the first state action against NYCHA, in which she offered the same claims as she set forth in the federal complaint, and also added that she was subject to a hostile work environment.

Plaintiff claims that NYCHA violated the NYSHRL and the NYCHRL when it failed to promote her continuously on the basis of her race, ethnicity/national origin or in retaliation for engaging in a protected activity. Plaintiff believes that she should have been promoted to Thabet's M-2 position, and claims that Thabet's replacement is not as qualified as she is. Plaintiff alleges that, from 2002-2004, all of the promotions given within the Finance Department were given generally to non-

Chinese, or to White employees.

Plaintiff claims that, after complaining to Thabet about the discriminatory hiring of someone else for his replacement, Thabet retaliated against her. Some examples of Thabet's alleged retaliatory conduct include, "yelling and screaming at me in the presence of subordinates, demeaning assignments and disrespectful treatment in their presence, and lack of training or participation in management meetings." Chin Affidavit, ¶ 38. Plaintiff further alleges that she was subject to a "demeaning and humiliating task" when she was asked to report for a special project. NYCHA's Exhibit M, Complaint, ¶ 36.

After plaintiff complained to Pagelson about Thabet's behavior and about not being promoted within the department, she alleges that Pagelson retaliated against her by transferring her out of the department. Plaintiff also complained about being sent on the special project. Plaintiff contends that her current transfer to the office on Lexington Avenue causes her "tremendous hardship" in that she has a longer commute and that it is further away for her to visit her elderly father. *Id.*, ¶ 41. She alleges that her new responsibilities are that of a "bookkeeper/clerk." *Id.*, ¶ 50. She contends that she is subject to disparate treatment and that non-Chinese employees are not treated in the same way. Plaintiff believes that, as a result of NYCHA's "intentional and unlawful" discriminatory employment

practices, she has suffered anxiety, as well as other maladies. *Id.*, ¶ 54.

In March 2009, plaintiff filed a complaint of alleged discrimination with NYCHA's DEO, where she alleged that Ramos discriminated against her on the basis of gender, national origin and race, and retaliated against her for filing her previous court claims.

In April 2009, plaintiff commenced another state action against NYCHA alleging that, since 2006 to the present, she has been subject to disparate treatment, a hostile work environment and retaliation, in violation of the NYSHRL and the NYCHRL. In her complaint, plaintiff sets forth many ways that she was allegedly discriminated against, retaliated against, or subject to a hostile work environment, some of which include:

> Plaintiff would be subject to micro management and microscopic scrutiny on a daily basis;
> Plaintiff would be barraged on a daily basis with e-mails, and telephone calls from her managers expecting immediate responses;
> Plaintiff has been subject to demeaning and discriminatory comments;
> Plaintiff has been given menial tasks outside her normal job duties;
> Plaintiff has been subjected to a difference in treatment regarding sick days and personal time off;
> Plaintiff was bypassed by promoting several other non-Chinese employees and Chinese employees who were not as qualified as Plaintiff.
> Plaintiff does not have an office, no windows, no air conditioning and is assigned to a desk with other clerical and secretarial staff. Plaintiff was also initially denied a fan[.]

NYCHA's Exhibit O, Complaint, at 2-3.

Plaintiff also contends that no Chinese employees in the Finance/Accounting Department have been promoted from the years 1995-2005. However plaintiff continues that between 2006-2010, at least seven Chinese employees have been promoted. Plaintiff believes that this is due to her DEO activity and also that not promoting her is linked to her DEO activity.

In light of the current court actions, NYCHA's DEO closed its investigation against Ramos.

By order dated February 1, 2010, this court consolidated the plaintiff's October 2008 and April 2009 complaints against NYCHA for violations of the NYSHRL and the NYCHRL.

Defendant now moves, pursuant to CPLR 3212, for an order granting summary judgment dismissing the complaints in this consolidated action.

DISCUSSION

I. Summary Judgment

"The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law." *Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 (1st Dept 2007), citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). Upon proffer of evidence establishing a prima face case by the movant, "the party opposing a motion for summary judgment bears the burden of 'produc[ing] evidentiary proof in admissible

form sufficient to require a trial of material questions of fact.'" *People v Grasso*, 50 AD3d 535, 545 (1st Dept 2008), quoting *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980). In considering a summary judgment motion, evidence should be viewed in the "light most favorable to the opponent of the motion." *Id.* at 544, citing *Marine Midland Bank, N.A. v Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610 (2d Dept 1990).

II. Discrimination Claims under the NYSHRL and NYCHRL

Pursuant to NYSHRL, as set forth in Executive Law § 296 (1) (a), it is an unlawful discriminatory practice for an employer to refuse to hire or employ, or to fire or to discriminate against an individual in the terms, conditions or privileges of employment because of the individual's gender, race, creed, national origin or age. The standard for proof for discrimination and retaliation claims brought pursuant to NYSHRL is the same for claims brought under Title VII of the Civil Rights Act of 1964 (Title VII). *Maher v Alliance Mortgage Banking Corp.*, 650 F Supp 2d 249, 259 (ED NY 2009).[2]

Plaintiff claims that NYCHA violated the NYSHRL and NYCHRL by subjecting her to disparate treatment when, among other allegations, she was bypassed for several promotions. This

[2] The provisions of the NYCHRL "mirror" the provisions of the New York State Human Rights Law, section 296 of the Executive Law, and the same standards are applicable. *See Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 n 3, (2004).

disparate treatment will be considered in two parts, following plaintiff's two complaints; prior to 2006, and then 2006 until the present.

In the realm of discrimination allegations brought pursuant to the NYSHRL and the NYCHRL, a plaintiff has the initial burden to establish a prima facie case of discrimination. *Forrest v Jewish Guild for the Blind,* 3 NY3d 295, 305 (2004). Plaintiff must set forth that "the plaintiff is a member of a protected class, was qualified for the position, and was terminated or suffered some other adverse employment action, and that the discharge or other adverse action occurred under circumstances giving rise to an inference of discrimination." *Baldwin v Cablevision Systems, Corp.*, 65 AD3d 961, 965 (1st Dept 2009).

If the plaintiff is able to set forth a prima facie case of discrimination, then the burden shifts to the defendants to rebut the presumption by demonstrating that the plaintiff was rejected for a legitimate reason. The defendants must provide evidence that "'the plaintiff was rejected, or someone else was preferred, for a legitimate, nondiscriminatory reason. The defendant need not persuade the court that it was actually motivated by the proffered reasons.'" *Stephenson v Hotel Empls. & Rest. Empls. Union Local 100 of AFL-CIO,* 6 NY3d 265, 270-271 (2006), quoting *Texas Department of Community Affairs v Burdine,* 450 US 248, 254 (1981).

Prior to 2006

Plaintiff has made various intertwined discrimination and retaliation claims regarding her treatment before she was transferred from the Financial Operations Department.[3] For instance, in 2003, plaintiff was denied the promotion into her current supervisor's (Thabet) position, when Thabet was promoted. Plaintiff alleges that, after telling Thabet that she felt left out because she is Chinese, Thabet told her to stop complaining and that the Whites, Jews and Italians have the power in housing. Pigott was transferred to plaintiff's department to take the place of Thabet. Plaintiff claims that Pigott, who is White, was not qualified to replace Thabet. Thabet has denied making these statements to plaintiff.

Even if plaintiff were able to make her prima facie case for discrimination, NYCHA has set forth independent and legitimate reasons for why Pigott, and not plaintiff, was placed in Thabet's position. First of all, Thabet was not the one to place Pigott in his position. Briefly, Panchamia, who had transferred Pigott, who was a lateral M-2 transfer, was not aware of plaintiff's complaint against Thabet nor of her desire to be promoted to Thabet's position. Panchamia transferred Pigott based on

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[3]In actuality, plaintiff alleges that all the actions and conditions she experienced while at NYCHA are due to discrimination, retaliation, and comprise a hostile work environment.

Pigott's experience in the Budget Department and also his belief that transferring Pigott out of the Budget Department would be in the Budget Department's best interest.

Plaintiff also alleges that multiple people were promoted between the years of 2002 and 2004 who were non-Chinese and that plaintiff did not even have the opportunity to apply for these promotions. Since plaintiff filed her federal claim on February 23, 2006, plaintiff's allegations for failure to promote prior to February 23, 2003, are beyond the three-year statute of limitations. *See* CPLR 214 (2).

However, NYCHA has shown that the positions referenced by plaintiff were given to other individuals for reasons that were not discriminatory. For example, according to NYCHA, Phillip Carlucci was hired in 2004 as an Assistant Director in the AFSD due to his past experience with New York City contract procurement procedures. NYCHA continues that, despite plaintiff's generalization that no Chinese employees were promoted between 1995-2005, NYCHA has submitted affidavits that there were indeed promotions of Chinese employees within those years.

Moreover, although NYCHA claims that most of the job positions were posted, even if they had not been posted for plaintiff to apply to, this does not demonstrate discrimination against plaintiff. "[F]ailure to post a vacancy does not give

rise to an inference of discrimination - it merely relieves the plaintiff of her burden to show that she applied for the position." *Giannone* v *Deutsche Bank Securities, Inc.*, 392 F Supp 2d 576, 590 (SD NY 2005).

Plaintiff also contends that her final transfer to the Manhattan Management Office was discriminatory. NYCHA has proffered that plaintiff was offered two opportunities to assist the department. After she rejected these opportunities, plaintiff was viewed as someone who was resistant to change and not a good leader. A restructuring occurred, and Pagelson felt that the department would not be impacted negatively if plaintiff was transferred out. It was not only plaintiff, but other managers and other employees who were also transferred. NYCHA has given legitimate business reasons for plaintiff's transfer, and she has not provided evidence that it was pretextual.

After 2006, plaintiff also alleges that the discrimination continued and that she was allegedly passed up for promotions due to her age, gender or her ethnicity. For instance, after Pigott retired, Simona Nicu (Nicu), labeled by plaintiff as "White/Hispanic," was promoted to Pigott's M-2 position. Plaintiff contends that this position was filled by someone younger, who did not have as much experience as plaintiff.

One court summarized a plaintiff's burden in demonstrating that an the employer discriminated against the plaintiff as

follows:

> When a plaintiff seeks to prevent summary judgment on the strength of a discrepancy in qualifications ignored by an employer, that discrepancy must bear the entire burden of allowing a reasonable trier of fact to not only conclude the employer's explanation was pretextual, but that the pretext served to mask unlawful discrimination. In effect, the plaintiff's credentials would have to be so superior to the credentials of the person selected for the job that no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff for the job in question [internal quotation marks and citation omitted].

Byrnie v Town of Cromwell, Board of Education, 243 F3d 93, 103 (2d Cir 2001).

NYCHA contends that Nicu was found to be an impressive managerial employee with extensive experience. The other candidates, including plaintiff, did not possess Nicu's leadership skills. Although plaintiff believed that Nicu only possessed secretarial skills, plaintiff was unaware of Nicu's education or her qualifications. Moreover, Pagelson, who hired Nicu, states that he was not aware of the ages or places of birth of the candidates he interviewed. NYCHA has provided legitimate non-discriminatory reasons for why it chose each candidate for each position instead of plaintiff. As such, plaintiff cannot establish a prima facie case of discrimination with Nicu's appointment, or with any of the other appointments to which she objects.

In summary, the specific instances of alleged disparate

treatment referenced by plaintiff do not suggest discrimination on the basis of national origin, race, age or gender. The record indicates that NYCHA has provided legitimate reasons for every one of the business decisions which were questioned by plaintiff. Plaintiff's "mere conclusions" and "unsubstantiated allegations" are insufficient to defeat a motion for summary judgment. *Zuckerman v New York*, 49 NY2d at 562. Accordingly, NYCHA is granted summary judgment with respect to plaintiff's discrimination claims in the consolidated complaint.

III. Retaliation Claims under the NYSHRL and NYCHRL

Prior to 2006, plaintiff alleges that NYCHA retaliated against her, among other things, when Pagelson asked her to transfer twice and then finally transferred her to the Manhattan Management Office.

The Court of Appeals has held that "it is unlawful to retaliate against an employee for opposing discriminatory practices." *Forrest v Jewish Guild for the Blind*, 3 NY3d at 312. When analyzing claims for retaliation, courts apply the burden shifting test as set forth in *McDonnell Douglas Corp. v Green* (411 US 792, 802 [1973]), which places the "initial burden" for establishing a prima facie case of retaliation on the plaintiff. Claims for retaliation under the NYSHRL and the NYCHRL are analyzed in the same manner as those under Title VII. *Middleton v Metropolitan College of New York*, 545 F Supp 2d 369, 373 (SD NY

2008). For a plaintiff to successfully plead a claim for retaliation, he or she must demonstrate that:

> (1) she has engaged in protected activity, (2) her employer was aware that she participated in such activity, (3) she suffered an adverse employment action based upon her activity, and (4) there is a causal connection between the protected activity and the adverse action.

Forrest v Jewish Guild for the Blind, 3 NY3d at 313.

"Protected activity" refers to "actions taken to protest or oppose statutorily prohibited discrimination." *Aspilaire v Wyeth Pharmaceuticals, Inc.*, 612 F Supp 2d 289, 308 (SD NY 2009).

NYCHA refutes that plaintiff's complaints to both Pagelson and Thabet were protected activity, since they claim that plaintiff did not address discrimination within the NYSHRL or NYCHRL. However, even taking the evidence in the plaintiff's favor that she did engage in protected activity, plaintiff is still unable to plead a claim for retaliation since she cannot demonstrate how any of Pagelson or Thabet's behavior constituted an adverse action.

An "adverse employment action" is defined as follows:

> An adverse employment action is a materially adverse change in the terms and conditions of an individual's employment. It is more disruptive than a mere inconvenience, and might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices unique to a particular situation [internal quotation marks and citations omitted].

Hunt v Klein, 2011 WL 651876, *5, 2011 US Dist LEXIS 14918, *14-15 (SD NY 2011). An "adverse employment action" is defined the same in the NYCHRL as in the NYSHRL. *Bermudez v City of New York*, __F Supp 2d___, 2011 WL 1218406, *10, 2011 US Dist LEXIS 33807 * 28 (SD NY 2011).

Plaintiff alleges that she considered the first two transfer requests to be demotions. NYCHA, on the other hand, contends that the two requests to have plaintiff transfer were considered important and could lead plaintiff to future advancement. The record indicates that NYCHA explained this to plaintiff and regardless, these transfers did not happen because the plaintiff rejected these opportunities.

Plaintiff maintains that her final transfer to the position she currently holds was in retaliation for complaining about discriminatory actions. Plaintiff alleges that, as a result of being transferred, she has a longer commute and, among other things, is "relegated to perform simple clerical tasks." Chin Affidavit, ¶ 42. However plaintiff's complaints about her transfer do not rise to the level of an adverse employment action. As established previously, plaintiff was transferred for legitimate, not discriminatory reasons. Plaintiff did not lose any salary or benefits. A longer commute, along with plaintiff's other complaints, are simply inconveniences.

2006-Present

In her current office location, plaintiff alleges that she is retaliated against in many ways, some of which include: an excessive work load, being treated differently than other coworkers with respect to her personal days, and that she was counseled for missing work during a snowstorm. Plaintiff does not provide an explanation of how these current alleged acts of retaliation are related to her prior protected activity of complaining, since, plaintiff is now in a new office with a different supervisor. Regardless, even assuming that Ramos and other supervisors were complained to about discriminatory behavior, plaintiff cannot demonstrate that any of these actions were adverse.

With respect to the denial of personal days off, Ramos states that he approved "plaintiff's requests for 8 paid personal days off in February 2009 and June 2010 ... between December 2007 and March 2010, I approved 17 leave of absence requests by plaintiff for paid personal time off totaling 39 days." Supplemental Affidavit of Hector Ramos, ¶ 3. Ramos provides a record of this.

With respect to her personal days, plaintiff testified that Ramos subjected her to different treatment, in that each time she asked, he gave her a "hard time" compared to the other people in the office. When asked why, plaintiff testified, "I'm older Chinese lady. Was born in China." Chin TR, at 117. Plaintiff's

baseless allegations do not provide evidence to show that Ramos's behavior regarding her personal days off was an adverse employment action.

Plaintiff complains of an excessive workload, in that she has to make photocopies, telephone calls and faxes. Ramos stated that he, too, performs these tasks. Ramos also stated that he had conversations with all of his staff, explaining to them the need to stay late on some evenings for a two-month period when the department engages in the process of closing out the year. Regardless, this, as well as plaintiff's other allegations of retaliation, do not rise to the level of a "materially adverse change in the terms and conditions of an individual's employment." *Hunt v Klein*, 2011 WL 651876, *5, 2011 US Dist LEXIS 14918, *14 (SD NY 2011).

Plaintiff alleges that she was retaliated against when, after she could not come into work due to a snowstorm, she was given counseling. She did not believe that any other employee was given counseling. Ramos states that plaintiff was provided with the NYCHA policy which explained that weather conditions are generally not a condition to be absent from work. Ramos contends that he has also issued counseling memoranda to other staff in his department.

Regardless, NYCHA's explanation of company policy does not rise to the level of a material adverse employment action. As

stated in *Hunt v Klein* (2011 WL 651876, at *5, 2011 US Dist LEXIS 14918, at *15), "the application of the [employer's] disciplinary policies to [the employee], without more, does not constitute an adverse employment action [internal quotation marks and citation omitted]." As such, plaintiff has not met her burden, and cannot demonstrate that the counseling she received from Ramos was an adverse employment action.

Since plaintiff has failed to demonstrate that any of the employment actions were adverse, plaintiff cannot show retaliation as a matter of law. As such, the fourth prong of a retaliation claim, which is whether or not there was a causal connection, is of no import. Accordingly NYCHA is granted summary judgment dismissing plaintiff's retaliation claims in the consolidated complaint.

IV. Hostile Work Environment Claims under the NYSHRL

A hostile work environment is present when "the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment [interior quotation marks and citation omitted]." *Forrest v Jewish Guild for the Blind,* 3 NY3d at 310.

"Whether a workplace may be viewed as hostile or abusive -- from both a reasonable person's standpoint as well as from the victim's subjective perspective -- can be determined only by

considering the totality of the circumstances." *Matter of Father Belle Community Center v New York State Division of Human Rights*, 221 AD2d 44, 51 (4th Dept 1996). These circumstances include "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 [interior quotation marks and citation omitted]." *Forrest v Jewish Guild for the Blind*, 3 NY3d at 310-311. Generally, isolated remarks or occasional episodes of harassment will not support a finding of a hostile or abusive work environment; in order to be actionable, the offensive conduct must be pervasive. *Matter of Father Belle Community Center v New York State Division of Human Rights*, 221 AD2d at 51.

Prior to 2006

Plaintiff claims that she was subject to a hostile work environment when, among other things, as explained below, Thabet made inappropriate comments to her. Plaintiff further alleges that Thabet asked her to perform menial tasks, and that she received less training than her peers.

Plaintiff maintains that, upon complaining to Thabet, he told her that Whites, Jews and Italians have the power in housing. He allegedly also told plaintiff, at another time, that women are trouble makers. Thabet denies making such comments. However, these comments, even if true, occurred sporadically over

a four year period and do not rise to the level of an actionable hostile work environment.[4] While plaintiff may have been exposed to a "mere offensive utterance" on several occasions, a reasonable person cannot find that plaintiff was subject to a hostile work environment. *Brennan v Metropolitan Opera Association, Inc.*, 284 AD2d 66, 72 (1st Dept 2001).

Plaintiff contends that she did not receive as much training in Oracle as her co-workers and, as well as being discriminatory and retaliatory, this contributed to a hostile work environment. Thabet states that, in 2002, plaintiff was offered training in Oracle and turned it down. He continues that plaintiff did receive the training in 2003, and that he had no input as to who would or would not receive the training. NYCHA also provides evidence showing that plaintiff was not singled out as a manager who was asked to help out other NYCHA departments. Regardless, no rational fact finder could conclude that these allegations, considering the time period in which they occurred and the totality of the circumstances, could alter the conditions of the plaintiff's employment so as to create a hostile work environment.

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[4]NYCHA contends that plaintiff's 2008 state court hostile work environment claims dated before 2005 are time-barred since they were not asserted in the federal claim back in 2006. For purposes of this motion, the court will consider all of the hostile work environment allegations from February 2003.

2006-present:

Plaintiff further alleges that she was subject to a hostile work environment when her current supervisor, Ramos, allegedly made comments about Chinese food, her accent and called her a little old lady. Even taking the evidence in plaintiff's favor, the record indicates that Ramos's comments do not rise to the level of an actionable hostile work environment under the NYSHRL or the NYCHRL. The Appellate Division, First Department, has held that "a decision maker's stray remark, without more, does not constitute evidence of discrimination." *Mete v New York State Office of Mental Retardation and Developmental Disabilities*, 21 AD3d 288, 294 (1st Dept 2005).

Plaintiff further maintains that she is currently subject to a hostile work environment in that she, among many other things, is given the least desirable location to work, is yelled at in front of her coworkers, is subject to microscopic scrutiny, is seated far away from the air conditioner, and that she is not "treated like a manager." Chin Affidavit, ¶ 53. Considering the totality of the circumstances, even in the light most favorable to plaintiff, plaintiff fails to raise a triable issue of fact with respect to their NYSHRL hostile work environment claims. A reasonable person would not find that plaintiff, evidently a disgruntled employee, was subject to a sufficiently severe or pervasive atmosphere at work. *See e.g. Barnum v New York City*

Transit Authority, 62 AD3d 736, 738 (2d Dept 2009) (touching thigh, patting buttocks, offensive comments not severe and pervasive); *Gregg v New York State Department of Taxation & Finance*, 1999 WL 225534, 1999 US Dist LEXIS 5415 (SD NY 1999) (at least 10 to 15 inappropriate conversations, four instances of offensive touching and invitations to drinks and meals not severe and pervasive); *compare Raniola v Bratton*, 243 F3d 610, 621 (2d Cir 2001) (finding a triable issue of fact where plaintiff stated that, over a period of two and a half years, she was subjected to offensive sex-based remarks, workplace sabotage, disproportionately burdensome work assignments, and one serious public threat of physical harm).

Accordingly, NYCHA is granted summary judgment with respect to plaintiff's NYSHRL hostile work environment claims.

V. Hostile Work Environment Claims for both complaints under the NYCHRL

As a result of revisions created to the NYCHRL in 2005 through the Local Civil Rights Restoration Act of 2005 (Restoration Act), the NYCHRL, or Administrative Code § 8-130, is to be construed more liberally than its state or federal counterparts. Analysis of claims under the NYCHRL is to be independent, and the court must evaluate the claims with regard for the NYCHRL's "uniquely broad and remedial purposes." *Williams v New York City Housing Authority*, 61 AD3d 62, 66 (1st

Dept 2009).

Under *Williams*, the test for dismissing a NYCHRL hostile work environment claim is whether the "alleged discriminatory conduct in question does not represent a 'borderline' situation but one that could only be reasonably interpreted by a trier of fact as representing no more than petty slights or trivial inconveniences." *Williams v New York City Housing Authority*, 61 AD3d at 80.

Despite the broader application of the NYCHRL, *Williams* also recognized that the law does not "operate as a general civility code [internal quotation marks and citation omitted]." *Id.* at 79. Applying the standard set forth in *Williams* to the present case, plaintiff's allegations with respect to her supervisor's comments or her conditions in the office can also be reasonably interpreted by a trier of fact to be no more than "petty slights and trivial inconveniences." *Id.* at 80. Although plaintiff may have found Thabet's or Ramos's alleged comments to be offensive, they do not rise to an actionable level. *See e.g. Wilson v N.Y.P Holdings, Inc.*, 2009 WL 873206, *29, 2009 US Dist LEXIS 28876, * 89 (SD NY 2009)(holding that despite plaintiffs' claims that defendant discriminated against black and female employees, there was no viable hostile work environment claim under the NYCHRL when black female employees were allegedly subject to some derogatory language over a number of years, as this only resulted

in "petty slights and inconveniences").

Moreover, although plaintiff personally may have felt like she was not "treated like a manager," her own personal feelings are not enough to demonstrate that a hostile work environment was present. The NYCHRL does not "operate as a general civility code."

Accordingly, NYCHA is granted summary judgment with respect to plaintiff's NYCHRL hostile work environment claims.

The court has considered petitioner's other contentions and finds them without merit. The record demonstrates that NYCHA responded to every one of plaintiff's allegations sufficiently to evidence that there was no discriminatory or retaliatory intent on NYCHA's part. The court notes that at least 16 NYCHA employees have submitted affidavits on NYCHA's behalf, providing evidence of how plaintiff's ethnicity, age, gender or national origin did not play a role in her treatment at NYCHA.

CONCLUSION

Accordingly, it is

ORDERED that NYCHA's motion for summary judgment is granted for this consolidated action and the complaints are dismissed with costs and disbursements to NYCHA as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: 7/7/11

ENTER:

J.S.C.

LOUIS B. YORK
J.S.C.

FILED

JUL 12 2011

NEW YORK
COUNTY CLERK'S OFFICE