

Momoh v Archdiocese of N.Y.
2012 NY Slip Op 31817(U)
July 9, 2012
Sup Ct, NY County
Docket Number: 107071/10
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: HON. JUDITH J. GISCHE
Justice

PART 10

Momoh, Amelia

Plaintiff (s),

INDEX NO. 107071/2010

- v -

MOTION DATE _____

Archdiocese of New York

MOTION SEQ. NO. 003

MOTION CAL. NO. _____

Defendant (s).

The following papers, numbered 1 to _____ were read on 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, the court's decision on this (these) motion (s) is as follows:

Motion (s) decided in accordance with
the accompanying memorandum decision

FILED

JUL 12 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 7/9/12

Hon. Judith J. Gische, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE SETTLE/SUBMIT ORDER

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10

-----X
AMELIA MOMOH,

Plaintiff (s),

-against-

ARCHDIOCESE OF NEW YORK, BEACON
OF HOPE HOUSE, CATHOLIC CHARITIES
OF THE ARCHDIOCESE OF NEW YORK,
ANNE TOMMASO, JOY JASPER, and
DENNIS SCIMONE,

Defendant (s).
-----X

DECISION/ORDER
Index No.: 107071/10
Seq. No.: 003

PRESENT:
Hon. Judith J. Gische
J.S.C.

FILED

JUL 12 2012

NEW YORK
COUNTY CLERK'S OFFICE

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this
(these) motion(s):

Papers	Numbered
Def's n/m (CPLR 3212) w/JJ, BDT, Sr.EC affids, JYP affirm, exhs [sep backs] . . .	1,2,3,4
Pltf's opp w/AM affid, IU affirm, exhs [sep backs]	5,6
Def's further support w/JYP affirm, exhs	7

Upon the foregoing papers, the decision and order of the court is as follows:

GISCHE J.:

Plaintiff Amelia Momoh ("plaintiff" or "Momoh") claims that defendants, Archdiocese of New York ("ADNY"), Beacon of Hope House ("Beacon"), Catholic Charities of the Archdiocese of New York ("CC"), Anne Tommaso ("Tommaso"), Joy Jasper ("Jasper"), and Dennis Scimone ("Scimone") (collectively "defendants"), violated the New York State Human Rights Laws, Exec Law § 296 et seq. ("NYSHRL") and New York City Human Rights Laws, Admin Code § 8-107 et seq ("NYCHRL"). Issued has been joined and the Note of Issue was filed while this motion was pending. Defendants now move for summary

judgment dismissing the complaint. This motion for summary judgment is timely brought and will be decided on its merits (CPLR § 3212; Brill v City of New York, 2 N.Y.3d 648 [2004]).

FACTS AND ARGUMENTS

Unless otherwise stated, the following facts are established, undisputed or unrefuted:

Plaintiff, a current employee, has worked at Beacon for over four years. She claims that her former supervisor, Heather Bonilla ("Bonilla"), subjected her to race-based discrimination and harassment over a 9-month period, in violation of NYSHRL and NYCHRL. Plaintiff further claims that white co-workers also harassed her after she complained about Bonilla. Plaintiff has not lost employment, wages or benefits as a result of the alleged hostile work environment.

In her complaint, plaintiff brings forth two causes of action. In the first cause of action, pursuant to NYSHRL, plaintiff alleges that defendants:

"failed and/or refused to protect Plaintiff from the aforesaid harassment abuse based on Plaintiff's race. Defendants' conduct resulted in a hostile work environment, which is so severe as to alter the conditions of Plaintiff's employment. Defendants participated in this harassment, as their actions condoned, aided and abetted the actions of the employees of Defendants." (Plt's Exhibit A.)

In her second cause of action, pursuant to NYCHRL, she pled the following:

"Defendants were aware of the conduct of its employees and failed to take immediate and appropriate corrective action prior to damage suffered by Plaintiff. As a result of the foregoing actions by the Defendants, Plaintiff has been damaged in her person and employment. (Plt's Exhibit A.)

Defendants bring this motion for summary judgment dismissing the complaint for

a number of reasons. First, defendants claim that plaintiff's sole employer is Catholic Charities Community Services ("CCCS") of which Beacon is an operating division. For that reason, defendants argue that the claims should be dismissed against the Archdiocese and CC. Second, defendants claim that the claims against the individual defendants, Tommaso, Jasper and Scimone should be dismissed because plaintiff has failed to establish that they aided or abetted in the alleged discrimination or harassment. Third, defendants claim that plaintiff failed, with minor exception, to report most of the incidents of alleged discrimination and harassment for which she now attempts to hold defendants liable. Defendants argue that these incidents, in the aggregate, were few in number, limited to a 9-month period and were neither severe nor extreme in nature. Finally, defendants claims that of the incidents that Momoh did report, the complaints were investigated and prompt remedial action was taken by CCCS.

The Defendants

Defendant ADNY is a New York religious organization, incorporated under the religious Corporations Law in 1981. Defendant claims that it does not own, operate or control any social service programs or organizations. For that reason defendant claims that it had no involvement with Momoh and her employment with Beacon.

Defendant CC is a New York not-for-profit corporation that supports and sponsors a number of different Catholic charitable organizations through affiliations, one of which is CCCS. Defendant CCCS is a New York not-for-profit corporation that provides professional human services in New York State. Beacon is a division of CCCS, after a merger in 2004, that provides rehabilitation and residential services to mentally ill adults in New York City.

Tommaso is a former CCCS employee and was a Division Director of Beacon. Dennis Scimone is also a CCCS employee an Director of Residential Services for Beacon. Joy Jasper is the Personnel Director for CCCS and is African American.

Plaintiff's Hire

Momoh is African American and began working for CCS on January 22, 2008 as a full-time counselor/case manager for Beacon's Staten Island Apartment Treatment Program ("SIATP" or "program"). Upon hire, Momoh received a Beacon Personnel Manual which contained an anti-discrimination policy, as well as an equal employment opportunity policy. In addition, Momoh went through an orientation session conducted by Jasper during which Jasper reviewed the anti-discrimination and anti-harassment policy and also instructed employees to come directly to her if they ever had any problems on the job.

Plaintiff's Supervisors

Plaintiff initially reported to Melinda Woolf ("Woolf"), the Program Manager of SIATP. Woolf supervised plaintiff from January 2008 until February 25, 2008, when Woolf left CCCS. Momoh did not bring any claims against Woolf or CCCS for the period Woolf worked at SIATP. Woolf was replaced by Nichole Simmons, from February 25, 2008 to October 10, 2008. On October 14, 2008, Bonilla was hired as the new Program Manager of SIATP and became plaintiff's immediate supervisor. Momoh reported to Bonilla until July 24, 2009, when Bonilla went out on a medical leave of absence from which she did not return. While Bonilla was on leave, Tommaso and Scimone discovered financial irregularities at the program and after a suspension and investigation, Bonilla was discharged for financial improprieties, effective October 22, 2009.

After Bonilla's discharge, plaintiff began reporting to Jillian Maye ("Maye"), then

Program Supervisor. Momoh had no problems working with Maye and does not contend that Maye discriminated against or harassed her. Maye is African American.

From September 2011 to the present, Momoh has reported to Shakima Hill ("Hill") who is also African American. Hill was hired on August 15, 2011 to replace Maye as Program Supervisor of the SIATP. Momoh has had no problems working with Hill, nor does she claim any discrimination or harassment by Hill.

The Alleged Harassment by Bonilla

Momoh points to four CCCS employees who discriminated against and harassed her: Bonilla, plaintiff's supervisor from October 14, 2008 until July 24, 2009, and fellow counselor/case managers, Loriann Knutsen ("Knutsen"), Vicki Scalia ("Scalia") and Jose Cardona ("Cardona").

Plaintiff claims that within the first couple of weeks after she began working at Beacon, Bonilla began discriminating against her and another African American counselor/case manager, Rotimi Oloye ("Oloye"). Momoh alleges four specific incidents of such discrimination and harassment.

First, in October 2008, Bonilla told plaintiff and Oloye a story about catching an African American employee sleeping on the job and allegedly commented that "African Americans are lazy and like to get over." Bonilla's alleged remarks were not witnessed by any other Beacon employee. Neither Momoh nor Oloye reported this alleged incident to anyone at the time. Plaintiff claims that Bonilla repeated this story to other coworkers in the office.

Second, in mid-November 2008, Bonilla allegedly told Momoh and Oloye that they needed to do shopping for a Thanksgiving party because "it was [their] duty to serve the

white staff." Although Momoh did not object to the shopping assignment per se, as every employee was assigned a task, she objected to the alleged comment. Momoh did not, however, immediately report Bonilla's alleged remark to anyone because she was afraid of retaliation. Bonilla subsequently did not ask plaintiff to serve white staff at the party and never asked plaintiff to serve white staff in any way.

Third, in the fall of 2008, Bonilla allegedly discriminated against Momoh in connection with enforcement of Beacon's dress code, which prohibited employees from wearing apparel with any logos or writing. Momoh complains that when she violated that dress code by coming to work in a hoodie and a t-shirt with the logo "Rocawear" on them, she was sent home to change her clothing. However, Bonilla subsequently allowed Caucasian employee Knutsen, to wear a non-conforming t-shirt to work and did not send her home. However, Bonilla did not take any disciplinary action against Momoh for violating the dress code and did not dock her pay when she went home to change.

Fourth, Momoh claims that in December 2008 and January 2009 Bonilla docked her pay when she was late to work and allegedly did not dock the pay of Caucasian co-workers Knutsen and Scalia. She also claims that a few times, Bonilla also changed plaintiff's sign-in sheets, noting that Momoh was late to work when she was not. Momoh was later repaid the docked time.

Finally, plaintiff claims that when she attempted to discuss the hostile work environment allegedly created by a disparity in treatment of the white and African American staff, Momoh claims that defendants provided no follow-up, feedback or comments regarding her complaints.

Initial Complaint

Although Momoh claims that the harassment began in October 2008, she did not file a complaint with Jasper until February 11, 2009 ("February 2009 letter"). In the February 2009 letter, plaintiff states that she "feel[s] the same way the Mr. Oloye feels." Plaintiff then gave an example of two staff members walking into work at the same time (presumably late), but only one of them being docked pay (Momoh). Momoh attributes this contrasting behavior to a bias against African American employees.

In response to the February 2009 letter, Jasper met with Momoh a few weeks later. Momoh explained that the staff was required to sign in and out on attendance sheets. Momoh claims that when she was late and did not account for her tardiness on these time sheets, Bonilla reprimanded her and then changed the time sheets. However, Momoh claims that Bonilla did not do the same to Knutsen. Knutsen in a later interview confirmed that although she was occasionally late to work and did not account for her tardiness, Bonilla did not reprimand her nor dock her pay.

When asked, Bonilla denied treating the staff differently in attendance and timekeeping matters. Scimone, Beacon's Director of Residential Services, reviewed the time sheets for irregularities and found that they were not being properly managed. Scimone further informed Jasper that a new procedure was implemented for staff to sign in and out.

Post February 2009 Letter

Plaintiff claims that after she filed the February 2009 letter, Bonilla would no longer deal directly with her. Instead of giving assignments directly Bonilla would leave them in plaintiffs' mailbox or ask Maye to communicate assignments to plaintiff. Momoh claims that as a result of this indirect communication, she was late completing assignments.

However, she does not claim that she was disciplined or otherwise negatively impacted for being tardy in completing her work. Momoh did not report this behavior until July of 2009.

July 2009 Altercation

On July 21, 2009 Bonilla and Maye held a regularly-scheduled weekly staff meeting of the SIATP staff. At the meeting, Bonilla and Maye announced that they were going to be seating changes because the existing seating arrangement "looked bad." The reason given for the current layout "look[ing] bad" was that all the African American staff sat on one side of the office, while the white staff sat on the other side.

Cardona objected to any change in his seat assignment and said he was not going to move and that it was "forced integration." Other staff members voiced agreement with Cardona's objection, stating that they were not going to "f***ing mix." Oloye then called Cardona a racist and a heated argument ensued. Several employees reported Cardona saying that there had never been a problem with the seating assignments, and that "you people" were the problem. This was construed as being a racial remark and sparked further argument. The staff meeting concluded with everyone going back to their seats.

Cardona called Jasper later in the afternoon and told her that there has been a heated staff meeting and that he had been accused of being a racist by Oloye. Tommaso and Scimone both confirmed that there had been an ugly incident and that staff member had made inappropriate remarks.

Beacon's Response

On July 23, 2009, Tommaso and Jasper went to SIATP and met with the staff and their first line supervisors, Bonilla and Maye, to discuss the July 21st staff meeting. They

were informed of the use of the phrases "forced integration," "you people," and "f***ing mix." No new racial remarks or comments were made at this meeting.

Jasper spoke with Momoh at the meeting. Momoh informed her that Bonilla was treating her differently. She complained for the first time that when she broke the dress code she was required to go home and change while Knutsen was not required to do so. Momoh also disclosed that Bonilla was no longer dealing with her directly and placed her assignments in her mailbox instead of giving them to her personally.

The meeting concluded with Tommaso directing the employees to act professionally and to focus on client care. Jasper, stated that CCCS had zero tolerance for discrimination or harassment of any kind and the every employee was expected to follow policy or be disciplined.

Cardona and Bonilla Leave SIATP

After the July 23rd meeting, Cardona submitted a letter of resignation to Jasper, protesting that he had been unjustly accused of being racist. His last day of work was August 7, 2009. Bonilla went out on medical leave due to a twisted ankle after the July 23rd meeting. She was later terminated due to an unrelated matter on October 22, 2008.

September 9, 2009 Complaint

Momoh sent another letter to Jasper on September 9, 2009 ("September 2009 letter"). Jasper tried to schedule another meeting with Momoh, to obtain details and clarification of the letter. After cancelling two meetings due to child care and car problems, Momoh met with Jasper a month later on October 8, 2009.

The September 2009 letter set forth the following:

"Internal Complaint of Discrimination based on race (Black),

national origin (African) from Sierra Leone and retaliation.

1. Harassment and condescending treatment by members of management.
2. Hostile work environment. Dock pay and disciplined differently than other non-Blacks.
3. Retaliation by management. I've made numerous complaint [sic] to management about the illegal employment practices. As a result of my complaints, member of management retaliated against me.
4. I've been treated differently than other similarly situated employee's [sic]. Members of management have caused a hostile work environment and have taken adverse employment actions against me.
5. I've been retaliation [sic] for making prior complaint of harassment and discrimination based on the above."

At the meeting, Momoh identified Bonilla as th member of management referenced in point one. As to item two, Momoh specified that her issue was with another incident of docked pay and repeated her complaint the Bonilla's uneven administration of the dress code policy. In her affidavit, Jasper claims that Momoh was not able to explain what she meant or to provide any facts or specifics. At the conclusion of the meeting, Jasper inquired as to how things were going with Bonilla out of the office. Momoh responded that things were fine, but she did not know how things would be when Bonilla returned.

Docked Pay

Jasper probed the issue of the additional docking which was complicated by Bonilla's discharge. CCCS made the decision to reimburse 6.3 hours of pay to Momoh, rather than dock Knutsen, even though Momoh had admitted to the tardiness in violation of CCCS time and attendance policy. Jasper sent Momoh a letter on January 11, 2010,

explaining the decision.

Claims of Additional Hostility From Co-workers

Plaintiff claims that co-workers Knutsen, Scalia and Cardona initially discriminated against her when they ceased talking to her after February 2009, when Momoh lodged a complaint against Bonilla with Human Resources. Momoh attributed this change in behavior towards her because she thinks they are racist.

In January of 2012 Momoh sent two letters to Jasper (the "January 2010 letters"). On January 12, 2010, Momoh sent a letter to Jasper complaining about a December 19, 2009 incident when Knutsen allegedly threw papers on her desk. On January 13, 2010, Momoh sent another letter to Jasper complaining that Knutsen had called her an "ass" when Momoh did not hold a door open for her by allowing it to slam shut as Knutsen was entering the building. Plaintiff later stated that Knutsen had called her a "f***ing ass."

Beacon's Response to the January 2010 Letters

In response to the letters, Jasper placed Momoh on a paid leave of absence pending investigation. Jasper met with Momoh on January 20, 2010. Also present were Beatriz Diaz Taveras ("Taveras"), the Executive Director of CCCS and Jasper's immediate supervisor, and Frances Saieva, Associate General Counsel of CCCS. During this meeting Jasper questions Momoh about her complaint against Knutsen. Plaintiff did not report any additional incidents, but mentioned that she used to be friends with Knutsen. Momoh claimed this friendship deteriorated after Knutsen was forced to abide by CCCS' time and attendance and dress code policies as a result of Momoh's complaints of unfair treatment. Momoh declined an offer of transfer, but requested that Beacon conduct diversity training.

Jasper then followed up with Knutsen, questioning her about the incidents cited in

the January 2010 letters. Knutsen denied being rude to or throwing papers at Momoh. She claimed that Momoh was rude to her. Knutsen denied calling Momoh a "f***ing ass." She did, however, recount an incident when Momoh was exiting the building while she was entering. According to Knutsen, Momoh allowed the door to slam on her instead of holding it open as a courtesy. Knutsen acknowledged that she had been friends with Momoh but did not know why there was so much tension between them. Jasper warned Knutsen to remain professional in her interactions with Momoh and that failure to do so would result in disciplinary action.

CCCS Reissues Policies and Conducts Diversity Training

On February 12, 20120 Taveras and Jasper held a meeting at SIATP. Taveras reissued and reviewed the CC Code of Ethics and the Beacon Personnel Manual with the staff and management, including the anti-harassment, anti-discrimination provisions, as well as, the reporting lines and anti-retaliation policy. CCCS also hired an outside consultant to conduct diversity and sensitivity training.

Other Happenings at SIATP

Scalia resigned on January 29, 2010 for reasons unrelated to this matter. Aside from an EEOC claim which was denied, Momoh has lodged no further complaints since January 20, 2010.

Plaintiff's Mental State

Momoh claims that in October 2009 she sought counseling due to her experience at work and its affect on her. She first sought help through the Employee Assistance Program ("EAP"), and later found a psychotherapist to continue treatment with. Her complaints were that she was crying all the time, that she could not concentrate and

suffered from anxiety at work or when she thought about going to work. Although plaintiff was proscribed Lorazepam, she did not take it because she was pregnant. Plaintiff claims she had to stop her sessions with the counselor because she could not afford the co-payment.

DISCUSSION

A movant seeking summary judgment in its favor must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." Winegrad v. New York Univ. Med. Ctr., 64 N.Y.2d 851, 853 [1985]. The evidentiary proof tendered, however, must be in admissible form. Friends of Animals v. Assoc. Fur Manufacturers, 46 N.Y.2d 1065 [1979]. Once met, this burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact. Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 [1986]; Zuckerman v. City of New York, 49 N.Y.2d 557 [1980].

A racially hostile work environment exists 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." Forest v. Jewish Guild for the Blind, 3 N.Y.3d 295 [2004] [internal citations and quotations omitted]. The Court of Appeals further explained that:

"[w]hether an environment is hostile or abusive can be determined only by looking at all 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. The effect on the employee's psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. Moreover, the conduct must both have

altered the conditions of the victim's employment by being subjectively perceived as abusive by the plaintiff, and have created an objectively hostile or abusive environment – one that a reasonable person would find to be so.”

Id. at 310-11. An employer's liability for mental anguish and humiliation suffered by an employee as result of hostile work environment caused by a supervisor or coworker may be “established by employer's failure, upon notification, to take corrective action.” State Div. of Human Rights v. Dom's Wholesale and Retail Center, 18 A.D.3d 335 [1st Dept. 2005]; see also Matter of State Div. of Human Rights v. St. Elizabeth's Hosp., 66 N.Y.2d 684, 687 [1985].

NYSHRL, Executive Law § 296 states (1)(a) states that:

It shall be an unlawful discriminatory practice:

(a) For an employer or licensing agency, because of ... race, creed, color, national origin, ... to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

Defendants claim that the record does not support a finding of a racially hostile work environment pursuant to NYSHRL. To support their argument they state that the following conduct claimed by Momoh was only “incidental”: (i) two alleged racial remarks by Bonilla; (ii) one occasion when Bonilla required Momoh to change her clothes when Momoh admittedly violated the CCCS dress code; (iii) two incidents where Bonilla docked plaintiff for being late and did not similarly dock Knutsen, and (iv) “a few times” when Bonilla changed plaintiffs time sheets to indicate plaintiff was tardy when she was not.

Defendants further state that the conduct of plaintiff's co-workers Knutsen, Scalia and Cardona were similarly “incidental”: (i) Knutsen, Scalia and Cardona did not speak with

Momoh; (ii) at the July 21, 2009 staff meeting, Cardona, Knutsen and Scalia allegedly stated that they would integrate or "f***king mix;" (iii) in December 2009, Knutsen "threw papers" down on plaintiff's desk, and, in January 2010, called plaintiff a "f***king ass" when Momoh did not hold a door open for her; (iv) defendants claims that these incidents do not rise to the level of severity and pervasiveness sufficient to support a hostile work environment harassment claim under the NYSHRL.

In opposition to the motion, plaintiff relies upon her deposition testimony in which she claimed that: (i) not only did Bonilla inform plaintiff that Blacks were lazy and untrustworthy, she constantly talked to Plaintiffs coworkers about her beliefs; (ii) approximately one month after informing plaintiff that blacks were untrustworthy, she informed plaintiff and another African employee that their duty was to serve white staff at Beacon; (iii) plaintiff and Oloye met with Jasper at Beacon headquarters in or about February 2009, but conditions did not change; (iv) Maye documented her own observations from on or about March 2009 and throughout 2009, went to Beacon headquarters on more than one occasion and informed Jasper all of plaintiffs and Oloye's complaints, but conditions did not change; (v) Bonilla informed white staff about plaintiff's complaints to management, resulting them completely ignoring and whispering about plaintiff around the office throughout 2009 and 2010; (vi) from February 2009 until July 2009, Bonilla stopped speaking to plaintiff, giving plaintiff her assignments, resulting her not handing her work in on time and not being updated on company policy; (vii) Bonilla, after informing her that all blacks are untrustworthy, started docking plaintiff's paychecks, but did not do the same when white staff came in late; (viii) Bonilla, demonstrating her belief that all "blacks try to get over," sent plaintiff home for infractions that were not

uniformly applied to white staff and was warned about it; (ix) Bonilla frequently called residences and different sites to make sure plaintiff was actually where she said she would be; (x) when an attempt was made for white and black staff to sit next to each other in July 2009, white staff stated that they would not mix with "you people", called it "forced integration" and "f***ing mixing" after months of ignoring black staff; (xi) Plaintiff sought out help with EAP in 2009 and eventually received treatment for anxiety and depression, which she claims resulted from the hostile work environment; (xii) in April 2011, the day after plaintiff was heard discussing the foregoing incidents with Maye, a phone call was made to Beacon where a male caller called her "a f***ing nigger."

The evidence presented is sufficient for a jury to find that there was a hostile work environment based on race. Therefore, Defendant's motion for summary judgment to dismiss plaintiffs first cause of action is denied.

The conduct and remarks relied upon by plaintiff support a claim of a hostile work environment under state law. Because the NYSHRL represents a "floor below which the City's Human Rights law cannot fall," the facts also necessarily state a claim of a hostile work environment under city law. Williams v. New York City Hous. Auth., 61 A.D.3d 62, 66-67 [1st Dept. 2009]. See N.Y.C. Admin. Code §§ 8-107(1) and (13)(b), 8-130; McRedmond v. Sutton Place Restaurant and Bar, Inc., 95A.S.3d 671 [1st Dept. 2012]; Brightman v. Prison Health Servs., Inc., 62 A.D.3d 472 [1st Dept. 2009]. Therefore, Defendant's motion for summary judgment to dismiss plaintiffs second cause of action is also denied.

Finally, the Court addresses defendants' motion to at least dismiss this action against ADNY and CC. Although ADNY provides the affirmation of Sister Eileen Clifford,

its Vice Chancellor, and "print outs" from the New York State Division of Corporation (with respect to Beacon and CCCS), they provide no documentary proof, in admissible form, to support their claims that ADNY and CC do not own, operate, maintain, exercise control over, or employ personnel at CCCS or Beacon. At this juncture, the Court finds that the defendants did not provide sufficient proof to warrant dismissal against ADNY and CC, since the relationship and affiliation amongst and between the not-for-profit corporate defendants remains unclear. See Zuckerman v City of New York, 49 N.Y.2d 557, 562 [1980]; see also CPLR §3212(b).

CONCLUSION

ORDERED that the defendants motion for summary judgment is denied in all respects; and it is further

ORDERED that this case is ready to be tried. Plaintiff shall serve a copy of this order on the clerk in the Office of Trial Support so the case can be scheduled for trial; and it is further

ORDERED that any relief requested, but not specifically addressed is hereby denied; and it is further

ORDERED that this constitutes the decision and order of the court.

Dated: New York, New York
July 9, 2012

So Ordered:



Hon. Judith J. Gische, JSC

FILED

JUL 12 2012

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