SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 11
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BRUCE EMMER,

Plaintiff,

Index No.:

151510/2013

-against-

The Trustees of Columbia University in the City of New York, Kathleen Crowley, David Brenner, George Hamawy, Lisa Hogarty, Sony Jean-Michel and John and Jane Does numbers 1-10, their identities being currently unknown to Plaintiff but intended to be employees or officers of Columbia who participated in Plaintiff's termination as alleged herein,

Defendants.

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Joan A. Madden, J.:

This action arises out of plaintiff Bruce Emmer's various claims that, among other things, he was subject to discrimination based on his age and religion, and in retaliation for opposing discriminatory practices in violation of the New York State Human Rights Law (NYSHRL) and the New York City Human Rights Law (NYCHRL). Defendants the Trustees of Columbia University in the City of New York (Columbia), Kathleen Crowley (Crowley), David Brenner (Brenner), George Hamawy (Hamawy), Lisa Hogarty (Hogarty), and Sony Jean-Michel (Jean-Michel) move, pursuant to

CPLR 3211 (a) (7), to dismiss the complaint.[1]

BACKGROUND AND FACTUAL ALLEGATIONS

Prior to his termination in February 2010, plaintiff was employed by Columbia as a health physicist. Since 1998, plaintiff worked in the Radiation Safety department located at Columbia's Medical Center Campus (CUMC). According to plaintiff, his duties included, among others, being "in charge of quality assurance for non-radiology and non-cardiology x-ray equipment," and testing dental equipment, to make sure the equipment was in compliance with radiation control procedures and protocols. Complaint, ¶ 10. At the time of his termination, plaintiff was working as a 1/4 permanent employee. He would mostly work only one day a week, on Sundays, but would sometimes work on other days too.

Plaintiff describes himself as a "practicing Orthodox Jew who follows Hasidic customs and as such has a full beard and wears a yarmulke." *Id.*, ¶ 1. At the time of his termination, he was almost 65 years old. Plaintiff contends that he was the oldest employee in the Radiation Safety office. He states that

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[1] Plaintiff does not describe the various job responsibilities of the defendants but lists their titles as follows: Brenner was the director of CUMC Center for Radiological Research, Crowley was a vice president in charge of environmental health at the CUMC, Hamawy was an employee of Columbia who was promoted to chief radiation safety office shortly before plaintiff was terminated, Hogarty was the chief operation officer of CUMC, and Jean-Michel worked in human resources at Columbia.

his supervisor, Salmen Loksen (Loksen), and Moshe Friedman (Friedman), an office administrator for the Radiation Safety Office, were also Hasidic Jews. Loksen and Friedman were also terminated. At the time, Loksen was 61 years old and Friedman was 57 years old. The complaint states that Loksen and Friedman were the second and fifth oldest employees in the Radiation Safety office.[2]

While employed by Columbia, plaintiff avers that he, as well as Loksen and Friedman and some other employees, "insisted on strict compliance with FDA protocols and policies relating to radiation." *Id.*, ¶ 24. He continues that, whenever he noticed Columbia's failure to comply with the FDA protocols, he would note them in his written reports, as part of his job responsibilities. According to plaintiff, Brenner was "unhappy" with plaintiff and the other employees' insistence on complying with FDA protocols. *Id.*, ¶ 26.

Plaintiff's affidavit states that Loksen and Friedman were terminated in January 2010. Plaintiff claims that Loksen and Friedman were advised that they were terminated as part of a restructuring.

When plaintiff showed up to work on the Sunday after Loksen and Friedman were terminated, he was not allowed to enter the

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[2] Plaintiff's affidavit states that they were the second and fourth oldest employees.

building. He was paid for the day. He acknowledges that, after Loksen and Friedman were terminated, he was "the only Hasidic Jew employed in the Radiation Safety Office at CUMC." *Id.*, ¶ 41.

Shortly thereafter, on February 18, 2010, plaintiff received a letter informing him that his position was terminated, after further assessment, after the restructuring. The letter, written by Crowley, states the following, in pertinent part:

> "Dear Bruce:
> As you are aware, the CUMC Radiation Safety Office has been restructured. After further assessment of the need of the department, we have determined that it is not necessary to continue a position for one day a week. As a result of this assessment, we will no longer require your services effective February 18, 2010."

Plaintiff's exhibit A at 1.

Plaintiff claims that his termination, as well as Loksen and Friedman's terminations, were improperly motivated based on age, religion and ethnicity. He maintains it was perceived that he, being a Hasidic Jew, "was suspect to rightfully" reporting CUMC's noncompliance with FDA protocols as well as the New York City Health Code. Complaint, ¶ 48. Plaintiff claims, upon information and belief, that after the restructuring, a John Doe defendant stated, "a reason for the shakeout is that there are too many yarmulkas in Radiation Safety." *Id.*, ¶ 36.

Plaintiff further believes that he was retaliated against for opposing discriminatory practices against Loksen and Friedman, and also for raising issues with CUMC's alleged

noncompliance with FDA protocols. He describes as follows:

> "Upon information and belief, defendants' actions were motivated by religious, ethnic and age bias and animus and retaliation for the perception that Emmer, because he was Hasidic Jew, would (like Hasidic Jews Loksen and Friedman), even more so than other employees at CUMC, continue to insist upon lawful compliance with FDA protocols and procedures and the NYC Health Code."

Id., ¶ 44.

Plaintiff asserts that his performance reviews were always satisfactory or higher and that he was replaced by a less qualified, younger and non-Hasidic employee. Similarly, according to plaintiff, Friedman had a satisfactory employment record. As such, plaintiff believes that the employees slated for termination were not evaluated by their merits, but based on protected categories. According to plaintiff, Columbia was later cited for the violations which plaintiff, Loksen and Friedman had urged them to comply with. Plaintiff further notes that, after his departure, the department was short-staffed and that he was called by someone at the security office at CUMC to respond to a radiation safety emergency.

Plaintiff's complaint alleges that defendants violated the NYSHRL and the NYCHRL when they discriminated and retaliated against him based on race, religion, age and national origin. Specifically, according to plaintiff, the three people that were terminated were all older employees and Hasidic Jews. As such, plaintiff contends that, although the restructuring was facially

neutral, it had a disparate impact upon persons in two protected categories.

Plaintiff alleges that Crowley, Brenner, Hamawy and the other defendants were involved in the decision to terminate him. He does not articulate any specific interaction with each defendant except for noting that Brenner did not like it when plaintiff insisted on FDA compliance. In addition, there is no information as to the specific duties of each defendant. Plaintiff further alleges that these defendants exercised supervisory authority over plaintiff and so are alleged to have aided and abetted Columbia's discriminatory practices.

Defendants now move to dismiss plaintiff's complaint. They contend that plaintiff's religious discrimination claim is unsupported since plaintiff fails to show a nexus between his discharge and his protected status. In particular, they note that plaintiff alleges that he was allegedly terminated for complaining about safety issues, not for his religion. In addition, they argue that plaintiff's disparate treatment claims based on religion cannot survive dismissal as they are based on the one stray remark made in relation to the restructuring.

With respect to age, defendants argue that plaintiff's allegations of being replaced by a younger employee are speculative. In addition, they claim that plaintiff has not adequately pled that he is a member of a either a protected race

or national origin. As such, defendants argue, those discrimination claims must fail.

Defendants also contend that plaintiff's disparate impact claim fails since he cannot allege that the three terminations of Hasidic Jews "resulted in a statistically significant imbalance in the relevant pool." Defendants' memorandum of law at 8. With respect to age, defendants maintain that plaintiff's disparate impact claim fails, since two other employees who were older than Friedman were not terminated. Defendants argue that the disparate impact claims are not viable as plaintiff alleges that his termination was motivated by age and religion and thus state claims for disparate treatment.

As for plaintiff's claims for retaliation, according to defendants the complaint does not state a claim for retaliation as plaintiff did not engage in protected activity. Defendants argue that the retaliation claim is based on speculation that plaintiff would oppose the termination of the other Hasidic Jews, or that he would report safety violations, is insufficient to be considered a protected activity.

Plaintiff counters that his termination, under the circumstances, gives rise to an inference of discrimination, noting that out of 16 employees, only three employees were terminated. These three employees were the only Hasidic Jews in the department, and were also the first, second and fifth oldest

employees in the radiation safety department. Plaintiff also asserts that, based on radiation safety meeting notes he obtained, the third oldest person was originally slated to be terminated, but instead, plaintiff was terminated in his place.

Plaintiff provides a "disparate impact analysis" from Charles Scherbaum (Scherbaum), an industrial and organizational psychologist. The analysis, which evidently considered plaintiff and the other people who were terminated, concludes that a statistical disparate impact would be found. Scherbaum apparently also included one worker over the age of 55 who was also in the protected age class but was not terminated.

Upon being terminated, Loksen allegedly received a list, which plaintiff attaches to his affidavit. The list sets forth the job titles of the people in the radiation safety department, their ages, and who was to be terminated, but who would still be eligible for the severance program as part of the January 2010 restructuring. Although the names were not listed on the paper, the employees who were 61 and 57, evidently representing Loksen and Friedman, were to be terminated. Out of the 16 people in the department, plaintiff was the oldest at 65. The list states the following, in pertinent part:

> "All person employed by Radiation Safety in the Medical Center Campus were eligible for the Columbia severance program. The following factors were used in selecting persons for termination as part of the January 2010 severance program: Restructure and consolidation of the business operations and functions to create greater

> efficiency, budgetary constraints and changes in the scope of the department.
> The following is a list of the job titles and ages of persons employed by Radiation Safety in the Medical Center Campus who were and were not selected for termination and the offer of consideration for signing a release."

Plaintiff's exhibit B at 1.

Plaintiff further maintains that he has set forth a claim for retaliation, since he was locked out of his office for no reason when he tried to report to work shortly after the other Hasidic Jews were terminated, but prior to when he was given notice of his termination.

DISCUSSION

On a motion to dismiss pursuant to CPLR 3211, "the facts as alleged in the complaint [are] accepted as true, the plaintiff is [given] the benefit of every possible favorable inference," and the court must determine simply "whether the facts as alleged fit within any cognizable legal theory." *Mendelovitz v Cohen*, 37 AD3d 670, 671 (2d Dept 2007); *see also P.T. Bank Cent. Asia, N.Y. Branch v ABN AMRO Bank N.V.*, 301 AD2d 373, 375 (1st Dept 2003). "[E]mployment discrimination cases are themselves generally reviewed under notice pleading standards" *Vig v. New York Hairspray Co., L.P.*, 67 AD3d 140, 145 (1st Dept 2009). Under notice pleading, plaintiff need not plead specific facts, but need only give defendants "fair notice" of the nature and grounds of his claims. Id Under CPLR 3211 (a) (7), "a court may freely

consider affidavits submitted by the plaintiff to remedy any defects in the complaint and the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one [internal quotation marks and citations omitted]." *Leon v Martinez*, 84 NY2d 83, 88 (1994). However, "bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration [internal quotation marks and citation omitted]." *Silverman v Nicholson*, 110 AD3d 1054, 1055 (2d Dept 2013).

Plaintiff's Disparate Impact and Treatment Claims

A finding of discrimination may be based on two separate violations; proof of discriminatory intent, which is disparate treatment, or disparate impact, where no proof of intent is required.[3] *Matter of New York State Off. of Mental Health, Manhattan Psychiatric Ctr. v New York State Div. of Human Rights*, 223 AD2d 88, 90 (3d Dept 1996). "Some employment practices, adopted without discriminatory motive, may be in operation functionally equivalent to intentional discrimination and thus have a disparate impact." *Id.*[4] To establish a prima facie case

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[3] Disparate treatment occurs where there is an intentional decision to treat people differently based on a protected class.

[4] *See also Griggs v Due Power Co.* 401 US 424, 430 (1971) ("practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices").

of disparate impact, plaintiff has the burden of showing, "by a preponderance of the evidence, that a facially neutral practice" had a disproportionate effect on a protected class. *Matter of New York State Off. of Mental Health, Manhattan Psychiatric Ctr. v New York State Div. of Human Rights*, 223 AD2d at 90.

To establish prima facie a claim for disparate treatment, a 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 Sys. Corp.*, 65 AD3d 961, 965 (1st Dept 2009). As one court noted with respect to the ADEA, both the disparate treatment and the disparate impact theory may be invoked since both "are simply alternative doctrinal premises for a statutory violation." *Meresco v. Evans Chemetics, Div. of W.R. Grace & Co., 964 F2d 106, 115 (2d Cir 1992)*.

Under the relaxed standard applied to pleadings in discrimination cases, for the reasons below, the complaint adequately states claims for disparate impact and treatment based on age and religion.

With respect to the disparate impact claim based on religion, plaintiff alleges that defendants' actions in restructuring the department, a policy defendants assert was

undertaken to reduce the workforce, although facially neutral, had a disparate impact on persons in this protected category. Plaintiff further alleges that he was subjected to disparate impact based on his religion, when the three Hasidic Jews were the only people terminated out of a pool of 16 people.

Defendants maintain that these discharges did not result in "a statistically significant imbalance" to the relevant pool. In support of its position, defendants rely on *Matter of New York State Off. of Mental Health, Manhattan Psychiatric Ctr. v New York State Div. of Human Rights, supra, at 90,* in which the court stated that to establish a disparate impact, "[t]he specific employment practice responsible for the statistical disparities must be identified and the statistical evidence must be of a kind and degree sufficient to show that the practice in question caused the exclusion because of [the plaintiff's membership in a protected class]." However, *Matter of New York State Off. of Mental Health, Manhattan Psychiatric Ctr* involved a decision after an evidentiary hearing and not a motion to dismiss based on the pleadings. Notably, defendants fail to cite any controlling precedent requiring that a complaint allege "a statistically significant imbalance."

In this case, at the pleading stage, given such a small pool of employees, the termination of all the Hasidic Jews in the 16-person department is sufficient to allege a religion-based

disparate impact claim under the NYSHRL and NYCHRL.

Similarly, the complaint states a claim for disparate impact based on age. Here, the expert report is of limited probative value, as the purpose of such report is to assist the fact finder in determining issues. The report at issue fails to explain the applicability and significance of "80% rule," "Fisher's exact test," "the Lancaster Mid-P correction," "the 2SD test," or "the impact ratio" used in the expert's analysis. However, the evidence indicates that, out of 16 people, the only three people who were terminated were over 55, and that although two persons over 55 were retained, none of the younger workers were terminated. Based on these numbers, and allegations that defendants' restructuring policy, although facially neutral, selected employee differently based on their age, plaintiff has made sufficient allegations to support a disparate impact claim. *See e.g. Albemarle Paper Co. v Moody,* 422 US 405, 425 (1975) (where the plaintiff made out a prima facie case of discrimination based on disparate impact by showing that "the tests in question select applicants for hire or promotion in a [age] pattern significantly different from that of the pool of applicants").

With respect to defendants' argument that plaintiff's allegations concerning the disparate impact claims are insufficient as plaintiff alleges the terminations were motivated

by age and religion and are therefore more properly disparate treatment claims, such argument is without merit. As noted above, disparate impact and disparate treatment "are simply alternative doctrinal premises for a statutory violation." *Meresco v. Evans Chemetics, Div. of W.R. Grace & Co., 964 F2d at 115.* Here, at the pleading stage, the undisputed fact of the terminations in the context of the age of the employees in the department, together with religious background of the three terminated employees, are sufficient to support a claim of either disparate impact or disparate treatment.

As noted above, the difference between a disparate impact and disparate treatment claim is that the latter requires a showing of motive. *Matter of New York State Off. of Mental Health, Manhattan Psychiatric Ctr. v New York State Div. of Human Rights*, 223 AD2d at 90. Here, the complaint asserts that one of the motives for plaintiff's termination was his religion. The complaint adequately alleges the other requirements of a disparate treatment claim, namely that plaintiff is a member of a protected class, was qualified for his position and was terminated. His termination gives rise to an inference of discrimination, given the fact that, as discussed above, out of 16 employees in the department, the only three terminated were the three Hasidic Jews.

Defendants argue that plaintiff was terminated for business reasons, as his one day a week position was no longer necessary.

However, for the reasons stated above, the complaint adequately pleads a disparate treatment claim, and it is premature to determine whether the business reasons asserted by defendants are pretextual.

Defendants also argue that plaintiff's termination was a separate event from the restructuring of the other two employees. Although they may have been two separate events, plaintiff's affidavit states that he was not allowed in his office the Sunday after Loksen and Friedman were terminated. As such, at this stage, the alleged proximity of all of the Hasidic employees' terminations gives rise to an inference of discrimination. *See e.g. Flores v Buy Buy Baby, Inc.*, 118 F Supp 2d 425, 430-431 (SD NY 2000) (inference of discrimination where termination occurred one month after plaintiff announced her pregnancy and right after satisfactorily completing her probationary period).

In addition, defendants suggest that plaintiff should not be able to avoid dismissal based on one stray remark. The Appellate Division, First Department, has held that, by itself, one stray comment does not support a finding of discriminatory animus. "[A] decision maker's stray remark, without more, does not constitute evidence of discrimination." *Mete v New York State Off. of Mental Retardation and Dev. Disabilities*, 21 AD3d at 294. However, this stray comment may "bear a more ominous significance when considered within the totality of all the evidence [internal

quotation marks and citation omitted]." *Carlton v. Mystic Transp., Inc.*, 202 F3d 129, 136 (2d Cir), *cert denied* 530 US 1261 (2000). In any event, even if the comment was excluded, plaintiff's allegations have met the minimal requirements to plead a cause of action for discrimination based on religion. The plaintiff's ultimate ability to prove those allegations is not relevant. *See e.g. Hae Sheng Wang v Pao-Mei Wang*, 96 AD3d 1005, 1008 (2d Dept 2012).

Similarly, the complaint sufficiently states a claim for disparate treatment based on age. Specifically, the complaint sets forth that plaintiff is a member of a protected class, that due to his age he was terminated from his position, that he was qualified for his position and always received positive reviews and that he was replaced by a younger and less qualified employee. *See Bailey v New York Westchester Sq. Med. Ctr.*, 38 AD3d 119, 123 (1st Dept 2007)(holding that if a plaintiff in a discrimination case "does not produce direct or statistical evidence that would logically support an inference of discrimination, [he] must show [his] position was subsequently filled by a younger person or held open for a younger person").

Plaintiff's Claims for Retaliation

Under both the NYSHRL and the NYCHRL, it is unlawful to retaliate or discriminate against someone because he or she opposed discriminatory practices. Executive Law § 296 (7);

Administrative Code § 8-107 (7). Under the broader interpretation of the NYCHRL, "[t]he retaliation . . . need not result in an ultimate action . . . or in an materially adverse change . . . [but] must be reasonably likely to deter a person from engaging in protected activity." Administrative Code § 8-107 (7).

For a plaintiff to successfully plead a claim for retaliation under the NYSHRL or NYCHRL, he must demonstrate that:

> "(1) [he] has engaged in protected activity, (2) [his] employer was aware that [he] participated in such activity, (3) [he] suffered an adverse employment action based upon [his] 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; *see also Fletcher v Dakota, Inc.*, 99 AD3d 43, 51-52 (1st Dept 2012).

"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); *see also Brook v Overseas Media, Inc.*, (69 AD3d 444, 445 (1st Dept 2010) (referring to protected activity under the NYCHRL as "'opposing or complaining about unlawful discrimination' [internal citation omitted]").

In the present case, plaintiff cannot set forth a claim for retaliation under either the NYSHRL or the NYCHRL because there

is no evidence that he complained to defendants about any discriminatory conduct or actions. Plaintiff alleges that he was retaliated against when he arrived for work at his scheduled time and was not allowed into his office. This was shortly after the other two Hasidic Jews were terminated. He continues that, defendants would "perceive" him to oppose Loksen and Friedman's termination, based on the fact that they are all Hasidic Jews and that plaintiff may raise issues of CUMC's alleged failure to follow FDA protocols. As such, since plaintiff merely speculates that defendants would conclude that he was protesting discrimination, his retaliation claims lack merit. *See e.g. Fletcher v Dakota, Inc.* (99 AD3d at 54) ("even under the City HRL, a complaint . . . that contains 269 numbered paragraphs without alleging even on information and belief that defendants knew or should have known that [plaintiff] was opposing discrimination when he spoke to them about the African-American shareholder who intended to renovate her bathroom fails to state a cause of action for retaliation").

As such, his retaliation claims fail as a matter of law under both the NYSHRL and the NYCHRL, and are dismissed.

Remaining Claims of Discrimination:

Plaintiff's cause of action alleges that he was discriminated against on the basis of race, religion, age and national origin. However, plaintiff has failed to specify what

national origin or race that he was allegedly discriminated against for being a member. As such, since these allegations are "vague, conclusory and unsubstantiated," any race or national origin discrimination claims are dismissed. *All the Way E. Fourth St. Block Assn v Ryan-NENA Community Health Ctr.*, 30 AD3d 182, 182 (1st Dept 2006).

Individual Claims Against Defendants:

Individual liability can be established under the NYSHRL and NYCHRL under certain circumstances. First, under Executive Law § 296 (1), individual liability attaches if the defendant is "an 'employer' (i.e., has an ownership interest or the power to do more than carry out personnel decisions made by others) or if the individual has aided and abetted in the discriminatory conduct." *Graaf v North Shore University Hospital,* 1 F Supp 2d 318, 324 (SD NY 1998). Carrying out personnel decisions has been interpreted to mean, "supervisors who, themselves, have the power to hire and fire employees." *Perks v Town of Huntington*, 251 F Supp 2d 1143, 1160 (ED NY 2003).

Administrative Code § 8-107 (1) (a) also states that it is a discriminatory practice for an "employer or an employee or agent thereof" to discriminate against an individual in the terms, conditions or privileges of employment because of the individual's religion and age. Under the NYCHRL, individual employees may be held liable when they "act with or on behalf of

the employer in hiring, firing, paying, or in administering the 'terms, conditions or privileges of employment.'" *Priore v New York Yankees*, 307 AD2d 67, 74 (1st Dept 2003).

In addition, Executive Law § 296 (6) states that "[i]t shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so." In general, one who participates in the actual conduct giving rise to the discrimination claim is an aider and abettor, even though they lack the authority to either hire or fire the plaintiff. *Feingold v State of New York*, 366 F3d 138, 158 (2d Cir 2004).

Individual claims brought pursuant to Executive Law § 296 (6) may also be viable against supervisors who failed to investigate or take appropriate measures despite being informed about the alleged conduct. *See Lewis v Triborough Bridge & Tunnel Auth.*, 77 F Supp 2d 376, 384 (SD NY 1999).

Similarly, under the NYCHRL, Administrative Code § 8-107 (6) provides that an individual employee may be held liable for aiding and abetting discriminatory conduct.

Plaintiff has broadly alleged that the defendants "had the requisite authority to approve hiring and firing of employees in the Radiation Safety Office." Complaint, ¶ 47. His complaint maintains that Brenner was unhappy with plaintiff's insistence on compliance with protocols. While it is unlikely that all of the

defendants were supervisory or had the ability to fire plaintiff, the court has no other information at this time about the individual defendants. "Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss." *EBC I, Inc. v Goldman Sachs & Co.*, 5 NY3d 11, 19 (2005). As such, taking all the allegations in the complaint as true and resolving all inferences in favor of plaintiff, the complaint sufficiently states a claim under the NYSHRL and NYCHRL against the individual defendants for discriminatory treatment against plaintiff based on age and religion.

Plaintiff maintains that the defendants should have known about the discriminatory conduct and failed to prevent it. As such, with such limited information at this stage, even if the defendants lacked the authority to fire plaintiff, their alleged participation may give rise to aider and abettor liability in lieu of employer liability, if the termination is found to constitute a violation under the NYSHRL or NYCHRL. Accordingly, plaintiff's claims against the individual defendants for aiding and abetting with respect to age and religious discrimination are not dismissed.

However, since plaintiff has failed to adequately plead claims for retaliation or claims for discrimination based on his national origin and race, under the NYSHRL and the NYCHRL, he cannot sustain these claims against any of the individual

defendants as employers. Plaintiff is also prevented from having any of these claims against the individual defendants as employees. *See Priore v New York Yankees* (307 AD2d at 74 n 2) ("[a] separate cause of action against an employee for actively 'aiding and abetting' discriminatory practices . . . would still require proof initially as to the liability of the employer [internal citations omitted]").

Accordingly, it is

ORDERED that the motion of defendants the Trustees of Columbia University in the City of New York, Kathleen Crowley, David Brenner, George Hamawy, Lisa Hogarty, and Sony Jean-Michel to dismiss the complaint is granted only with respect to the plaintiff's claims for retaliation and claims for discrimination based on national origin and race, and such claims are dismissed as against each defendant, however the remainder of the motion to dismiss is denied; and it is further

ORDERED that the remaining claims are severed and shall continue; and it is further

ORDERED that defendants shall answer the complaint within 30 days of this decision and order; and it is further

ORDERED that a preliminary conference will be held on July 17, 2014, at 9:30 am.

Dated: April 24, 2014

J.S.C.

HON. JOAN A. MADDEN
J.S.C.