

O'Neill v New York Univ.
2014 NY Slip Op 33676(U)
September 30, 2014
Supreme Court, New York County
Docket Number: 651322/10
Judge: Alice Schlesinger
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

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IA PART 16
PART _____

PRESENT: ALICE SCHLESINGER
Justice

Index Number : 651322/2010
O'NEILL, DAVID
vs
NEW YORK UNIVERSITY
Sequence Number : 003
SUMMARY JUDGMENT

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

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). _____
Answering Affidavits — Exhibits _____	No(s). _____
Replying Affidavits _____	No(s). _____

Upon the foregoing papers, it is ordered that this motion is *determined in accordance with the accompanying memorandum decision.*

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

FILED
OCT 02 2014
NEW YORK
COUNTY CLERK'S OFFICE

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OCT 02 2014
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NYS SUPREME COURT - CIVIL

Dated: SEP 30 2014

Alice Schlesinger
ALICE SCHLESINGER J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 16

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DAVID O'NEILL,
Plaintiff-Petitioner,

Index No. 651322/10
Motion Seq. No. 003

- against -

NEW YORK UNIVERSITY, NYU HOSPITALS
CENTER, and NYU LANGONE MEDICAL CENTER,

Defendants-Respondents.

FILED

OCT 02 2014

**NEW YORK
COUNTY CLERKS OFFICE**

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SCHLESINGER, J.:

Plaintiff-petitioner David O'Neill, formerly a research scientist employed by the New York University defendants-respondents (collectively, "NYU"), commenced this hybrid plenary action/Article 78 proceeding challenging the termination of his employment in or about May 2010. Dr. O'Neill asserts, among other things, that he was fired in retaliation for his complaints of research misconduct by another NYU scientist, and he seeks reinstatement to his former position and an award of back pay and other damages based on various theories of law.

The facts are set forth at length in the decision by the Appellate Division, which modified this Court's June 30, 2011 decision on the motion by NYU to dismiss. *O'Neill v New York Univ.*, 97 AD3d 199 (1st Dep't 2012). Since that time, the parties completed discovery, and NYU made the instant motion for summary judgment, which Dr. O'Neill opposed. Following oral argument, counsel for Dr. O'Neill confirmed in writing that Dr. O'Neill did not intend to pursue his Article 78 claims. Accordingly, the two remaining causes of action which NYU seeks to dismiss at this time are (1) breach of contract by retaliation for reporting research misconduct; and (2) breach of contract by failure to follow disciplinary rules.

The papers submitted by each side are voluminous, consisting of attorney affirmations, memoranda of law, and multiple exhibits. In the first instance, NYU has submitted 36 exhibits, consisting of five deposition transcripts and numerous e-mails, letters, departmental memoranda, the Faculty Handbook, meeting notes, and reports. Additionally, NYU has submitted an affidavit from Terrance J. Nolan, Deputy General Counsel and Director of Labor Relations for NYU, suggesting, based on his own understanding of custom and practice, that the general disciplinary procedures in the Faculty Handbook were not available to Dr. O'Neill. He adds that Dr. O'Neill was an "at-will employee" serving on appointment for the 2009-2010 academic year through August 31, 2010, who would have had to be reappointed for the 2010-2011 academic year for his employment to continue (Exh KK).

In opposition, Dr. O'Neill has submitted over 40 exhibits, which include more e-mails and letters. In addition, he has submitted his own 76-paragraph affidavit detailing his years of employment commencing in 2002, the regular renewal of his contract each year, and the circumstances surrounding his firing in 2010. Not only does he insist that his contract renewals were effectively routine until his firing in retaliation for his reports of research misconduct, but he adds that at no time did anyone advise him that the NYU procedures to appeal his termination were not available to him. Further, he states that he was advised by Dr. Stephen Abramson, the Medical Center's Vice Dean for Education, Faculty and Academic Affairs, in a meeting shortly after he was fired, that he could be reinstated if an investigation by Human Resources showed that the firing was retaliatory (§ 75).

Discussion

As NYU correctly notes, the standard for summary judgment is well-established. Where, as here, the movant has come forward with proof in admissible form challenging at least one material element of each of plaintiff's claims, the burden shifts to the plaintiff to proffer admissible evidence demonstrating that a trial is required because disputed issues of material facts exist. *See, e.g., Zuckerman v City of New York*, 49 NY2d 557 (1980). This Court finds that Dr. O'Neill has more than met his burden.

Few causes of action recognized in our jurisprudence are more fact-laden than claims based on retaliation. The conflicting testimony offered in the depositions of the various parties involved, coupled with the e-mails, letters, and other documentation, are more than sufficient to raise an issue of fact. NYU's stated reason for firing Dr. O'Neill is his "unprofessional conduct" which consisted in large part of his loud voice and expressed anger in conversation with supervisors regarding what he perceived to be research misconduct by another scientist and unfair treatment of him in response to his complaints about that subject. However, Dr. O'Neill has offered sufficient evidence suggesting improper animus on the part of those in charge and possible disparate treatment of him to raise an issue of fact as to whether NYU's stated reasons for O'Neill's dismissal were pretextual and his firing retaliatory.

Issues also exist as to whether the parties' conduct and the documentation evinced a mutual intent to be bound by NYU's Faculty Handbook and Code of Conduct in connection with the terms of employment and termination procedures. The Appellate Division specifically found that: "NYU's letters renewing Dr. O'Neill's employment over

specific academic years (including the offer letter and the renewal letter), read in conjunction with the non-tenure hiring provision in the Faculty Handbook, evidence an employment arrangement for a fixed duration, sufficient to overcome the motion to dismiss ..." 97 AD3d at 208. NYU has not presented definitive evidence here to dispose of that issue without a trial.

Accordingly, it is hereby

ORDERED that the motion by the defendants-respondents for summary judgment is granted to the extent of striking the claims premised on CPLR Article 78 and is otherwise denied; and it is further

ORDERED that the matter is referred to Part 40 for assignment to a General IAS Part for trial on the remaining claims identified by the Appellate Division premised on breach of contract.

Dated: September 30, 2014

SEP 30 2014

Alice Schlesinger

J.S.C.
ALICE SCHLESINGER

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