Jeudy v City of New York
2015 NY Slip Op 31167(U)
July 7, 2015
Supreme Court, New York County
Docket Number: 155146/2014
Judge: Margaret A. Chan

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 52

ST. JEAN JEUDY,

Plaintiff,

"against"

THE CITY OF NEW YORK,

Defendant.

INDEX# 155146/2014
DECISION and ORDER

Margaret A. Chan, J.:

Plaintiff, a former criminalist employed by the City of New York at the Office of Chief Medical Examiner (OCME), is a black man of Haitian descent. Plaintiff brought the instant action asserting claims of discrimination based on race and national origin and retaliation in violation of New York State Human Rights Law, Executive Law § 290, and New York City Human Rights Law, Administrative Code § 8-101, *et seq.*. Defendant the City of New York (City) moved to dismiss pursuant to CPLR § 3211(a)(5) and 3211(a)(7) on the grounds that the complaint is time-barred, in part, and failed to state a cause of action. Plaintiff submitted opposition, to which defendant submitted a reply.

Plaintiff began his employment with OCME in June 2004, and was assigned to the Molecular Genetics Group as a Laboratory Associate II. The next year his title changed to Criminalist Level I-B and he received a "Very Good" rating on his annual evaluation for his first year. In early 2007, plaintiff was rejected from a promotion to Criminalist II in the Molecular Genetics group. Plaintiff claimed the hiring committee was dominated by people who harbored "negative attitudes toward blacks and those with foreign accents" that prevented his advancement (Complaint, ¶ 32). Plaintiff was granted a transfer to the Homicide and Sex Crimes group in July 2007.

Plaintiff alleged that Assistant Director Marie Samples and Criminalist Level IV Noelle Umback, who are both white and American-born oversaw the group. Plaintiff asserted that Samples and Umback were also the members of the hiring committee that were "responsible for the committee's bias against black and foreign criminalists" (*id.* at ¶ 39). Plaintiff asserted that other black or foreign-accented criminalists under their supervision had lower annual ratings, greater scrutiny, harsher discipline, and were discouraged from seeking promotions unlike their non-black and American-accented counterparts (*id.* at ¶¶ 41-42). Plaintiff claimed that a component for a promotion — an oral examination — was waived for American-accented applicants but not for foreign-accented applicants (*id.* at ¶ 46). A Chinese-

born criminalist failed the oral exam (*id.* at ¶69). Plaintiff claimed the oral exam was designed so that foreign-accented applicants would fail it.

Plaintiff submitted that between 2008 and 2010 all of his applications for promotion were denied (*id.* at ¶ 50) despite positive reviews from his direct supervisor, Kelly Birmingham. Plaintiff failed to provide any details on how many applications he made, what positions he applied for or to whom the applications were submitted. Plaintiff sought out monthly meetings with Birmingham to discuss how he could improve his skills and performance. At these meetings, Birmingham consistently discouraged plaintiff from seeking promotions and found new deficiencies in his performance (*id.* at ¶ 55-57). Eventually, all of the non-black, American-accented criminalists in plaintiff's entering class, and many of those hired later, were promoted, while plaintiff remained in an entry-level position. Plaintiff claimed that in late 2010 and again in March 2011, Birmingham stated that plaintiff was being held back due to his accent (*id.* at ¶¶ 64, 66).

In 2012, Birmingham left OCME and plaintiff's direct supervisor became Sarah Phillips. Plaintiff claimed that an issue arose with a new computerized information management system. Phillips advised him to speak to a colleague about it, but plaintiff opted to consult a manual (*id.* at ¶ 92). Phillips made a formal report against plaintiff for failing to follow her direct order. Plaintiff attributed this and other incidents of stringent scrutiny to directives by Samples and Umback, who were "out to get" him (*id.* at ¶ 73; ¶¶ 74 - 93). With Birmingham gone, Samples and Umback drafted plaintiff's 2012 review which was rated "Conditional" overall (*id.* at ¶ 94). Plaintiff also learned that Samples and Umback were reporting alleged infractions to Human Resources (*id.* at ¶ 100).

In 2013, a case plaintiff worked on in 2007 was dismissed during criminal proceedings. OCME believed the file was missing and conducted a search for it. It was found in plaintiff's filing cabinet (*id.* at ¶¶ 103-108). This led to plaintiff's suspension. Plaintiff asserted that missing files were a "common occurrence and rarely led to disciplinary action." (*id.* at ¶ 111). In May 2013, plaintiff was suspended without pay for 30 days and afterwards permitted to return to work. Upon his return he was assigned to a "rubber room" for 5 months; he was compensated with his salary but not permitted to actually perform work (*id.* at ¶¶ 113- 119). Eventually plaintiff appeared for a disciplinary hearing with a union representative. Plaintiff did not provide the disciplinary charges in his complaint. The hearing officer recommended retraining plaintiff for his position to avoid termination which was agreed upon by all parties. A stipulation was entered where plaintiff's termination would rest on a favorable final review after retraining.

Plaintiff was retrained for 3 months starting in November 2013. Plaintiff claimed he was under greater scrutiny and treated more harshly than other trainees. Despite that treatment he received an overall rating of "Good" on his

preliminary review. However, he received an overall rating of "Conditional" on his final review. Plaintiff attributed his poor rating to hostility from the evaluator who was under the influence of management. He claimed that he was deliberately tested on subjects that were not properly taught during training (*id.* at ¶¶ 155-167). Pursuant to the stipulation, plaintiff was terminated based on the negative review (*id.* at ¶ 168).

Initially, plaintiff is barred from litigating claims that accrued prior to May 23, 2011, as claims of employment discrimination are subject to a 3 year statute of limitation (*see* CPLR § 214). Plaintiff commenced the instant case on May 23, 2014. The City specifically argued that plaintiff's failure to promote claims are time barred because the last time plaintiff actually applied for a promotion was, at the latest, in 2010. Indeed, while the complaint generally stated that petitioner applied for a position repeatedly between 2007 and 2013 (Complaint at ¶ 5), the most recent rejection from a promotion that plaintiff articulated occurred in 2010 (*id.* at ¶ 60). Plaintiff claimed that in March 2011, he was told that he was being held back due to his accent (Complaint at ¶¶ 64-66). However, that claim also accrued beyond the permissible timeframe. Thus, plaintiff's claims for failure to promote are stale.

As to the remainder of his claims, the City moved to dismiss them for failure to state a cause of action. A cause of action invoking protections under both New York State and City Human Rights Laws requires plaintiff to assert that he is a member of a protected class, that he was qualified for his position, that he suffered an adverse employment action, and that the adverse action was due to circumstances that could be deemed discriminatory (*see Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004]). Once the plaintiff satisfies this burden, the burden shifts to the employer to articulate some "legitimate, nondiscriminatory reason" for the adverse action taken (*Stephenson v Hotel Empales. & Rest. Empales. Union Local 100 of ADD–CIO*, 6 NY3d 265, 270 [2006]). If defendants produce such evidence, the plaintiff must then show that reason given is pretext for discrimination (*see Ferrante v American Lung Assen*, 90 NY2d 629–630 [1997]).

Plaintiff has asserted he is a member of a protected class and that he was qualified for his position. His suspension and termination were adverse employment actions. Plaintiff claimed that those actions stemmed from harsh criticism and strict scrutiny more so than that of his similarly situated colleagues who were not black and/or were not foreign-accented. Defendant argued that plaintiff failed to show how his race or national origin factored into OCME's determination to suspend and then terminate him.

"[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]). A plaintiff must give notice to the nature of the claim and its

grounds but need not plead a prima facie case of discrimination (*see id.*). Failure to adequately plead discriminatory animus is fatal to discrimination claims (*see Whitfield-Ortiz v Department of Educ. of City of N.Y.*, 116 AD3d 580, 581 [1st Dept 2014]; *Askin v Department of Educ. of the City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013]).

Here, the complaint failed to allege any comments or references to plaintiff's race, national origin, and/or foreign accent made by an employee of defendant within the applicable timeframe. Plaintiff only made broad assertions that similarly situated individuals who did not share plaintiff's protected characteristics were treated more favorably. Plaintiff pleaded specific facts as to his claim concerning oral examinations for foreign-accented applicants, but, as discussed above, that claim was made beyond the statute of limitations. Therefore, even when applying the liberal pleading standard here, plaintiff failed to state causes of action for violations of New York State and City Human Rights Laws based on discrimination.

Similarly, as to plaintiff's retaliation claims, there were no facts pleaded regarding when the alleged retaliatory incidents occurred or how those incidents were causally connected to any protected activity within the applicable timeframe (*see Whitfield-Ortiz v Department of Educ. of City of N.Y.*, 116 AD3d 580; *Williams v New York City Hous. Auth.*, 61 AD3d 62, 71-72 [1st Dept 2009], *lv denied* 13 NY3d 702 [2009]). Thus, plaintiff cannot maintain any causes of action for retaliation here.

Accordingly, the City of New York's motion to dismiss is granted. The action is dismissed.

This constitutes the decision and order of the court.

Dated: July 7, 2015

Margaret A. Chan, *J.S.C.*