

Pelepelin v City of New York

2019 NY Slip Op 31597(U)

June 4, 2019

Supreme Court, New York County

Docket Number: 154246/2018

Judge: Julio Rodriguez, III

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

PRESENT: HON. JULIO RODRIGUEZ, III PART IAS MOTION 62EFM

Justice

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ALEX PELEPELIN,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, HOWARD REDMOND, KARL PFEFFER, PAUL
BRISCOE

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for

DISMISSAL

DECISION AND ORDER

Plaintiff commenced this action seeking damages for the alleged discriminatory conduct of his supervisors from January 2014 to November 2016 while plaintiff worked within the Executive Protection Unit (“EPU”) of defendant City of New York’s Police Department Intelligence Bureau.

Plaintiff filed a first amended complaint on December 12, 2018; the first amended complaint will hereinafter be referred to as the “complaint”.

Defendants City of New York (“City”), New York Police Department (“NYPD”), Howard Redmond (“Redmond”), Karl Pfeffer (“Pfeffer”), and Paul Briscoe (“Briscoe”) now move to dismiss pursuant to CPLR 3211 (a) (7) on the bases that some of the allegations are time-barred and plaintiff otherwise fails to state a claim. Plaintiff opposes the motion.

Facts

In the complaint, plaintiff alleges that he, a 51-year-old male of Russian national origin, joined EPU in January 2014, after approximately 19 years of service with NYPD (Dandrige aff., Exhibit A, at ¶¶ 3-4, 27-38).

Plaintiff was accepted into the NYPD police academy in June 1995 (*id.* at ¶ 27). Plaintiff was promoted to detective third grade in approximately 1999 (*id.* at ¶ 29) and promoted to detective second grade in June 2008 (*id.* at ¶ 32). “In January 2014, plaintiff was selected to join Mayor Bill de Blasio’s detail as a member of the EPU” (*id.* at ¶ 38).

Defendant Redmond is “employed by the City’s NYPD as the Commanding Officer of the [EPU] and Municipal Security Section (‘MSS’)” (*id.* at ¶ 12). Defendant Redmond is “responsible for daily operation of the EPU; and, upon information and belief is a decision-maker as to personnel and staffing matters, including but not limited to recommending and approving NYPD detectives’ promotions” (*id.* at ¶ 13).

Defendant Pfeffer is “employed by the City’s NYPD as a Lieutenant assigned to the EPU” (*id.* ¶ 14).

In May 2015, defendant Pfeffer removed plaintiff’s “Number Two” from plaintiff’s vehicle during the Mayor’s trip to Washington, D.C. (*id.* ¶ 42). Plaintiff was thereafter “removed from primary assignments and put on support assignments” (*id.* ¶ 43). Additionally, “[n]on-Russian detectives, and detectives younger and less qualified than Plaintiff... were not removed from primary assignments and [reassigned] to support assignments” (*id.*).

Defendant Pfeffer, at the direction of defendant Redmond, told plaintiff “to stay away from City Hall” because defendant Redmond “doesn’t want you to be near City Hall” (*id.* ¶ 45). Defendant Redmond is non-Russian (*id.*). Younger, non-Russian detectives were not told to stay away from City Hall (*id.* ¶ 46).

Furthermore, “[u]pon information and belief, defendant Redmond has also told other NYPD officers that plaintiff is ‘too intimidating for the [Mayor’s] family’” (*id.* ¶ 47); this was not said about younger, non-Russian detectives (*id.* ¶ 48). Additionally, defendant “Pfeffer said that he ‘does not want [plaintiff] anywhere close to the Mayor’” (*id.* ¶ 49); this was not said to younger, non-Russian detectives (*id.* ¶ 50).

Plaintiff alleges that when he spoke to defendant Redmond sometime around December 2016 about his “secondary assignments”, defendant “Redmond stated that he didn’t ‘believe [plaintiff] qualified for primary assignments’” (*id.* ¶ 52). Defendant “Redmond effectively demoted plaintiff in spring 2016 by reassigning plaintiff from the Mayor’s detail to the EPU detail protecting the Mayor’s daughter” (*id.* ¶ 54); “younger, non-Russian, less qualified EPU detectives were kept on, or assigned to the Mayor’s detail” (*id.*).

Moreover, “plaintiff has not been promoted” during his time at EPU (*id.* ¶ 56). Plaintiff alleges “[u]pon information and belief, there are approximately 30 detectives in the EPU, and 26 of those detectives have been promoted” (*id.* ¶ 57). “Plaintiff has more years in service than a significant number of the EPU detectives who have been promoted, all of whom are non-Russian, and most of whom are younger and less qualified than Plaintiff” (*id.* ¶ 58). “Plaintiff is the only officer whose national origin is Russian, and is one of the oldest officers in the EPU” (*id.* ¶ 60).

With respect to promotional decisions, specifically the promotion from detective second grade to detective first grade:

“The NYPD has no structured policy or procedure governing the promotions process for detectives. The only written policy the NYPD has for promotions

applies to how supervising officers evaluate the detectives they are supervising. Supervising officers can recommend that a detective be promoted but they are not the ultimate decision-maker for that promotion. That responsibility rests with [the Chief of the NYPD Intelligence Bureau, Thomas] Galati” (*id.* ¶ 63).

Plaintiff “emailed defendant Redmond complaining about his seniority and lack of promotion” (*id.* ¶ 72). “Defendant Pfeffer, per orders of defendant Redmond, shortly after plaintiff’s complaint, reassigned plaintiff to City Hall and ordered plaintiff to wear a uniform to guard the gates of City Hall” (*id.* ¶ 73). “[B]eing ordered to wear a uniform is considered degrading and humiliating to police detectives; and, upon further information and belief, younger, non-Russian EPU detectives have never been ordered to wear a uniform” (*id.* ¶ 74).

Plaintiff felt “convinced that he had no other options but to leave the EPU or retire from the NYPD” (*id.* ¶ 76), so he transferred from the EPU in November 2016 (*id.* ¶ 77).

Defendants’ Motion to Dismiss

Defendants move to dismiss this action for failure to state a claim. Principally, defendants’ move to dismiss on the bases that 1) some of plaintiff’s allegations are time-barred under the three-year limitations period (plaintiff’s complaint was filed on May 7, 2018); 2) plaintiff fails to allege any adverse employment actions; and, 3) plaintiff’s allegations do not support an inference that any action was taken against him due, in whole or in part, to discriminatory animus.

Additionally, defendants contend that NYPD is not an entity amenable to suit and that the complaint should be dismissed as against defendant Briscoe because there are no allegations made against him.

Plaintiff’s Opposition

In opposition to this motion, plaintiff argues that 1) plaintiff’s claims of failure to promote are not time-barred, as the alleged harms were a continuing violation; 2) the change from primary to support assignments was an adverse employment action; 3) the alleged failure to promote was an adverse employment action; and, 4) the fact that younger, non-Russian detectives were assigned primary assignments and received promotions gives rise to an inference of discrimination.

Defendants’ Reply

In reply, defendants reiterate their main points. Additionally, defendants argue for dismissal of claims against defendant NYPD and defendant Briscoe because plaintiff did not dispute these claims in opposition (*see e.g. Cassell v City of New York*, 159 AD3d 603, 603 [1st Dept 2018]).

Oral Argument

At oral argument, plaintiff's counsel clarified that there are no allegations of discriminatory conduct within NYPD prior to plaintiff's transfer to EPU in January 2014, conceded that NYPD is not an entity amenable to suit (*Troy v City of New York*, 160 AD3d 410 [1st Dept 2018]), and conceded that the complaint does not make any allegations of personal involvement by defendant Briscoe.

Therefore, on the issue of plaintiff's alleged continuing violation, this decision will only analyze the disputed time period, which began with plaintiff's transfer to EPU in January 2014. Moreover, defendants' motion is granted without opposition as to plaintiff's alleged claims against defendant NYPD and defendant Briscoe.

Motion to Dismiss Standard

“[O]n a CPLR 3211 motion to dismiss we ‘accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory’ (*Leon v. Martinez*, 84 N.Y.2d 83, 87-88, 614 N.Y.S.2d 972, 638 N.E.2d 511 [1994])” (*William Doyle Galleries, Inc. v Stettner*, 167 AD3d 501 [1st Dept 2018]). However, “factual allegations...that consist of bare legal conclusions...are not entitled to such consideration” (*Leder v Spiegel*, 31 AD3d 266 [1st Dept 2006]).

“[O]n such a motion, the complaint is to be construed liberally and all reasonable inferences must be drawn in favor of the plaintiff” (*Alden Global Value Recovery Master Fund, L.P. v KeyBank N.A.*, 159 AD3d 618 [1st Dept 2018] citing *Leon*). “[T]he criterion is whether the proponent of the pleading *has* a cause of action, not whether he has stated one” and the court “determine[s] only whether the facts as alleged fit within any cognizable legal theory” (*Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401 [1st Dept 2013] citing *Leon*).

Plaintiff's Causes of Action

The first and second causes of action of plaintiff's complaint are titled “National Origin Discrimination – Disparate Treatment” (Dandridge aff., Exhibit A, at 12-14), and are pled under the State and City Human Rights Laws (“SHRL” AND “CHRL”), respectively. A “disparate treatment” claim is an ordinary discrimination claim.¹ The elements of a claim for discrimination in employment under the SHRL and CHRL are: “(1) [plaintiff] is a member of a protected class; (2) [plaintiff] was qualified to hold the position; (3) [plaintiff] was terminated

¹ A disparate treatment claim is distinct from a disparate impact claim. As stated by the United States Supreme Court in *Texas Dept. Of Housing and Community Affairs v Inclusive Communities Project, Inc.*, 135 S Ct 2507 (2015), “[i]n contrast to a disparate-treatment case, where a ‘plaintiff must establish that the defendant had a discriminatory intent or motive,’ a plaintiff bringing a disparate-impact claim challenges practices that have a ‘disproportionately adverse effect on minorities’ and are otherwise unjustified by a legitimate rationale” (*id.*; see *Mete v New York State Off. Of Mental Retardation & Dev. Disabilities*, 21 AD3d 288, 297 [1st Dept 2005]; see also *Byrnie v Town of Cromwell, Bd. of Educ.*, 243 F.3d 93 [2d Cir 2001] [disparate impact claim requires “that the plaintiff identify a ‘specific employment practice’ that is the cause of the statistical disparities”]; *Miller v City of New York*, 2018 WL 2059841 [SDNY 2018] citing *Brown v Coach Stores, Inc.*, 16 F3d 706, 712 [2d Cir 1998]).

from employment or suffered another adverse employment action; and (4) the discharge or other adverse action occurred under circumstances giving rise to an inference of discrimination” (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004] citing *Ferrante v American Lung Assn.*, 90 NY2d 623, 629 [1997]; see *Hamburg v New York University School of Medicine*, 155 AD3d 66, 73-74 [1st Dept 2017]).

As to the third element, “[a]n adverse employment action requires a materially adverse change in the terms and conditions of employment. To be ‘materially adverse’ a change in working conditions must be more disruptive than a mere inconvenience or an alteration of job responsibilities. A materially adverse change 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” (*Messinger v Girl Scouts of the U.S.A.*, 16 AD3d 314 [1st Dept 2005]; see *Smith v Federal Defenders of New York, Inc.*, 161 AD3d 154 [1st Dept 2018] quoting *Messinger*).

Plaintiff’s third and fourth causes of action claim that the alleged conduct created a hostile work environment (Dandrige aff., Exhibit A, at 14-15). These claims are alleged under the SHRL and CHRL, respectively. To state a hostile work environment claim under the SHRL, a plaintiff must allege conduct or remarks “sufficiently severe or pervasive to alter the conditions of [their] employment” (*Chin v New York City Hous. Auth.*, 106 AD3d 443, 445 [1st Dept 2013] citing *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 310-311 [2004]); see *Ferrer v New York State Div. of Human Rights*, 82 AD3d 431 [1st Dept 2011]). Under the CHRL, a plaintiff must allege facts to show that they have “been treated less well than other employees because of [their] protected status; or that discrimination was one of the motivating factors for the defendant’s conduct” (*Chin* at 445 citing *Williams v New York City Hous. Auth.*, 61 AD3d 62 [1st Dept 2009]).

Plaintiff’s fifth and sixth causes of action are for retaliation under, respectively, the SHRL and CHRL (Dandrige aff., Exhibit A, at 16-17). To state a claim for retaliation under both SHRL and CHRL, a plaintiff must allege facts to show that “(1) [they] engaged in protected activity, (2) [their] employer was aware that [they] participated in such activity, (3) [they] suffered an adverse employment action based upon [their] 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 295, 313 [2004]; see *Brook v Overseas Media, Inc.*, 69 AD3d 444 [1st Dept 2010] [under the CHRL, protected activity is “opposing or complaining about unlawful discrimination”] citing *Forrest*; *Albunio v City of New York*, 67 AD3d 407 [1st Dept 2009]).

Plaintiff’s seventh and eighth causes of action are for discrimination in promoting under the SHRL and CHRL, respectively (Dandrige aff., Exhibit A, at 17-18). A claim for failure to promote has the following elements: “(1) [plaintiff] is a member of a protected class; (2) [plaintiff’s] job performance was satisfactory; (3) [plaintiff] applied for and was denied promotion to a position for which [plaintiff] was qualified; and (4) the position remained open and the employer continued to seek applicants” (*Porter v New York State Dept. of Motor Vehicles*, 78 Fed Appx 166, 168, 2003 WL 22367531 [2d Cir 2003] citing *Cruz v Coach Stores*,

Inc., 202 F3d 560, 565 [2d Cir 2000]; *see Okocha v City of New York*, 122 AD3d 550 [1st Dept 2014] citing *Brown v Coach Stores, Inc.*, 163 F3d 706 [2d Cir 1998]).

Analysis and Discussion

Plaintiff's first and second causes of action are employment discrimination claims under the SHRL and CHRL, respectively. Here, the parties do not dispute the first two elements. Rather, defendants dispute whether plaintiff has sufficiently plead that he suffered an adverse employment action² and, if so, whether the circumstances give rise to a discriminatory inference (*see Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004]).

Plaintiff alleges that he is the one of the oldest officers and the only officer of Russian national origin in the EPU (Dandrige aff., Exhibit A, at ¶ 60). Plaintiff alleges that younger, non-Russian officers did not have the same experience within the EPU with respect to assignments and promotions (*id.* ¶¶ 33, 41, 43, 46, 48, 50, 57-58). Plaintiff also alleges, however, that he "has more years in service than a significant number of the EPU detectives who have been promoted...most of whom are younger and less qualified than plaintiff" (*id.* ¶ 58 [emphasis added]).

For the following reasons, under the circumstances pled in plaintiff's complaint, this court finds that plaintiff's first and second causes of action fail to state a claim.

As to the third element of these claims ("adverse employment action"), plaintiff cites (1) removal of his "number two" (the import of which is not described) (Dandrige aff., Exhibit A, at ¶ 42); (2) reassignment to "support assignments" or "secondary assignments" (*id.* ¶ 43, 51); (3) reassignment to City Hall "to wear a uniform to guard the City Hall gates" (*id.* ¶ 73); and (4) reassignment to protecting the Mayor's daughter (*id.* ¶ 54). Significantly, plaintiff does not allege that any of the "reprimands resulted in any reduction in pay or privileges" (*Gaffney v City of New York*, 101 AD3d 410 [1st Dept 2012]; *see Cubelo v City of New York*, 168 AD3d 637 [1st Dept 2019] [perception of a demotion not an adverse employment action]). Ultimately, plaintiff's allegations with respect to his work assignments do not constitute adverse employment actions but, rather, exhibit mere "alteration[s] of [his] responsibilities" (*Silvis v City of New York*, 95 AD3d 665 [1st Dept 2012]).

Additionally, plaintiff's allegations fail as to the fourth element—that is, that the allegations give rise to an inference of discriminatory animus. First, plaintiff's allegations regarding certain comments (*id.* ¶ 40 ["made derogatory comments directed at plaintiff"], ¶ 45 ["stay away from City Hall"], ¶ 47 [plaintiff is "too intimidating for the [Mayor's] family"], ¶ 49 [defendant Pfeffer "does not want [plaintiff] anywhere close to the mayor"], ¶ 52 [plaintiff not "qualified for primary assignments"]) during the time period at issue do not arguably touch upon plaintiff's protected status either as a 51-year-old person or a person of Russian national origin (*see Ortiz v City of New York*, 105 AD3d 674 [1st Dept 2013]; *Askin v Department of Educ. of*

² Plaintiff's alleged claims for failure to promote under the SHRL and CHRL were discretely plead as plaintiff's seventh and eighth causes of action. Defendants "concede that generally a failure to promote constitutes an adverse employment action" (Defendants' mem. of law at 10), and these claims will be analyzed separately *infra*.

the City of N.Y., 110 AD3d 621 [1st Dept 2013]; *see also Clyburn v Shields*, 33 Fed Appx 552, 555-556 [2d Cir 2002]).

Second, plaintiff's allegations of discriminatory animus based on his protected statuses, without more, amount to "bare legal conclusions" (*Leder v Spiegel*, 31 AD3d 266 [1st Dept 2006]). Plaintiff's allegations that 1) he was one of the more experienced officers but 2) did not receive a promotion are not sufficient to support a claim of discrimination (*see Askin* at 622).

By plaintiff's own admission, the event that "marked the beginning of a period of [his] marginalization" within the EPU (Plaintiff's mem. of law in opp. at 12) occurred during the Mayor's May 2015 visit to Washington, D.C.:

"the Mayor arrived late to his destination. When the lead driver, Detective Azab, was blamed by his superiors for causing the delay, plaintiff explained to defendants in a non-confrontational manner that Detective Azab should not be held accountable, as the accidental detour could have been easily avoided had plaintiff's 'Number Two' been in the vehicle with plaintiff, instead of being impermissibly reassigned to chauffeur persons unrelated to the Mayor.

As the complaint alleges, irrespective of this specific event's designation as an adverse employment action, this event marked the beginning of a period of marginalization by defendants against plaintiff" (*id.*).

Even without the above context—and although plaintiff alleges that younger, non-Russian detectives were treated differently from May 2015 forward—plaintiff's allegations do not give rise to an inference that there was a discriminatory preference for such younger, non-Russian detectives. Plaintiff states in his complaint that he is the only person of Russian national origin in the EPU (Dandridge aff., Exhibit A, at ¶ 60); therefore, by definition, if plaintiff was given a specific instruction or assignment, then all his non-Russian colleagues would be treated differently. Additionally, plaintiff fails to specify the precise, approximate, or perceived age of any of his colleagues (*see e.g. id.* at ¶¶ 70-71), and his complaint implicitly concedes that some officers of his experience and age were in fact promoted (*id.* ¶ 58 ["*most of whom* are younger and less qualified than plaintiff"] [emphasis added]). As pled, the alleged conduct, comments, and circumstances simply fail to give rise to an inference that discrimination played even a partial role in plaintiff's treatment.

Because this court finds that plaintiff has not alleged a qualifying "adverse employment action", and because this court further finds that plaintiff's allegations do not give rise to a discriminatory inference, plaintiff's first and second causes of action fail to state a claim.

Plaintiff's third and fourth causes of action claim that the alleged conduct created a hostile work environment. These claims come respectively under the SHRL and CHRL.

To sustain this claim under the SHRL, plaintiff's allegations of comments made about and to him must be "sufficiently severe or pervasive to alter the conditions of [his] employment" (*Chin v New York City Hous. Auth.*, 106 AD3d 443, 445 [1st Dept 2013]). Plaintiff's allegations

amount to four specific comments (Dandrige aff., Exhibit A, at ¶ 45 [“stay away from City Hall”], ¶ 47 [plaintiff is “too intimidating for the [Mayor’s] family”], ¶ 49 [defendant Pfeffer “does not want [plaintiff] anywhere close to the mayor”], ¶ 52 [plaintiff not “qualified for primary assignments”]) over plaintiff’s almost three-year period with the EPU (January 2014 to November 2016) (*id.* ¶¶ 38, 77). Additionally, plaintiff makes a general allegation that, “upon information and belief, defendants Redmond and Pfeffer made derogatory comments directed at plaintiff on a continuing and ongoing basis, regularly for at least a year” (*id.* ¶ 40).

As with his claim for discrimination, the facts alleged do not support an inference that the reassignments or comments were based, in whole or in part, upon plaintiff’s status as a 51-year-old person or a person of Russian national origin. Moreover, the relative infrequency of these comments, most of which relate directly to EPU and plaintiff’s work, is insufficient to sustain a hostile work environment claim under the SHRL, as the alleged conduct was not “sufficiently severe or pervasive to alter the conditions of [his] employment” (*Chin* at 445). Additionally, plaintiff’s allegation of “derogatory comments” is conclusory in characterizing the comments as “derogatory” and in failing to specify if and how the comments were in any way related to plaintiff’s protected statuses (Dandrige aff., Exhibit A, at ¶ 40).

Similarly, plaintiff’s allegations do not set forth facts sufficient for a hostile work environment claim under the CHRL. Plaintiff’s claims do not show that plaintiff was treated less well *because of* his protected statuses or lead to an inference that discrimination was one of the motivating factors in defendants’ conduct (*see Ji Sun Jennifer Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD3d 18, 26 [1st Dept 2014]; *Askin v Department of Educ. of the City of N.Y.*, 110 AD3d 621 [1st Dept 2013]).

Accordingly, this court finds that plaintiff’s third and fourth causes of action, which allege that defendants’ conduct created a hostile work environment, fail to state a claim.

Plaintiff’s fifth and sixth causes of action are for retaliation under the SHRL and CHRL, respectively. Plaintiff alleges that he emailed defendant Redmond sometime after October 2016, “complaining about his seniority and lack of promotion” (Dandrige aff., Exhibit A, at ¶ 72). Shortly afterward, “defendant Pfeffer, per orders of defendant Redmond...reassigned plaintiff to City Hall and ordered plaintiff to wear a uniform to guard the gates at City Hall” (*id.* ¶ 73). Additionally, plaintiff “attempted to speak with defendant Redmond for more than a year-and-a-half regarding plaintiff’s secondary assignments” (*id.* ¶ 51). “When plaintiff was finally able to converse with defendant Redmond, Redmond stated that he didn’t ‘believe [plaintiff] qualified for primary assignments’” even though “approximately 80% of the EPU detectives have no experience or training in dignitary protection”, and plaintiff does have such experience and training (*id.* ¶¶ 52-53).

In both instances where plaintiff spoke to his supervisors about his dissatisfaction with his assignments and lack of promotion, plaintiff does not allege that he complained of unfair treatment due to his status as a 51-year-old person or a person of Russian national origin (*id.* ¶¶ 51, 72). Consequently, plaintiff’s claims for retaliation fail (*see Sims v Trustees of Columbia University*, 168 AD3d 622 [1st Dept 2019] [“Plaintiff never complained to defendant that he was discriminated against because of his race [or] age]; *cf. La Porta v Alacra, Inc.*, 142 AD3d 851,

853 [1st Dept 2016] [where plaintiff complained about specific sexual conduct of colleague]; *Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD3d 18 [1st Dept 2014] [where plaintiff raised specific concerns of unfair treatment “due to her pregnancy”]). This court finds that plaintiff has therefore failed to plead causes of action for retaliation under the SHRL and CHRL.

Plaintiff’s seventh and eighth causes of action are for discrimination in promoting, respectively under the SHRL and CHRL. Again, the first two elements of these causes of action are undisputed. In this instance, it is not alleged that there was a specific position opened for application or left open following plaintiff’s application. However, this is not a bar to these causes of action (*see Greenbaum v Handelsbanken*, 67 F Supp 2d 228, 258 [SD NY 1999]; *see also Texas Dept. of Community Affairs v Burdine*, 450 US 248, 253 n 6 [1981] [the “standard is not inflexible” for a “prima facie case” of discrimination]). Here, plaintiff alleges that “NYPD does not publish when promotion decisions for...detectives will be made”, that “candidates...are not told how many vacancies there are”, and that “promotions are made and have been made during the course of plaintiff’s employment with defendants, on a monthly basis, wherein a ceremony is held on or about the last Friday of each month” (Dandrige aff., Exhibit A, at ¶¶ 65-69).

It remains, however, that plaintiff’s allegations do not give rise to an inference of discrimination. The basis for that inference is lacking because 1) other, similarly-situated individuals—that is, detectives as old or older than plaintiff—were in fact promoted,³ and 2) none of the alleged comments or conduct tangentially relate to plaintiff’s protected statuses. Additionally, and as noted above, plaintiff fails to allege the specific, approximate, or perceived ages or national origins of the individuals identified in the complaint. This court therefore finds that plaintiff’s seventh and eighth causes of action fail to state a claim.

Ultimately, plaintiff’s complaint describes grievances with his job-related assignments and support (*id.* at ¶ 42 [“removed plaintiff’s ‘Number Two’”], ¶ 43 [“removed from primary assignments and put on support assignments”], ¶ 54-55 [reassigning plaintiff to “protecting the Mayor’s daughter”, which was a “*de facto* demotion”], ¶ 73 [“ordered plaintiff to wear a uniform”]). That plaintiff may have been dissatisfied with his professional progress during his almost three-year tenure with EPU does not—without more than is alleged in his complaint—create a cognizable cause of action (*see Uwoghiren v City of New York*, 148 AD3d 457 [1st Dept 2017] [“mere personality conflicts must not be mistaken for unlawful discrimination, lest the antidiscrimination laws become a general civility code”] citing *Forrest v Jewish Guild for the Blind*, 3 NY3d 295 [2004]).

“Construing the complaint liberally, presuming its factual allegations to be true, and according the complaint the benefit of every possible favorable inference” (*Askin v Department of Educ. of the City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013]), this court finds that plaintiff fails to state a claim for disparate treatment, a hostile work environment, retaliation, or discrimination in promoting under the State and City Human Rights Laws.

³ “Upon information and belief, plaintiff has more years in service than a significant number of the EPU detectives who have been promoted, all of whom are non-Russian, and most of whom are younger and less qualified than plaintiff” (Dandrige aff., Exhibit A, at ¶ 58); “Plaintiff is the only officer whose national origin in Russian, and is one of the oldest officers in the EPU” (*id.* ¶ 60).

Finally, plaintiff failed to specify the date of the opening incident to the course of alleged discriminatory conduct—the May 2015 removal of plaintiff’s “number two” and the Mayor’s late arrival to an event in Washington, D.C (Plaintiff’s mem. of law in opp. at 12; Dandrige aff., Exhibit A, at ¶ 42 [“occurred in May 2015”]). As the summons and complaint were filed on May 7, 2018, and the statute of limitations for the claims herein is three years (*Jae Hee Chung v Mary Manning Walsh Nursing Home Co., Inc.*, 147 AD3d 452 [1st Dept 2017]), the specific date of this event would ordinarily be essential. However, for the reasons stated above, the court need not reach the parties’ contentions with respect to whether plaintiff’s claims constitute continuing violations and whether the claims are time-barred.

Based on the foregoing, plaintiff’s first amended complaint is hereby dismissed as against defendants City of New York, New York Police Department, Howard Redmond, Karl Pfeffer, and Paul Briscoe, for failure to state a claim.

Accordingly, it is hereby ORDERED that the motion of defendants City of New York, New York Police Department, Howard Redmond, Karl Pfeffer, and Paul Briscoe to dismiss the complaint herein is granted and the complaint is dismissed in its entirety, and the Clerk is directed to enter judgment accordingly in favor of said defendants City of New York, New York Police Department, Howard Redmond, Karl Pfeffer, and Paul Briscoe; and it is further

ORDERED that counsel for the defendants shall serve a copy of this order with notice of entry upon plaintiff, the Clerk of the Court (60 Centre Street, Room 141B), and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119).

Any argument or requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected. This constitutes the decision and order of the court.

June 4, 2019



 HON. JULIO RODRIGUEZ III, JSC

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APPLICATION:

CHECK IF APPROPRIATE: