SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **57TR**

Justice

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CHRISTINE PEDDY

Plaintiff,

- v -

L'OREAL USA INC.,

Defendant.

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INDEX NO. 160928/2020

MOTION DATE 12/06/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59

were read on this motion to/for DISMISS.

BACKGROUND

Plaintiff commenced this action alleging age discrimination by defendant under state law pursuant to a summons and complaint filed on December 16, 2020. Plaintiff had commenced a prior action in Federal Court asserting the same claims in August 2018.

Pursuant to an order issued July 15, 2020, defendant was awarded summary judgment and the action in Federal Court was dismissed. Plaintiff appealed.

In January 2021, the parties entered into a stipulation in this action which was so-ordered by the court. The stipulation provided in pertinent part:

> The parties currently have a case pending in the 2nd Circuit … which has federal claims that address the same claims as in this state court case.
> Accordingly, in the interest of efficiency, the parties agree to stay this case until the 2nd Circuit has issued a Decision.
> Upon issuance of the 2nd Circuit Decision, Defendant shall have 30 days to either (i) answer or otherwise respond to the Complaint, or if the federal case is reinstated (ii) file a dismissal of this state court case.

Pursuant to a Summary Order dated May 20, 2021, the Second Circuit Court of Appeals affirmed the decision on summary judgment dismissing plaintiff's claims.

In June 2021, defendant moved to dismiss this action based on the dismissal of the claims in Federal Court. The motion was fully briefed, and Judge Kelly heard argument in December 2021 and reserved decision. In January 2022, this Court took over Part 57 and in the Spring of 2023 the parties reached out to the Court asking that the stay be vacated and that a decision be issued on the motion.[1]

For the reasons stated below, the motion is granted, and the action is dismissed.

ALLEGED FACTS

Plaintiff began her employment with Defendant as an Assistant Vice President (AVP) in the Professional Products Division (PPD) when she was 45 years old, and she remained employed there for over two years. She was terminated on April 14, 2016, at the age of 46 after L'Oreal's Matrix brand sought to optimize its performance by eliminating layers in the business structure, which resulted in the elimination of her position.

Shortly after her 2016 termination, plaintiff wrote to L'Oréal senior executives asking to be reinstated in an alternative position and alleging that she felt that her age and gender had something to do with her termination. Without investigating her claims, L'Oréal's then-Chief Executive Officer directed the Human Resources (HR) team to find plaintiff an alternate position.

By mid-June 2016, plaintiff was reinstated to an AVP position in L'Oréal's LP brand, with full salary and benefits for the time she had missed.

[1] The parties also provided the court with a transcript of the oral argument held before Judge Kelly.

In an anonymous workplace questionnaire on September 13, 2017, plaintiff complained that career opportunities were not fair, and that senior people shouldn't be cut to hire junior people. The response to the questionnaire did not contain any specific complaints about age discrimination.

In November 2017, L'Oréal implemented a division-wide reduction in force (RIF). L'Oréal presented plaintiff with a document entitled "Older Workers Benefit Protection Act Information Relating to Workforce Restructuring: Professional Products Division," listing 10 out of 486 employees in PPD that had been selected for termination, all of whom were over 40. 200 employees aged 40 and older remained in the PPD (126 of which were older than Plaintiff), and 254 employees under age 40 remained.

After she was notified of her termination, plaintiff applied to between 15 and 30 positions with L'Oréal. Many of the positions were at the Senior Manager level, the Director level, or were digital specialist roles or retail positions, all of which were considered lower in rank than plaintiff's prior roles at the AVP level. Plaintiff also applied to two Vice President-level positions that were ranked higher than her prior roles at the AVP level. One of the positions was not filled due to reevaluation of business needs. The other was a Vice President of Digital position for the IT Cosmetics division for which L'Oréal hired a candidate who had led e-commerce strategy for L'Oréal's CPD division, and who had prior digital and retail background from other companies.

Finally, Plaintiff applied to three AVP positions. Before she was officially terminated from the company, she applied for a position as AVP Key Accounts at the Kiehl's brand, but the role was downgraded from an AVP position to a Director-level position for budgetary reasons. After her termination, she applied for the AVP of Retail Customer Experience position alongside

95 other candidates, and for the AVP of Marketing position with L'Oreal's Giorgio Armani Fragrance Brand alongside 200 applicants. The candidates hired had experience directly relevant to the role.

Plaintiff subsequently turned to legal action. Her attorney wrote a letter to L'Oréal regarding plaintiff's termination and requested that she be reinstated to the Company. Plaintiff's former supervisor wrote a memo outlining plaintiff's performance deficiencies related to the role, alleging plaintiff was to strategize without repeated feedback and guidance, and that plaintiff had issues managing others.

L'Oréal found positions for several other, younger employees, such as Laurie Lam, Christelle Michelet, Yvahn Martin, Melissa Davis, Christine Kennally, and Karla Duffner, some of whom obtained new roles in other divisions abroad. Plaintiff did not apply for any of those roles. Plaintiff did not assert any facts indicating that she was similarly situated to them. The manager responsible for a number of the positions to which plaintiff applied testified that L'Oréal never instructed him not to hire plaintiff, that age played no part in his decision-making process, and that he did not know plaintiff's age when considering her applications.

Plaintiff never raised any complaints to management or HR regarding her belief that she was being treated differently because of her age between the time of her reinstatement in June 2016 and her termination in November 2017. She also offered no direct evidence of age discrimination, failing to identify a single discriminatory comment made to her, about her, or about the age of L'Oréal employees in general.

DISCUSSION

Pursuant to CPLR § 3211(a)(5), "[a] party may move for judgment dismissing one or more causes of action asserted…on the ground that…the cause of action may not be maintained

because of…collateral estoppel." The party attempting to defeat the bar of collateral estoppel "has the burden of establishing the absence of a full and fair opportunity to litigate the issue in the prior action." *Simmons-Grant v. Quinn Emanuel Urquhart & Sullivan, LLP*, 116 A.D.3d 134, 138 (1st Dep't 2014) (*citing Kaufman v. Eli Lilly & Co.*, 65 N.Y.2d 449, 456 (1985).

Collateral estoppel "precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party…whether or not the tribunals or causes of action are the same." *Williams v. N.Y.C. Tr. Auth.*, 171 A.D.3d 990, 991 (2d Dep't 2019); *see also Hudson v. Merrill Lynch & Co.*, 138 A.D.3d 511, 515 (1st Dep't 2016). The doctrine applies when "(1) the issues in both proceedings are identical; (2) the issue in the prior proceeding was actually litigated and decided; (3) there was a full and fair opportunity to litigate in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits." *Williams*, 171 A.D.3d at 991-992, 97 N.Y.S.3d at 695.

Plaintiff does not dispute in her opposition papers that the elements of collateral estoppel have been satisfied as to the NYSHRL claims. The court finds they have also been satisfied as to the and NYCHRL claims.

Though a discrimination claim under the NYCHRL is analyzed under a broader standard than its state and federal counterparts, a plaintiff is nonetheless estopped from asserting such a claim if the factual findings of the District Court are dispositive, as they are here. *Hudson.*, 138 A.D.3d at 515; *Milione, v. City Univ. of N.Y.*, 153 A.D.3d 807, 809 (2d Dep't 2017); *Simmons-Grant*, 116 A.D.3d at 140–41.

The NYCHRL uses the same burden-shifting framework as its state and federal counterparts. *Hudson*, 138 A.D.3d at 514. Under the NYCHRL's broader standard, a plaintiff

can also prevail on a claim if she shows that an employment decision is motivated, at least in part, by a discriminatory animus. *Id*. at 515.

Here, plaintiff is collaterally estopped from asserting her NYCHRL claim because the District Court made factual findings sufficient to establish that discrimination played no role in the decision not to rehire her. The District Court ruled that L'Oréal had demonstrated a legitimate, non-discriminatory reason for plaintiff's non-hire for each position to which she applied. The Court held both that plaintiff had proffered no direct evidence of discrimination and had failed establish any facts sufficient to show that the decision not to hire her for each position was pretextual.

Absent any direct evidence of discrimination, the only facts that plaintiff alleges in her State Complaint – all of which she proffered in the Federal Action to support her discrimination claim – are that after the RIF resulted in her termination, she applied to certain jobs for which she was qualified but not hired, and other, younger employees obtained other jobs within L'Oréal. The District Court held that this finding was insufficient evidence of discrimination.

The "general principle" that the city discrimination law is interpreted more broadly than federal and state discrimination laws "does not substitute for evidence." *See Simmons-Grant*, 116 A.D.3d at 141. "[O]nce defendant established its nonretaliatory reason in the federal action, plaintiff [is] required to identify an issue of fact." *Id.* In the Federal Action, plaintiff never alleged, and never established, any additional facts that would indicate that discrimination played a role in her non-hire. Similarly, plaintiff has not identified a single factual allegation in her State Complaint that this Court could use to arrive at a different conclusion than the District Court did.

Plaintiff alleges two remaining claims, plead in her second cause of action. The first, based on defendant's refusal to redeploy plaintiff after her termination, and a second claim based on defendant's refusal to rehire plaintiff after terminating her.

The District Court rejected plaintiff's argument that defendant's preference not to hire former employees into positions lower than they previously held was in fact pretextual. The District Court declared, "[E]ven if L'Oréal has hired one or two employees into lower-level roles, such hiring decisions would not refute L'Oréal's general assertion that it does not do so as a matter of course." The same principle is true under the city law; merely failing to follow an internal procedure does not itself indicate discriminatory animus. *See Ciulla v. Xerox Corp*., 70 Misc. 3d 1205(A), 2021 NY Slip Op 50007(U), at 10 (Sup. Ct. N.Y. Cnty. Jan. 5, 2021).

Plaintiff has failed to allege facts sufficient to support her claim of discrimination under the NYCHRL, and therefore, even under the more lenient city standard, her claim still fails. *See Matias v. New York & Presbyt. Hosp*., 137 AD3d 649, 650 (1st Dep't 2016).

Plaintiff alleges a separate disparate treatment claim based on the fact that younger marketing individuals were treated differently than plaintiff in their redeployment practice, and that the District Court failed to address this claim. However, "[a] plaintiff relying on disparate treatment evidence must show [she] was similarly situated in all material respects to the individuals with whom [she] seeks to compare [her]self." *Ciulla,* 70 Misc. 3d 1205(A), 2021 NY Slip Op 50007(U) at *9. Here, plaintiff admits that she never applied to any of the positions that she alleges younger employees received. Plaintiff alleges that certain employees sought jobs in other countries but fails to allege that any of the employees had similar skills and credentials or were in any way similarly situated.

Even under the broader NYCHRL standard, plaintiff cannot sustain a discrimination claim on such speculative and conclusory allegations. *See Whitfield-Ortiz v. Dep't of Educ. of City of N.Y.*, 116 A.D.3d 580, 581 (1st Dep't 2014); *Brown v. City of N.Y.*, 188 A.D.3d 518, 519, (1st Dep't 2020).

Finally, the court does not find a basis to sanction plaintiff for her refusal to withdraw this action after the decision in the Federal Court litigation. While the Court does find that there are no viable claims remaining to pursue in this action, the court does not find that the arguments made by plaintiff and her counsel rise to the level of being frivolous.

WHEREFORE it is hereby:

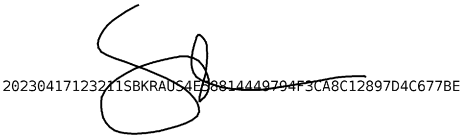
ORDERED that defendant's motion is granted and the action is dismissed; and it is further

ORDERED that, within 20 days from entry of this order, defendant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh);]; and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

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



4/11/2023
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE