

Garcia v City of New York

2023 NY Slip Op 32966(U)

August 28, 2023

Supreme Court, New York County

Docket Number: Index No. 151552/2022

Judge: J. Machelles Sweeting

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: IAS PART 62

-----X
 DAVID GARCIA,

Plaintiff,

Index No.: 151552/22

-against-

THE CITY OF NEW YORK, NETEIS GILBERT,
 Individually, and JOSEPH REZNICK, Individually

**DECISION AND ORDER ON
 MOTION Seq #001**

Defendants.
 -----X

HON. J. MACHELLE SWEETING, J.S.C.:

Plaintiff David Garcia, a police officer in the New York City Police Department (“NYPD”) alleges that he was denied employment benefits on the basis of his race, arrest and criminal record. Plaintiff seeks compensatory and punitive damages, withheld employment benefits, a retroactive promotion to Sergeant, and an order banning the unlawful use of sealed criminal records by the NYPD against members of the department.

Defendants moved to dismiss the complaint pursuant to Civil Practice law and Rules (“CPLR”) 3211. Plaintiff opposed the motion, cross-moved to amend his complaint, and submitted a Proposed Amended Complaint. Defendants then submitted papers seeking to apply their motion to dismiss to the Proposed Amended Complaint, which the court will consider in evaluating this motion (*see Sage Realty Corp. v Proskauer Rose LLP*, 251 AD2d 35, 38 [1st Dept 1998]).

Pursuant to CPLR 3025, leave to amend a pleading is freely granted absent prejudice or surprise resulting directly from any delay in asserting the proffered claim (*see Peach Parking Corp. v 346 W. 40th St., LLC*, 42 AD3d 82 [1st Dept 2007]). In this case, neither prejudice, nor surprise, is demonstrated.

In the Proposed Amended Complaint, plaintiff alleges as follows: Plaintiff joined the NYPD in 2004. In March 2016, he was arrested for “domestic violence allegations stemming from” his wife (NYSCEF 15, Proposed Amended Complaint, ¶ 110). Plaintiff was charged with “violation of Department Regulations.” Specifically, plaintiff was charged with having “engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: [he] was involved in a physical altercation with his wife” (NYSCEF 7). Plaintiff alleges that he and his wife were in the process of divorcing. The disposition sheet shows that he pled guilty to the specified charges (NYSCEF 8). Plaintiff alleges that he pled guilty to disorderly conduct (NYSCEF 15, ¶ 113). Plaintiff was suspended from duty for 30 days. Upon his return to duty, plaintiff was placed on performance monitoring. Plaintiff alleges that all documents stemming from his arrest and plea were sealed pursuant to Criminal Procedure Law (“CPL”) 160.50 or 160.55.

The Proposed Amended Complaint alleges that police officers undergo an annual performance evaluation. The top score in a performance evaluation is five. An officer who receives a score of four or five can transfer into a specialized unit, where they can earn as much as \$50,000 more than an officer who works regular patrol. Some specialized units place officers on an investigatory track wherein they will receive promotion to detective within 18 months of placement in the unit. During the span of a 20-year career, such a promotion can mean millions more in pay and benefits.

The NYPD Patrol Guide states that police officers must keep a daily tabulation of their enforcement activity. The activity is recorded on Monthly Conditions ImProposed Amended Complaintt Reports forms (“monthly reports”). The monthly reports are assigned points based

on the enforcement activity recorded therein. The number of annual points assigned to the reports should conform to the annual evaluation score.

Police officers are judged on the number of arrests and summons they issue as compared to their peers on the same command. Assignments are to be given on a rotating basis to ensure that every officer within a command is assigned a proportionate number of assignments to earn activity. If for some reason an officer is given a disproportionate number of assignments which prevent him/her from achieving activity points, those assignments should be factored into their annual evaluation.

Although plaintiff was the third most senior officer on his command, he was assigned a disproportionate number of tours which prevented him from earning activity points on par with his white peers. Plaintiff was lucky to have 10 tours of patrol every month. His white counterparts, against whom he is judged regularly, have 20 tours for that same month. Plaintiff did not have a steady sector or a steady partner which made it more difficult to earn activity points. White colleagues would have a steady sector that they were responsible for which allowed them to get the numbers required for strong performance evaluations.

The tours assigned to plaintiff created a hostile work environment based on his race. Plaintiff was "disproportionately assigned fixed posts, prisoner transports, station house security, telephone switchboard, sent to barriers, and other assignments at a far greater rate than his white colleagues yet was judged against his peers as if he worked patrol every day." To date white officers Napolitano and McNamara are almost never assigned to duties that make it difficult to earn activity points.

In February or March 2017, plaintiff took the sergeant's examination and passed. He continued to be on performance monitoring. In September 2019, plaintiff went before the Career Advancement Review Board ("CARB") and was denied promotion. Chief Morris, one of the chiefs who conducted the hearing, "accused plaintiff of being lazy which is coded language for race discrimination." Defendant Reznick told plaintiff that he would not be promoted because he had committed a crime against his wife. Even though the records in the criminal proceeding were sealed, defendants used his arrest to deny him promotion.

Following the CARB hearing, plaintiff applied for and was denied multiple specialized details. Plaintiff "spoke with" defendant Gilbert about joining the anti-crime unit to increase his arrests but his application was denied. The position was filled by less qualified and less senior white officer Hespler. Plaintiff was similarly situated to Hespler in every way except for race.

The individual defendants assign a disproportionate amount of overtime to white police officers as compared to minority officers. White officers receive the vast majority of overtime, and "top out" on overtime every month which results in approximately 40 hours per month in overtime. Plaintiff, who is similarly situated and performs at or above their level, is lucky to earn 10 hours a month in overtime. The lower amount of overtime results in plaintiff earning \$5,000 to \$7,000 less a month than his white peers. Plaintiff explained his situation to his Commanding Officer who refused to place plaintiff in a position to earn as much activity as non-Hispanic officers within the command.

Plaintiff next applied for the Domestic Violence position within the command. He was not given the opportunity to interview for the position, which was given to white officer Boystak. Plaintiff was similarly situated to Boystak as to her tour and duties. Plaintiff applied for the Neighborhood Coordinator Position and was not given an interview. Plaintiff again received a

negative evaluation. White comparators Lynch and McDermott received higher evaluation scores as a result of their race. As a result of plaintiff's negative evaluations, he was prevented from achieving upward mobility within the NYPD.

In May 2020, Lt. Pimental informed plaintiff that defendant Gilbert did not recommend him for promotion due to his lack of activity. No consideration was given to the fact that the lack of activity was due to plaintiff being assigned tasks with little chance to earn activity points. Favorable treatment was given to white police officers William Lynch and Thomas McDermott. They were both on the Sergeants' List and were given easier assignments within the command and they were promoted.

Plaintiff again went in front of CARB on September 15, 2020. At the hearing he was chastised over his activity, was informed that he would not be promoted, and was taken off the Sergeant's List. White officers who were similarly situated would get three appearances before CARB before being taken off said list.

In October 2020, defendant Gilbert extended plaintiff's Level 2 performance monitoring. In February 2021, plaintiff filed a complaint of discrimination against Gilbert with the Office of Equal Employment Opportunity. On February 26, 2021 plaintiff's direct sergeant placed him on an overtime list. Lt. DiPetta told plaintiff's sergeant that plaintiff could not be placed on the overtime list. As a result of complaining about discrimination, plaintiff went from earning approximately \$1,000 a month in overtime to no overtime. His white comparators reached the maximum allowed for overtime per month.

On March 10, 2021, plaintiff volunteered for overtime. The overtime tasks were given to other employees because of his complaint of discrimination. The next day he was denied a day off. He was denied repeated days off, whereas white officers were always allowed days off. Plaintiff was further chastised for not earning activity points and received more assignments that prevented him from earning activity points. His evaluations worsened after his complaint. As a result, he has lost pension benefits and substantial income.

In nine causes of action, the Proposed Amended Complaint alleges violations of New York State Human Rights Law (NYSHRL) and the New York City Human Rights Law (“NYCHRL”) through employment discrimination based on race and arrest/conviction record, hostile work environment, and retaliation.

CONCLUSIONS OF LAW

On a motion, pursuant to CPLR 3211 (a) (7), the facts pleaded are presumed to be true and are accorded every favorable inference. The court determines only whether the facts as alleged fit within any cognizable legal theory (*Nonnon v City of New York*, 9 NY3d 825, 827 [2007]). The court's inquiry is limited to determining whether the complaint states any cause of action, not whether there is evidentiary support for it (*Rovello v Orofino Realty Co.*, 40 NY2d 633, 635-636 [1976]). “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]).

**I. Count I - discrimination under NYSHRL
Count IV – discrimination under NYCHRL**

Under NYSHRL (Executive Law § 296 [1]), to state a *prima facie* cause of action for employment discrimination, a plaintiff must plead that he/she is a member of a protected class qualified to hold the position, that he/she suffered an adverse employment action, and that the adverse action occurred under circumstances giving rise to an inference of discrimination based on plaintiff's protected status (*Stephenson v Hotel Empls. & Rest. Empls. Union Local 100 of AFL-CIO*, 6 NY3d 265, 270 [2006]). While analysis of discrimination under NYCHRL (Administrative Code of City of NY § 8-107 [Administrative Code] [1] [a]) follows the same guidelines, the more liberal intent of the NYCHRL must be considered in evaluating the adequacy of a plaintiff's claim (*Romanello v Intesa Sanpaolo, S.p.A.*, 22 NY3d 881, 884-885 [2013]). NYCHRL affords protections broader than NYSHRL (*Williams v New York City Hous. Auth.*, 61 AD3d 62, 66 [1st Dept 2009]) and is to be construed more favorably to the plaintiff than federal or state human and civil rights laws (*Albunio v City of New York*, 16 NY3d 472, 477-478 [2011]).

Under NYCHRL, plaintiffs need not demonstrate an adverse employment action, but only that they were treated less well than others because of their membership in a protected class (*Dimitracopoulos v City of New York*, 26 F Supp 3d 200, 216 [ED NY 2014]; *Gorokhovskiy v New York City Hous. Auth.*, 552 Fed Appx 100, 102 [2d Cir 2014]). Nonetheless, the plaintiff still bears the burden of showing that the conduct is caused by a discriminatory motive (*Juillet v City of New York*, 77 Misc 3d 1002, 1006 [Sup Ct, NY County 2022]), citing *Mihalik v Credit Agricole Cheuvreux N. Am., Inc.*, 715 F3d 102, 110 [2d Cir 2013]).

Both State and City employment discrimination cases are generally reviewed under fair notice pleading standards (*Thomas v Mintz*, 182 AD3d 490, 490 [1st Dept 2020]; *Petit v Department of Educ. of the City of N.Y.*, 177 AD3d 402, 403 [1st Dept 2019]; *Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 145 [1st Dept 2009]).

When determining claims under NYSHRL and NYCHRL, New York courts may look to how federal law has analyzed those laws (*McIntyre v Manhattan Ford, Lincoln-Mercury*, 175 Misc 2d 795, 802 [Sup Ct, New York County 1997]).

Plaintiff states that, as a Hispanic person, he is a member of a protected class; that because of his race he was denied promotion and opportunities to earn more monthly points and higher annual evaluation scores; and that he is qualified for the positions for which he applied.

An inference of discrimination can be shown by an allegation that a decision maker made a remark reflecting discriminatory intent or by an allegation that persons similarly situated to the plaintiff who were not members of his protected class were treated more favorably than the plaintiff (*Brown v City of New York*, 188 AD3d 518, 519 [1st Dept 2020]). For instance, the plaintiff stated a cause of action for age discrimination by alleging that a superior told him that he was being reassigned because of a desire for younger faculty (*Wiesen v New York Univ.*, 304 AD2d 459, 460 [1st Dept 2003]).

Here, plaintiff alleges that “lazy” is coded language that refers to a racial stereotype of Hispanic people, and that use of the term is probative of discriminatory intent. Assuming that the word is indeed “coded language,” to show that its use is probative of discriminatory intent, the use of the word must be related to an adverse employment action (*see Kwong v City of New York*, 204 AD3d 442, 444 [1st Dept 2022]; *Alhaj v New York City Health & Hosps. Corp.*, 77 Misc 3d 1063,

1086 [Sup Ct, Kings County 2022]; *Polite v Marriott Marquis Hotel, Manhattan*, 2017 NY Slip Op 33335[U], *3 [Sup Ct, Kings County]). In this case, the remark was allegedly made by plaintiff's superior during a CARB hearing held to decide if plaintiff should be promoted and he was not promoted. A cause of action for discrimination under City and State laws is stated by the allegations that plaintiff's superior used the word in circumstances related to an adverse employment decision and that the word is racially offensive.

To allege disparate treatment, a plaintiff must allege facts tending to show that plaintiff and the comparator are similarly situated in "all material respects" (*Graham v Long Island R.R.*, 230 F3d 34, 40 [2d Cir 2000]). This standard can be satisfied by allegations that plaintiff and the other person have the same title, experience, salary, and job responsibilities (*Uwoghiren v City of New York*, 148 AD3d 457, 458 [1st Dept 2017]), hold the same position, report to the same supervisor, are subject to the same workplace standards (*Gross v National Broadcasting Company*, 232 F Supp 2d 58, 70 [SD NY 2002]), and that the comparators and plaintiff engaged in similar or comparable conduct (*Graham*, 230 F3d at 39).

Plaintiff fails to allege that he and the officers to whom he compares himself were similarly situated to him in any respect or that they engaged in similar conduct as he did and yet were treated better than he was. He gives no information about the status of the other officers.

Plaintiff claims that he endured a hostile work environment. An actionable hostile work environment exists under NYSHRL "when the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment" (*Hernandez v Kaisman*, 103 AD3d 106, 111 [1st Dept 2012], quoting *Harris v Forklift Systems, Inc.*, 510 US 17, 21 [1993]). The offensive "conduct must both have altered the conditions of the victim's employment by being

subjectively perceived as abusive by the plaintiff and have created an objectively hostile or abusive environment—one that a reasonable person would find to be so” (*id.* quoting *Harris*, 510 US at 21; *see Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 311 [2004]).

The conduct alleged in the Proposed Amended Complaint does not reflect a workplace “permeated with discriminatory intimidation, ridicule and insult,” that was so “severe or pervasive” as to alter the conditions of plaintiff’s employment.

Under NYCHRL, a plaintiff need not show “severe and pervasive,” but only that he/she experienced differential or unequal treatment on account of a protected characteristic (*Williams*, 61 AD3d at 76-79). Plaintiff must allege that he was treated less well than other employees because of his race (*see Mihalik*, 715 F3d at 111; *Williams*, 61 AD3d at 78).

“The NYCHRL does not differentiate between discrimination and hostile work environment claims; rather both are governed by” Administrative Code § 8–107 (1) (a) (*Nnebe v City of New York*, 2023 WL 2393920, *17, 2023 US Dist LEXIS 16480, *48-49 [SD NY 2023]; quoting *Russo v New York Presbyterian Hosp.*, 972 F Supp 2d 429, 449-50 [ED NY 2013]; *Nelson v New York City Tr. Auth.*, 2019 NY Slip Op 30693[U], *14 [Sup Ct, NY County 2019], *affd* 179 AD3d 615 [1st Dept 2020]). Both “are analyzed under the same standard” (*Bacchus v New York City Dept. of Educ.*, 137 F Supp 3d 214, 246 [ED NY 2015]). There is no separate “hostile work environment” claim under the NYCHRL (*Cardwell v Davis Polk & Wardwell LLP*, 2020 WL 6274826, at *29 n 21, 2020 US Dist. LEXIS 198655 *83 [SD NY 2020]).

Plaintiff offers the same evidence to support both his disparate treatment claim and his hostile work environment claim (*see Karupaiyan v CVS Health Corp.*, 2021 WL 4341132, *26, 2021 US Dist. LEXIS 182300, *71 [SD NY 2021]). Plaintiff alleges that because of his race he was consistently assigned to details on which he could not earn activity points and was denied promotion and overtime. He has thus alleged that he was less well treated than others and that this conduct towards him created a hostile environment. The statement that he was lazy connects the treatment to his race. NYCHRL claim of hostile work environment survives a motion to dismiss.

II. Count III – Retaliation Per NYSHRL; Count VI – Retaliation Per NYCHRL

It is unlawful for an employer to retaliate against an employee for having opposed a discriminatory practice (Executive Law § 296 [7]; Administrative Code § 8-107 [7]). To state a retaliation claim under NYSHRL and NYCHRL, the plaintiff must allege that he or she engaged in a protected activity, that the employer knew of the activity, that the employer retaliated, and that there is a causal connection between the complaint and the retaliatory conduct (*Torre v Charter Communications, Inc.*, 493 F Supp 3d 276, 288-89 [SD NY 2020]). Under NYSHRL, the employer must have subjected the plaintiff to a materially adverse action, while under NYCHRL, the retaliation need only consist of an action that would be reasonably likely to deter a person from engaging in protected activity (*Nieblas-Love v New York City Hous. Auth.*, 165 F Supp 3d 51, 70 [SD NY 2016]).

Plaintiff alleges that he filed a discrimination complaint and was denied overtime in circumstances that could indicate retaliation. Before he complained, plaintiff was assigned overtime work. Shortly after he complained, the overtime assignments were reduced or stopped and his evaluations worsened. These responses to plaintiff's complaint could constitute both a materially adverse action and an action likely to deter further discrimination complaints. Accordingly, those claims alleging retaliation are not dismissed.

**III. Count VII - Strict Liability For Discrimination Per NYCHRL;
Count IX – Strict Liability For Retaliation Per NYCHRL**

Under NYCHRL, an employer may face strict liability for discrimination practiced by managers and supervisors, if the employer knew or should have known of the discrimination and failed to take corrective action (Administrative Law § 8-107 [13] [b]; *Zakrzewska v New School*, 14 NY3d 469, 480 [2010]). Plaintiff alleges that his supervisors discriminated against him and that defendant New York City knew of and condoned the discrimination and retaliation. This allegation is sufficient to withstand the motion to dismiss.

**IV. Count II - Discrimination Based On Arrest And Conviction Per NYSHRL;
Count V - Discrimination Based On Arrest And Conviction Per NYCHRL
Count VIII – Strict Liability For Discrimination Based On Arrest And
Conviction Per NYCHRL**

The Proposed Amended Complaint alleges that after plaintiff pled to disorderly conduct, all documents stemming therefrom were sealed pursuant to CPL 160.50 or 160.55, and that defendants unlawfully unsealed plaintiff's arrest and conviction records and by reason of said records denied plaintiff job opportunities.

NYSHRL, Executive Law § 296 (16), provides in relevant part.

It shall be an unlawful discriminatory practice . . . to make any inquiry about . . . or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by . . . a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law . . . in connection with the licensing, housing, employment, including volunteer positions, or providing of credit or insurance to such individual The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer . . . ; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a . . . conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law

CPL 160.50 is inapplicable here, because it requires the sealing of records where the criminal action is terminated in favor of the accused. The statute spells out with particularity those instances where a criminal action terminates in favor of the accused (*Matter of Demesyieux (Demesyieux, Jr.)*, 39 Misc 3d 1209[A], 2013 NY Slip Op 50547[U], *20 [Sur Ct, Nassau County 2013]; *People v Schleyer*, 192 Misc 2d 113, 116 [Rochester City Ct 2002]); and a plea for a violation is not among them (*see Matter of N.J.D. Elecs. v New York City Health & Hosps. Corp.*, 205 AD2d 323, 324 [1st Dept 1994] [about disorderly conduct]).

CPL 160.55 requires the sealing of records which terminate by a conviction for a violation, regardless of the class of offense with which a person is initially charged. Disorderly conduct is a violation, which is an offense, while a crime is a misdemeanor or a felony (Penal Law § § 240.20 [7], 240.29, 10.00 [3], 10.00 [6]; *State Div. of Human Rights v Sorrento Cheese Co.*, 115 AD2d 323, 324 [4th Dept 1985]). A plea of disorderly conduct is a conviction (*see People v Jalloh*, 76 Misc 3d 137[A], 2022 NY Slip Op 50999[U] [App Term, 1st Dept 2022]; *People v Mason*, 62 Misc 3d 75, 76 [App Term, 2d, 11th and 13th Jud. Dists. 2019]). A conviction for disorderly conduct is

designated as a violation and not a crime (*Dunham v Lobello*, 2023 WL 3004623, *2, 2023 US Dist LEXIS 68555, *6 [SD NY 2023]; *Coronel v Decker*, 449 F Supp 3d 274, 288 n 4 [SD NY 2020]; *People v G.M.*, 32 Misc 3d 274, 276 [Crim Ct, Queens County 2011]). As plaintiff pled guilty to disorderly conduct, CPL 160.55 applies to his case.

Section 296 (16) states that it is unlawful to discriminate on the basis of conviction for a violation, except that such conviction may be considered when hiring police officers. Defendants argue that the exclusion from anti-discrimination protection applies not only to the initial hire of a police officer, but also “in connection with” (the phrase is in § 296 [16]) any adverse employment decision taken during employment. Therefore, plaintiff may not base a claim on the allegation that while he was an officer defendants used his criminal records to discriminate against him. Plaintiff argues that the exclusion from protection applies only to persons applying to become police officers and not to post-employment decisions.

In *Annabi v Cassino* (269 AD2d 551 [2d Dept 2000]), the Court held that an adverse employment action against the police officer plaintiff based upon an arrest without a conviction stated a claim for violating § 296 (16). The plaintiff also claimed that his employers violated CPL 160.50.

The prohibition against adverse employment actions in § 296 (16) concerns persons whose criminal actions are sealed pursuant to CPL 160.55 or 160.50 and does not distinguish between them and neither excludes nor includes currently employed officers. Based on the language of the statute, this court finds that it is applicable to a currently employed police officer and that plaintiff may maintain a claim that his employers discriminated against him by reason of his criminal record that was sealed pursuant to CPL 160.50

Defendants contend that § 296 does not apply because they obtained knowledge of plaintiff's arrest and conviction independently of his sealed records. Once an employer or licensing agency lawfully discovers an arrest record, the independent evidence of the conduct leading to the criminal charges may be considered without violating § 296 (16) (*Johnson v Assn. for the Advancement of Blind & Retarded*, 21 Misc 3d 268, 273 [Sup Ct, NY County 2008]). In addition, when a hearing officer bases the determination not on the fact that a person was arrested, but on the conduct underlying that arrest, there is no violation of § 296 (16) (*Matter of Young v City of New York*, 68 Misc 3d 514, 518 [Sup Ct, Kings County 2020]). Here, the means by which defendants discovered plaintiff's record is not fully borne out on this record.

Article 23-A, which defendants allegedly violated, bars potential employers from denying employment solely on the basis of a person's criminal conviction without first conducting an analysis to determine whether there is a direct relationship between the criminal offense and the employment sought or where the employment would involve an unreasonable risk to persons or property (Correction Law § 752). Membership in a law enforcement agency removes a person from the protections of Article 23-A (Correction Law § 750). Accordingly, as a police officer who was convicted of a violation during employment, plaintiff is not entitled to the protection of Article 23-A.

Administrative Code § 8-107 [10] [a], [b], and [c] bar discrimination based on "pending arrests and criminal accusations, and criminal convictions preceding and during employment." Section (a) applies to criminal convictions preceding employment. Section (f) makes sections (b) and (c) non applicable to persons employed as police officers. Administrative Code § 8-107 [11] [a] incorporates Executive Law § 296 (16); section (b) (3) states that this part of NYCHRL does not apply to police officers. Administrative Code § 8-107 [11-a] applies to discrimination based

on arrest and conviction records preceding and during employment; section (g) makes this law inapplicable to current employees of the police force.

The cause of action for discrimination based on criminal record under NYSHRL is not dismissed and the cause of action for discrimination based on criminal records under NYCHRL is dismissed.

In conclusion, it is

ORDERED that defendants' motion to dismiss the complaint is granted to the extent that the part of the first cause of action alleging hostile work environment is dismissed, counts five and eight are dismissed, and the motion is otherwise denied; and it is further

ORDERED that plaintiff's cross motion to amend the complaint is granted and the Proposed Amended Complaint is deemed filed; and it is further

ORDERED that defendants shall answer the amended complaint within a month of the filing of this order with notice of entry.

8/28/2023

DATE

JMS
J. MACHELLE SWEETING, JSC

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES
TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: