SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS, JSC** **PART 36**
Justice

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VELIN MEZINEV,
Plaintiff,

- v -

DONALD SMITH & CO., INC. and
RICHARD L. GREENBERG,
Defendants.

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INDEX NO. 161367/2017

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 170, 172, 173, 174, 175, 176, 177, 180, 181, 182, 183, 184, 185, 186

were read on this motion to/for **SUMMARY JUDGMENT**.

In this action, plaintiff Velin Mezinev alleges that, after twelve years of employment, defendant Donald Smith & Co., Inc. (DSC) illegally terminated him (1) because he was involved in a custody dispute in which he sought custody of his daughter and/or (2) on account of his Bulgarian national origin. Specifically, plaintiff claims that defendants wrongfully discriminated against him based upon (1) his "familial" status in violation of the New York State Human Rights Law, Executive Law § 296 ("NYSHRL"); (2) his "caregiver" status in violation of the New York City Human Rights Law, Administrative Code § 8-107(1) ("NYCHRL"); and (3) his "national origin" in violation of both the NYSHRL and the NYCHRL.

Defendants DSC and Richard L. Greenberg, as Executor of the Estate of Donald Smith now move, pursuant to CPLR 3212, for summary judgment dismissing the fourth amended complaint (hereinafter, "complaint"), NYSCEF Doc. No. 97. For the reasons set forth below, defendants' motion is granted, and the complaint is dismissed.

Smith formed DSC in 1984, and Greenberg soon joined him as DSC's first employee. During plaintiff's employment at DSC, Smith was its President and Chief Investment Officer. Smith died in October 2019, before he could be deposed in this action. Greenberg served as the next highest-ranking officer and held significant responsibilities for investments, research, and management. Upon Smith's death, Greenberg became DSC's Chief Executive Officer and Co-Chief Investment Officer, and is now a defendant as Executor of Smith's estate. DSC has consistently had only 8 to10 employees, and maintained a single office in Manhattan (NYSCEF Doc. No. 95, *Greenberg affirmation* ¶¶ *1, 6, 15-16, 18, 25*).

In 2005, DSC hired plaintiff as a research analyst and the company's fifth investment professional. At that time, Smith and Greenberg were responsible for managing DSC's

portfolios; Jonathan Hartsel served as a research analyst; and Kamal Shah served as Assistant Trader & Associate Analyst with responsibility for trade execution. DSC's five investment professionals included Greenberg, a Jewish-American of Eastern European descent, Shah who was born in India and of Indian descent, and plaintiff, who is Bulgarian (*id.*, ¶¶5, 19; see also NYSCEF Doc. No. 122, *Shah affirmation* ¶ *5*).

As DSC's junior analyst, plaintiff played several roles, including covering stocks in the technology, retail, industrial, and financial sectors, and his primary responsibilities were (1) to advise Smith and Greenberg regarding the performance of DSC's existing investments within his sectors, and (2) to find new investment ideas within his areas of coverage (*Greenberg affirmation*, ¶¶ 29-31). DSC gave plaintiff primary responsibility over a $40 million portfolio (*id.*, ¶ 32). Plaintiff could invest this portfolio in equities within his sectors that Smith and Greenberg had approved for inclusion in one of their respective portfolios. Plaintiff had to obtain the approval of Smith or Greenberg on any trade order before Shah could execute it (*id.*, ¶¶ 33-35).

According to defendants, DSC looked at portfolio performance as only one of many criteria used to evaluate an analyst's job performance. DSC also considered the quality of the analyst's work, such as the ideas that they develop and their ability to convey them well, the quality and quantity of ideas that the firm ultimately acts on, effectiveness with clients, and feedback from colleagues (*id.*, ¶¶ 35-36).

Defendants allege that, during his twelve (12) years of employment, plaintiff's performance at DSC was competent but never excellent, and that thus, they refused to give him increased responsibility for the firm's assets under management (*id.*, ¶¶ 39-45). Additionally, DSC never promoted plaintiff, or increased his base rate of pay during his tenure at the company (*id.*, ¶ 42). According to defendants, the return on plaintiff's portfolio was "abysmal" during his early years (*id.*, ¶ 46). Defendants further allege that, while his portfolio improved performance during the latter years of his tenure, their concerns about his abilities were not assuaged because portfolio performance (whether good or bad) is a product of many factors outside of the analyst's control, such as whether Smith or Greenberg approved of an investment, the market's treatment of an analyst's sector, and unforeseeable economic conditions, such as war (*id.*, ¶ 51).

Defendants allege that, in July 2016, DSC placed plaintiff on probation because Smith and Greenberg were frustrated with the consistently poor quality of his securities analysis (*id.*, ¶ 70). In a 2016 mid-year review, Smith and Greenberg informed plaintiff that (1) he was being put on probation, (2) the quality of his work needed to improve, (3) if his performance did not improve, his job was in jeopardy, and (4) he might not receive a bonus for 2016 (*id.*, ¶¶ 70-71).

Defendants further allege that plaintiff's performance did not improve. On July 27, 2017, Smith and Greenberg informed plaintiff that his employment was being terminated, and offered him a severance package providing for six months of continued compensation (*id.*, ¶ 89). Plaintiff rejected DSC's offer and filed this action on December 22, 2017.

Plaintiff alleges herein that he was fired because of discriminatory animus. Specifically, plaintiff asserts that Smith made frequent and inappropriate references to his national origin and ancestry in connection with work-related activities, such as, for example:

- Commenting that plaintiff's investment performance was somehow hindered by his "culture" (e.g., "your culture is a problem");

- Admonishing plaintiff for allegedly not understanding that "American people adopt new technologies fast" – as if plaintiff's Bulgarian national origin was preventing him from properly investing in technology companies;

- Asking plaintiff "why don't you go back to the land?" – a reference to Smith's perception that Bulgarians are a largely agrarian society;

- At a holiday event, giving a sarcastic toast in front of the entire firm and "congratulating" plaintiff for being the "highest paid Bulgarian"

- Making cutting remarks with respect to Bulgarian wine in order to further mock and humiliate plaintiff;

- Suggesting at a work-related social function that plaintiff (who was married at the time) should "meet your Bulgarian girlfriend" while pointing to another event attendee who was Bulgarian;

- Suggesting at another event that plaintiff should "meet your fellow countrymen" while pointing at waiters.

(NYSCEF Doc. No. 161, *Mezinev affirmation* ¶ *6 [a]-[g];* see also, *complaint,* ¶ *19*).

Plaintiff further alleges that defendants viewed him "as a form of cheap foreign labor who could be dramatically underpaid compared to similarly-situated U.S.-born employees of the firm," and that he has learned that his "similarly situated, but lesser-performing, American-born co-workers earned hundreds of thousands (and even millions) of dollars per year more than" him, including Hartsel, his co-worker, who earned more than $1 million more per year than him (*Mezinev affirmation*, ¶¶ *7-9*; see also, *complaint*, ¶¶ *20-22*). According to plaintiff, for essentially all of his 12-year tenure with the company, defendants paid him less than such similarly-situated U.S.-born co-workers on the basis of his Bulgarian national origin and ancestry (*Mezinev affirmation,* ¶ *12*; see also, *complaint,* ¶ *25*).

Plaintiff alleges that, moreover, when defendants later discovered his plans to assume equal or almost equal custody over his young daughter, they engaged in further pay discrimination – this time on the basis of his familial status (*Mezinev affirmation,* ¶ *13*; see also, *complaint,* ¶ *26*). According to Mezinev, defendants then actively discouraged him from serving as a caregiver and punished him for taking time to participate in custody proceedings for his daughter by depriving him of compensation he would have otherwise earned (*Mezinev affirmation,* ¶ *14*; see also, *complaint,* ¶ *27*).

Plaintiff alleges that, in response to learning of his custody proceedings in the summer of 2016, Smith suggested that he should not fight for custody, but rather "You can get another child" (*Mezinev affirmation,* ¶ *40*; see also, *complaint,* ¶ *50*). Plaintiff further alleges that, on July 8, 2016, he was mocked and humiliated at lunch in front of nearly the entire firm for needing to be out of the office to attend a mandatory custody court appearance on July 11, 2016 (*Mezinev affirmation,* ¶ *41*; see also, *complaint,* ¶ *51*).

According to plaintiff, on July 11, 2016, Greenberg inquired whether it would be too much time and effort to participate in the custody proceedings and asked (ominously) "are you sure you want to do this?" When plaintiff answered in the affirmative, Greenberg sarcastically exclaimed, "Oooo-K-ey" and left the room (*Mezinev affirmation,* ¶ *42*; see also, *complaint,* ¶ *52*). Plaintiff alleges that, shortly thereafter, Greenberg (who, upon information and belief, had conferred with Smith), re-entered the room and explained that, with respect to plaintiff's custody battle, "Life is unfair. Get used to it ... You are pissing against the wind" (*Mezinev affirmation,* ¶ *43*; see also, *complaint,* ¶ *53*). However, plaintiff states that he made it clear to Greenberg that he was unwilling to give up the fight for custody of his daughter (*id.*).

Plaintiff disputes defendants' characterization of his work performance, and contends that "[b]y any subjective or objective measure, [his] performance at the Company was outstanding" (*complaint,* ¶ *42*; see also *Mezinev affirmation,* ¶ *27*). Specifically, he asserts that, in December 2015, just six months before he was placed on probation, he received the largest bonus of his tenure, which "recognized [his] outstanding performance" (*Mezinev affirmation,* ¶ *19-20*; see also, *complaint,* ¶¶ *39-40*).

Plaintiff asserts that, on July 12, 2016 – the very day after he repeatedly refused to acquiesce to the Company's suggestion to give up his custody fight for his daughter – he was placed on probation (*Mezinev affirmation,* ¶ *46*; see also, *complaint,* ¶ *57*). Plaintiff was also informed that his compensation (e.g., bonus) opportunities would be reduced or eliminated; that his investment coverage area would be diminished; and that his investment portfolio would be taken away or sharply curtailed (*Mezinev affirmation,* ¶ *66*; see also, *complaint,* ¶ *78*). Plaintiff alleges that all of these decisions were a direct result of his national origin and familial status (*Mezinev affirmation,* ¶ *68*; see also, *complaint,* ¶ *79*).

Plaintiff originally asserted seven causes of action: familial status and national origin discrimination under the NYSHRL (first and second causes of action); caregiver status and national original discrimination under the NYCHRL (third and fourth causes of action); retaliation under the NYSHRL and NYCHRL (fifth and sixth causes of action); and differential rate of pay based on protected class status in violation of Labor Law §§ 194 and 198 (seventh cause of action). By order dated October 9, 2020 (NYSCEF Doc. No. 78), this court dismissed the fifth and sixth causes of action.

"'[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact'" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993] [citation omitted]; see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The burden is a

heavy one: the facts must be viewed in the light most favorable to the non-moving party and every available inference must be drawn in the non-moving party's favor (*Sherman v New York State Thruway Auth.*, 27 NY3d 1019, 1021 [2016]). "Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad*, 64 NY2d at 853; see also *Lesocovich v 180 Madison Ave. Corp.*, 81 NY2d 982 [1993]).

The party opposing summary judgment has the burden of presenting evidentiary facts sufficient to raise triable issues of fact (see *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *CitiFinancial Co. [DE] v McKinney*, 27 AD3d 224, 226 [1st Dept 2006]). Summary judgment may be granted only when it is clear that no triable issues of fact exist (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]), and "is inappropriate in any case where there are material issues of fact in dispute or where more than one conclusion may be drawn from the established facts" (*Friends of Thayer Lake LLC v Brown*, 27 NY3d 1039, 1043 [2016]; *see also Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]; *Tronlone v Lac d'Amiante Du Quebec*, 297 AD2d 528, 528-529 [1st Dept 2002], *affd* 99 NY2d 647 [2003]).

Both the NYSHRL and NYCHRL make it unlawful for an employer to refuse to hire or to discriminate against an individual in compensation or in terms, conditions, or privileges of employment because of that person's race, national origin, or caregiver status (see Executive Law § 296[1][a]; Administrative Code, § 8-107[1][a]). On a motion for summary judgment seeking dismissal of discrimination claims under the NYSHRL or the NYCHRL, New York courts apply the burden shifting analysis adopted by the United States Supreme Court in *McDonnell-Douglas Corp. v Green*, 411 US 792 [1973]). First, a plaintiff must be able to establish a prima facie case of discrimination (see *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004]). To meet this burden, a plaintiff must offer evidence showing that she or he (1) is a member of a protected class; (2) was qualified to hold the position; (3) was terminated from employment or suffered another adverse employment action; and (4) that the adverse employment action occurred under circumstances giving rise to an inference of discrimination (see *Stephenson v Hotel Empls. & Rest. Empls. Union Local 100 of AFL-CIO*, 6 NY3d 265, 270 [2006]; accord *Ayers v Bloomberg, L.P.*, 203 AD3d 872, 874 [2d Dept 2022]).

If the facts support a *prima facie* case of discrimination, defendant has the burden of showing a legitimate, non-discriminatory, reason for its challenged conduct (*Forrest*, 3 NY3d at 305). If defendant satisfies this burden, the burden switches back to plaintiff to show that defendant's proffered reason is a mere pretext for discrimination (see *Bauman v Mount Sinai Hosp.*, 181 AD3d 515, 515 [1st Dept 2020]; *Edwards v Jamaica Med. Ctr.*, 47 AD3d 514, 515 [1st Dept 2008]).

As is relevant here, in order to establish that the adverse employment action occurred under circumstances giving rise to an inference of discrimination under the NYSHRL, a plaintiff must demonstrate that she or he was subject to "'inferior terms, conditions or privileges of employment because of the individual's membership'" in a protected category (*Elco v Aguiar*, 226 AD3d 649, 651 [2d Dept 2024] [citation omitted]; see also *Golston-Green v* 184 AD3d at 41 n 3 ["(The NYSHRL) was amended to provide that harassment is actionable 'regardless of whether such harassment would be considered severe or pervasive under precedent applied to

harassment claims,' and the plaintiff need demonstrate only that she or he was subjected to 'inferior terms, conditions or privileges of employment'," citing Executive Law § 296(1)(h)]).

"'[U]nder the [NYCHRL], liability for a harassment/hostile work environment claim is proved where a person provides that he or she was treated less well than other employees because of the relevant characteristic'" (*Benitez v Jamaica Hosp. Med. Ctr.*, 230 AD3d 1284, 1285 [2d Dept 2024] [citation omitted]; see also *Russell v New York Univ.*, 204 AD3d 577, 593 [1st Dept 2022]). In other words, all that a plaintiff is required to show to demonstrate that the adverse employment action occurred under circumstances giving rise to an inference of discrimination is "unequal treatment" based upon membership in a protected class .... Questions of "severity" or "pervasiveness" go to damages only — not to liability" (*Fattoruso v Hilton Grand Vacations Co., LLC*, 873 F Supp 2d 569, 578 [SD NY 2012]), *affd* 525 F Appx 26 [2d Cir 2013]).

The conduct alleged must, however, exceed "what a reasonable victim of discrimination would consider 'petty slights and trivial inconveniences'" (*Williams v New York City Hous. Auth.*, 61 AD3d 62, 80 [1st Dept 2009] [citation omitted]; see *Ji Sun Jennifer Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD3d 18, 26 [1st Dept 2014]; see e.g., *Pitter-Green v NYU Langone Med. Ctr.*, 223 AD3d 576, 579 [1st Dept 2024]). As such, "mere personality conflicts" will not suffice to establish a hostile work environment (*Forrest*, 3 NY3d at 309; see also *Mihalik v Credit Agricole Cheuvreux N. Am., Inc.*, 715 F3d 102, 110 [2d Cir 2013]).

As more fully set forth below, plaintiff fails to establish that his termination occurred under circumstances giving rise to an inference of discrimination. Plaintiff points only to several uncorroborated and un-dated remarks that the late Donald Smith made about plaintiff's Bulgarian ethnicity during plaintiff's twelve years of employment, and several uncorroborated comments that Smith and Greenberg allegedly made about plaintiff's child custody proceedings. Under New York law, these comments are insufficient to create an inference that defendants terminated plaintiff for discriminatory reasons. Moreover, it is undisputed that DSC employed plaintiff as an investment professional for twelve years, that he worked closely with DSC's two principals during this extensive time period, but that he never complained of unfair treatment, and never looked for alternative work. Accordingly, defendants are entitled to summary judgment dismissing all of the causes of action asserted as against them in the complaint.

Pursuant to the NYSHRL, as set forth in Executive Law § 296(1)(a), it is an unlawful discriminatory practice for an employer to refuse to hire or employ, or to fire or to discriminate against an individual in the terms, conditions or privileges of employment because of the individual's familial status. Under the NYSHRL, familial status is defined, as is relevant here, as "any person who ... is in the process of securing legal custody of any individual who has not attained the age of eighteen years" (Executive Law § 292[26][a]).

Likewise, the NYCHRL prohibits discrimination on the basis of an individual's "caregiver status" (Administrative Code, § 8-107[1][a]). The statute defines "caregiver" as "a person who provides direct and ongoing care for a minor child or a care recipient" (*id.*, § 8-102). It also defines a "covered relative" (a type of "care recipient" for purposes of the Code), as is

relevant here, as "a caregiver's child" (*id.*; see *McCabe v 511 W. 232nd Owners Corp.*, ___ NY3d ___, 2024 NY Slip Op 06290, * 3 [2024]).

Although plaintiff has met the requirements under both statutes for familial or caregiver status, he has nevertheless failed to establish circumstances suggesting that defendants terminated him because of his caregiver responsibilities for his daughter, as alleged in the first and third causes of action. Plaintiff bases his caregiver-discrimination claim on three alleged remarks regarding his custody dispute. However, plaintiff fails to connect any of these comments to his caregiver status, or to his termination. Plaintiff presents no evidence in support of his allegations, other than these comments. The alleged comments regarding plaintiff's custody dispute might at worst be perceived as insensitive, but they do not suggest actionable employment discrimination (see *Serdans v New York and Presbyterian Hosp.*, 112 AD3d 449, 450 [1st Dept 2013]; see also *Forrest*, 3 NY3d at 309).

In addition, Greenberg alleges that he does not recall using the words claimed by plaintiff but acknowledges that "[a]ll I would have offered was friendly advice that I feared that this dispute would exact a terrible financial and emotional toll" (*Greenberg affirmation,* ¶¶ 94-95). Moreover, Greenberg does not recall ever speaking to Smith about plaintiff's custody dispute (NYSCEF Doc. No. 139, *see Greenberg dep at 215*). Importantly, during his employment at DSC, plaintiff did not complain that DSC treated him differently on account of caregiver responsibilities for his daughter (*Greenberg affirmation*, ¶ 95). Finally, Greenberg specifically asserts that "DSC based all of its employment-related decisions with respect to Mr. Mezinev entirely on his mediocre performance as a research analyst," and that he "never heard Mr. Smith make any derogatory comments concerning Mr. Mezinev's Bulgarian heritage or his attempts to seek custody of, or spend time with, his daughter" (*Greenberg affirmation*, ¶ 4).

Defendants also present evidence that, far from being upset at the birth of plaintiff's daughter, DSC sent him a gift at the hospital when his daughter was born (*Greenberg affirmation*, ¶ 28). Indeed, at the same time that defendants supposedly retaliated against plaintiff for seeking custody of his daughter, many of his DSC colleagues were assuming caregiver responsibilities of their own, due to the arrival of seven newborn babies (*id.*, ¶ 26). Importantly, none of these similarly situated employees with significant caregiver responsibilities corroborated plaintiff's claims that DSC was hostile to employees with responsibilities for young children (see NYSCEF Doc. No. 123, *Hartsel affirmation ¶ 9*; NYSCEF Doc. No. 124, *Piermont affirmation ¶ 14*; NYSCEF Doc. No. 116, *Cianfrone affirmation*, ¶ *4*), or witnessed any conduct suggesting that DSC discriminated against plaintiff due to his effort to retain custody of his daughter (see *Hartsel affirmation*, ¶ *8*; *Piermont affirmation*, ¶*14*; NYSCEF Doc. No. 120, *Jiyoung Park affirmation ¶ 11*; *Cianfrone affirmation*, ¶ *3*; *Shah affirmation*, ¶¶ *4; 19*; *Greenberg affirmation*, ¶ *95*). Accordingly, plaintiff fails to demonstrate that he was treated less well than other similarly situated employees (see *Pogil v KPMG LLP*, 228 AD3d 469, 469 [1st Dept 2024]; see also *Pitter-Green*, 223 AD3d at 578).

In response to the motion, plaintiff fails to present any competent evidence that defendants discriminated against him because of his caregiver status. Instead, plaintiff submits an affirmation in which he essentially repeats the allegations in the complaint. Accordingly, beyond his own speculative assertions, plaintiff's discrimination claims on the basis of his

caregiver status must be dismissed because he fails to present any evidence that defendants ever treated him less favorably than other employees because of his caregiver status (see *Suri v Grey Global Group, Inc.*, 164 AD3d 108, 135 [1st Dept 2018]; see generally *Dickerson v Health Mgt. Corp. of Am.*, 21 AD3d 326, 329 [1st Dept 2005]).

As with his caregiver status claim, plaintiff's claim of national origin discrimination relies solely on alleged isolated comments regarding plaintiff's Bulgarian nationality. Plaintiff alleges seven stray comments by Smith regarding plaintiff's Bulgarian ethnicity over the entirety of his twelve-year employment at DSC (see *Mezinev affirmation, ¶ 6*). Four of them occurred at social events, and could be interpreted as intending to be humorous: (1) a toast at a holiday party, congratulating plaintiff for being the "highest paid Bulgarian"; (2) a joke that Bulgarian wines were bad; (3) a comment at a party that plaintiff should "meet your Bulgarian girlfriend" in reference to a female Bulgarian guest; and (4) a remark to plaintiff that he should "meet your fellow countryman" in reference to a Bulgarian waiter at Smith's wedding party (*see id.*). However, none of these isolated comments had any alleged connection to plaintiff's work performance, or defendants' decision to terminate plaintiff.

With respect to the remaining three comments, plaintiff fails to identify the time or place at which these comments occurred, and again, fails to tie these comments to his work performance, or defendant's adverse employment action. For instance, Smith allegedly commented, "American people adopt new technologies fast" (*see id.*). Plaintiff claims this comment is derogatory of Bulgarians, but completely fails to justify that conclusion. Smith also allegedly commented, "Why don't you go back to the land?" (*see id.*). Plaintiff apparently believes that this remark referred to, or even disparaged, Bulgarian agrarianism but, again, does not support that conclusion. Finally, plaintiff claims that Smith commented, "Your culture is a problem" but fails to identify where, when, or why the comment was made.

Taken as a whole, plaintiff's evidence of national-origin discrimination consists only of his uncorroborated claim that, over 12 years, on average, approximately once every two years, Smith made a comment that may have referred to plaintiff's national origin. However, "[t]he few comments plaintiff claims [that defendants] made regarding his ... race do not establish discriminatory intent, as stray derogatory remarks, without more, do not constitute evidence of discrimination" (*Wecker v City of New York*, 134 AD3d 474, 475-476 [1st Dept 2015]; *accord Kwong v City of New York*, 204 AD3d 442, 443-444 [1st Dept 2022]; see also *Sicola v Cushman & Wakefield, Inc.*, 210 AD3d 449, 451 [1st Dept 2022]; *Thomas v Mintz*, 182 AD3d 490, 490-491 [1st Dept 2020]; *Uwoghiren v City of New York*, 148 AD3d 457, 458 [1st Dept 2017]). Moreover, plaintiff fails to present evidence connecting these isolated comments to defendants' decision to terminate plaintiff in July 2017 (see e.g., *Lively v Wafra Inv. Advisory Group, Inc.*, 211 AD3d 432, 433 [1st Dept 2022]).

Furthermore, due to Smith's death on October 30, 2019, plaintiff cannot testify about his interactions with him under New York's Dead Man's Statute. Accordingly, he cannot offer any admissible evidence substantiating Smith's alleged comments. A party opposing summary judgment must proffer "admissible evidence" to support his claims (*W.W.W. Associates, Inc. v Giancontieri*, 77 NY2d 157, 164 [1990]). Plaintiff has proffered none (see *Strathis v Estate of Karas*, 193 AD3d 897, 900 [2d Dept 2021]). The Dead Man's Statute also bars plaintiff's claims

against DSC, which was closely held by Smith (see *Herrmann v The Sklover Group, Inc.*, 2 AD3d 307, 307 [1st Dept 2003]; *see also* CPLR 4519).

The court rejects plaintiff's argument that the Dead Man's Statute is merely an evidentiary rule that may not serve as a basis for granting summary judgment. To the contrary, New York courts have held that where, as here, a plaintiff's claims rest entirely on evidence barred by the Dead Man's Statute, dismissal is appropriate (*Strathis*, 193 AD3d 897; *Matter of Ingberman v Colon*, 194 AD3d 410, 411 [1st Dept 2021]).

Plaintiff does not offer any evidence supporting his claim of national origin discrimination, other than his self-serving testimony regarding his communications with the late Smith. Plaintiff offers no testimony by any witnesses corroborating his allegations, nor does he allege that anyone else at DSC ever mentioned his Bulgarian ethnicity. Plaintiff offers no e-mail or other documentary evidence corroborating his claims. He also offers no recordings supporting his claims, even though he admittedly spent the final year of his employment at DSC surreptitiously recording his colleagues in attempt to collect such evidence (NYSCEF Doc. No. 100, *Mezinev dep at 179-180*; *see also* NYSCEF Doc. No. 102, *February 15, 2019, letter from plaintiff's counsel to defendant's counsel producing such audio recordings*).

The court also rejects plaintiff's argument that the Dead Man's Statute cannot apply to his claims against the entity DSC, as the Dead Man's Statute bars testimony that affects property or interests that the decedent conveyed to others. The broad language of the Dead Man's Statute prohibits testimony offered against virtually any successor of decedent. A person "shall not be examined ... against the executor, administrator or survivor of a deceased person ... or a person deriving his or her title or interest from, through or under a deceased person ... by assignment or otherwise" (CPLR 4519). Here, Smith was the controlling shareholder of DSC prior to his death and, therefore, the Dead Man's Statute bars claims against DSC as much as it bars claims against the Estate (see *Herrmann*, 2 AD3d at 307).

In his seventh cause of action, plaintiff asserts a claim under the New York State Equal Pay Act, Labor Law § 194 (see *complaint*, ¶¶ *126-134*). Prior to October 8, 2019, however, Labor Law § 194 applied only to pay differentials between male and female employees. Consequently, at the time that plaintiff alleges that he was subject to pay discrimination based upon his familial status or national origin, Labor Law § 194 provided no protection to those categories of employees (see *Shamciyan v Acacia Network, Inc.*, 2023 U.S. Dist. LEXIS 171008, *20 n 6, 2023 WL 6214546, n 6 [SD NY 2023]). Plaintiff, therefore, cannot assert a claim under Labor Law § 194.

In opposition to the motion, plaintiff argues that the 2019 amendment expanding Labor Law § 194's coverage to other classes of employes applies retroactively, because § 194 is a "remedial" statute. However, in *Raparthi v Clark* (214 AD3d 613 [1st Dept 2023]), the court rejected an identical argument that the 2021 amendment to Labor Law § 193 applied retroactively. (*id.* at 614 [citations, quotation marks, and alterations omitted]). Thus, plaintiff's Labor Law § 194 claim must be dismissed as a matter of law. Accordingly, it is

ORDERED that defendant's motion for summary judgment is granted, and the fourth amended complaint is dismissed with costs and disbursements to defendants as taxed by the Clerk upon the submission of an appropriate bills of costs; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for defendants shall serve a copy of this decision and order, with notice of entry upon plaintiff; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

February 28, 2025

HON. VERNA L. SAUNDERS, JSC

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**