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United States District Court,
S.D. New York.

Rita WALSH, Plaintiff,
v.
NEW YORK CITY HOUSING AUTHORITY, Defendant.

No. 11 Civ. 6342(NRB). | Dec. 16, 2013.

Attorneys and Law Firms

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Jeffrey Niederhoffer, Esq., New York City Housing Authority, Law Department, New York, NY, for Defendant.

Opinion

MEMORANDUM AND ORDER

NAOMI REICE BUCHWALD, District Judge.

I. Introduction

***1** Plaintiff Rita Walsh ("plaintiff") brings this action against the New York City Housing Authority ("NYCHA"), claiming that NYCHA refused to hire her as a bricklayer because of her gender in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended ("Title VII"), the New York State Human Rights Law, N.Y. Exec. Law § 290 *et seq.* (the "NYSHRL"), and the New York City Human Rights Law, N.Y. City Admin. Code § 8–101 *et seq.* (the "NYCHRL"). NYCHA moves for summary judgment, asserting that its reasons for not hiring plaintiff were legitimate and nondiscriminatory. For the reasons stated below, the Court grants NYCHA's motion for summary judgment as it relates to the Title VII and NYSHRL claims and dismisses without prejudice the NYCHRL claim.

II. Background [1]

[1] The facts recited here are drawn from the following sources: (1) Defendant's Statement of Uncontested Facts Pursuant to Rule 56.1 ("Def.'s R. 56.1") (ECF No. 17); (2) exhibits attached to the Declaration of Jeffrey Niederhoffer in Support of Defendant's Motion for Summary Judgment ("Niederhoffer Decl.") (ECF No. 16); (3) exhibits attached to the Reply Declaration of Jeffrey Niederhoffer in Further Support of Defendant's Motion for Summary Judgment ("Niederhoffer Reply Decl.") (ECF No. 30) (4) Plaintiff's Response to Defendant's Rule 56.1 Statement ("Pl.'s R. 56.1") (ECF No. 27); (5) Plaintiff's Counter–Statement of Disputed Material Facts ("Pl.'s Ctr–Stmt.") (ECF No. 27); (6) exhibits attached to the Declaration of Laura Sager in Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment ("Sager Decl.") (ECF No. 28); and (7) the Declaration of Rita Walsh in Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment ("Walsh Decl.") (ECF No. 25).

The following facts are undisputed except where otherwise noted.

A. Application Process for Bricklayer

On October 15, 2005, the Department of Citywide Administrative Services ("DCAS") administered a written, multiple-choice test for the civil service position of bricklayer. Def.'s R. 56.1 ¶ 1. In the official job specification, DCAS summarized the duties and responsibilities of a bricklayer as follows: "Under direction, [a bricklayer] lays brick and masonry to line and grade in or on a given structure or form of work; [and] performs related work." Niederhoffer Decl., Ex. 10.

The job specification also listed eight examples of a bricklayer's tasks:

> Lays brick or masonry units in the particular bond specified for walls and partitions.
>
> Works with refractory and insulating units for boiler settings and combustion chambers.
>
> Does fireproofing, block arching, terra cotta cutting and setting.
>
> Constructs brick masonry sewers and manholes.
>
> Estimates materials required for small jobs.
>
> Keeps job and other records.
>
> Reads and follows plans and specifications.
>
> May supervise assigned personnel.

Id. [2]

2 NYCHA was not involved in the preparation of the job specification. Def.'s R. 56.1 ¶ 4.

Bricklayers employed by NYCHA were assigned to either a borough property management department or the Technical Services Department (the "TSD"). Bricklayers in the borough property management departments primarily performed routine repairs and inspections on things such as cinderblock, brickwork, subfloors, boilers, facades, handrails, and doors. Def.'s R. 56.1 ¶¶ 18, 20–22. Bricklayers in the TSD assisted with these tasks, but had greater involvement in large projects that entailed more brick and block work. *Id.* at 18. All bricklayers hired by NYCHA were expected to be able to perform all duties associated with the position. *Id.* at 19.

Importantly for this case, a bricklayer's job also entailed working with tile. Def.'s R. 56.1 ¶ 24. Indeed, there was no separate tile setter position at NYCHA; bricklayers performed that task. Pl.'s Ctr–Stmt. ¶ 8. However, it is unclear exactly how much of the job involved tile work. Wanda Gilliam, NYCHA's Brooklyn Borough Administrator for Skilled Trades, testified that tile work was "not a bigger part of [a bricklayer's] job." Niederhoffer Decl., Ex. 3 at 37:19–20. Two bricklayers, on the other hand, testified that tile work consumed between 50% and 90% of their time. Sager Decl., Ex. 2 at 85, Ex. 10 at 64, 82.

***2** In order to become a bricklayer, DCAS required candidates to possess either:

1. Five years of full-time satisfactory experience as a bricklayer; or

2. At least three years of experience as described in "1" above and sufficient bricklayer apprentice experience or training in the bricklaying field acquired in an approved trade, technical or vocational high school to make up the equivalent of the remaining required experience. Six months of acceptable experience will be credited for each year of the above apprentice experience or training.

Niederhoffer Decl., Ex. 10.[3] Candidates had to possess this experience by the last day of the application period, which was June 21, 2005. Niederhoffer Decl., Ex. 9. However, they were informed that they "may be given the test before [DCAS] check[ed] [their] qualifications." Niederhoffer Decl., Ex. 9.

3 DCAS provided virtually the same description of the bricklayer position and its qualification requirements in both the job specification and notice of examination. Niederhoffer Decl., Exs. 9, 10.

B. Interview Process

After administering the test for bricklayer, DCAS ranked candidates on a list according to their test scores. Pl.'s Ctr–Stmt. ¶ 4. Plaintiff received a passing score of 72.5 and a list number of 55. Def.'s R. 56.1 ¶ 9.

In January 2010, NYCHA, seeking to hire five bricklayers to fill vacancies in its Manhattan and Brooklyn property management departments,[4] invited eight candidates who had passed the test to appear for interviews. *Id.* at ¶¶ 10, 11. On February 24, 2010, the date of the interviews, six candidates-all of whom were male except for plaintiff-appeared: (1) Ferdinand Arlia, list number 12; (2) Joseph Giannotti, list number 45; (3) Michael Zambino, list number 47; (4) Emmanuel Sylvester, list number 54; (5) plaintiff, list number 55; and (6) Giuseppe Grippi, list number 57. *Id.* at ¶ 12. All the candidates brought resumes with them except for Grippi, who completed a portion of a preliminary application detailing his education and work experience prior to his interview. *Id.* at ¶ 13.

4 There were two vacancies in Manhattan and three in Brooklyn. Def.'s R. 56.1 ¶ 31.

Four NYCHA employees conducted the interviews: Fred Singer, the Manhattan Borough Administrator for Skilled Trades; Wanda Gilliam, the Brooklyn Borough Administrator for Skilled Trades; James Lollo, the TSD's Technical Advisor; and Charles Pawson, the TSD's Deputy Director. *Id.* at ¶ 14. Osagie Akugbe, a NYCHA Human Resources employee, oversaw the interview process. *Id.* at ¶ 30. Akugbe met with the candidates as a group prior to the interviews to explain the process, telling them that they would be interviewed in list order and that, because there were only five vacancies, one of the candidates would not be hired. *Id.;* Pl.'s Ctr–Stmt. ¶ 25. He then brought each candidate into the interview room and sat in on their interviews. Def.'s R. 56.1 ¶ 30. However, he had no input in the hiring decisions. *Id.*

Because Singer and Gilliam had limited bricklaying experience, they asked candidates questions of a general nature, such as questions relating to borough preference, work constraints, and attendance issues. Pl.'s Ctr–Stmt. ¶ 28. Pawson, who also lacked bricklaying experience, did not

ask any questions. *Id.* All three deferred to Lollo's extensive knowledge of and.experience with bricklaying, and he asked most of the questions during the interviews, including all masonry-related questions. *Id.* at ¶ 27; Niederhoffer Decl., Ex. 6 at 26. Specifically, Lollo asked candidates technical questions relating to tasks they would be expected to perform as bricklayers. Def.'s R. 56.1 ¶ 34. The purpose of these questions, and the interviews in general, was to ascertain whether the candidates had adequate knowledge of bricklaying and could perform the job well, not to determine whether the candidates met the qualification requirements established by DCAS. *Id.* at ¶¶ 35–37.

***3** The interviewers reviewed each candidate's resume right before he or she was brought in to the interview room. *Id.* at ¶ 39. Each interview lasted approximately ten to thirty minutes, after which the interviewers discussed the candidate they had just interviewed. *Id.* at ¶ 39; Pl.'s Ctr–Stmt. ¶ 30. Singer and Gilliam possessed formal authority to make hiring decisions for their respective boroughs. Def.'s R. 56.1 ¶ 40. In practice, however, the interviewers made hiring decisions collectively, and then Singer and Gilliam would come to an agreement on where the candidate would be assigned after taking into account the candidate's borough preference. Pl.'s Ctr–Stmt. ¶ 32. Under DCAS rules, the interviewers were required to hire at least one out of every three candidates interviewed. *Id.* at ¶ 25.

Notably, at the time of the interviews, no women were employed by NYCHA as bricklayers, and as far as the interviewers knew, no woman had ever held the position. *Id.* at ¶ 3.

C. Interviews and Hiring Decisions

1. Ferdinando Arlia

The first candidate interviewed was Ferdinando Arlia. *Id.* at ¶ 33. Arlia had significant bricklayer experience. *Id.* Based on this experience and his answers to the interview questions, the interviewers believed he was qualified and unanimously agreed to hire him. Def.'s R. 56.1 ¶¶ 41, 42. He was selected to fill one of the two vacancies in Manhattan. *Id.* at ¶ 42.

2. Joseph Giannotti

Joseph Giannotti was interviewed next. Pl.'s Ctr–Stmt. ¶ 34. His work experience consisted of the following: from 1989 to 1995, he was a carpenter; from 1995 to 2002, he was a maintenance mechanic for the Long Island City Board of Education, where he did tile repair and minor brick and block projects; from 2002 to 2005, he was a mason's helper at Bellevue Hospital Center, a job which involved assisting bricklayers with their work; from 2005 to 2007, he was a certified forklift operator at the New York Convention Center; and since 2007, he had been a maintenance worker for NYCHA's TSD, where he worked with concrete. *Id.* at ¶¶ 34, 35, 38; Def.'s R. 56 .1 ¶¶ 43, 44. Giannotti's TSD supervisors had in fact recommended him for the bricklayer position. Def.'s R. 56.1 ¶ 43.

Lollo testified that Giannotti had answered his bricklaying and masonry-related questions satisfactorily. *Id.* Lollo also testified that Giannotti's experience as a mason's helper was relevant to the job of bricklayer because mason's helpers often lay brick and block, finish concrete, and set tile. *Id.* at 1126, 43. The interviewers unanimously agreed to hire Giannotti, and he was selected to fill the other vacancy in Manhattan. Pl.'s Ctr–Stmt. ¶ 41.

3. Michael Zambino

The third candidate interviewed was Michael Zambino. Pl.'s Ctr–Stmt. ¶ 42. Lollo testified that he had asked Zambino typical masonry-related questions. Niederhoffer Decl., Ex. 4 at 113. Beyond that, however, none of the interviewers could recall any details of the interview. Pl.'s Ctr–Stmt. ¶ 42. Zambino's resume indicated that he had approximately eight years of masonry-related work experience as a foreman and union shop steward at a company called Blade Contracting. Sager Decl., Ex. 22. The resume listed his responsibilities at Blade Contracting as follows:

***4** Overseeing up to 8 or more men at a time

Masonry Restoration

Waterproofing

Lentil replacement, masonry work

Pointing, cleaning and caulking of brick work, expansion joints and windows

Steel and beam replacement

Rigging & operation of 2 point suspended rope, electric & pipe scaffolding up to 50 stories high

Stone patching

Demolition

Id. Zambino's resume also noted that he completed four courses from 1997 to 2001 at the International Masonry Institute. *Id.*

The interviewers unanimously agreed to hire Zambino, and he was selected for one of the positions in Brooklyn. Pl.'s Ctr–Stmt. ¶ 45.

4. Emmanuel Sylvester

The fourth interviewee was Emmanuel Sylvester. *Id.* at ¶ 47. Sylvester had extensive bricklaying experience, and the interviewers unanimously agreed to hire him for a position in Brooklyn. *Id.* at ¶ 48.

5. Plaintiff

Plaintiff was the next candidate interviewed. *Id.* at ¶ 49. Her resume included four entries under the section titled, "Experience": from 1981 to 1987, she was an administrative assistant to a manager at a watch company; from 1987 to 1988, she was an "assistant manager/customer service" employee at a different watch company; in 1989, she worked in customer service at an ice cream company; and finally, since May 1995, she had been a tile mechanic with Local 7 Tile, Marble & Terrazo, a division of the Bricklayers and Allied Crafts Union. Sager Decl., Ex. 12. Her resume provided the following description of her work as a tile mechanic: "Responsibilities include tile installation and/or marble on walls and floors, level and plumb the walls and floors. Water proofing, cutting and install saddles, soap dishes, repair and patchwork. Lay out all work as per specifications." *Id.*

In her interview, plaintiff was asked about her experience working with brick and block. Def.'s R. 56.1 ¶ 48. She told the interviewers that she had once "done a glass block shower at the Home Depot Expo." Sager Decl., Ex. 11 at 88. However, other than that one project, she admitted: "That was pretty much it.... I've done little things on my own but nothing, you know." *Id.* Plaintiff's inexperience with brick and block stood out to her interviewers. Def.'s R. 56.1 ¶ 48. Lollo testified that he "was kind of shocked that somebody would actually come, because the title is bricklayer, and come right out and tell everybody you have no experience with brick or block." Niederhoffer Decl., Ex. 4 at 118. Similarly, Pawson testified that "about the only thing I remember" from plaintiff's interview was that "she said that she never worked with brick and block," and that "being a bricklayer, I assumed you did brick and block." Niederhoffer Decl., Ex. 6 at 46.

Plaintiff was also asked how to mix mortar, whether she had any concerns about working high off the ground or in cramped spaces, and whether she would be available to work overtime. Def.'s R. 56.1 ¶ 33. According to plaintiff, one of the interviewers prefaced the overtime question by stating that some people have family obligations that would interfere. Pl.'s Ctr–Stmt. ¶ 55. There is no indication that plaintiff's answers to any of these questions were problematic. Lollo testified that he also asked plaintiff questions about tile, and that she answered them all correctly. Niederhoffer Decl., Ex. 4 at 118–19. However, plaintiff claimed that she was not asked any tile-related questions. Sager Decl., Ex. 11 at 88–89.

***5** According to Gilliam, plaintiff's interview revealed that she was not familiar with some of the tools used by bricklayers or with the task of boiler overhaul (which Gilliam considered to be the most significant part of a bricklayer's job in the Brooklyn Property Management Department), and that she lacked sufficient technical knowledge of the job. Def.'s R. 56.1 ¶¶ 21, 54–56. However, plaintiff denied being asked questions about these subjects. Pl.'s R. 56.1 ¶¶ 54, 55; Pl.'s Ctr–Stmt. ¶¶ 53, 54.

Following the interview, the interviewers unanimously decided to reject plaintiff. Def.'s R. 56.1 ¶ 48. The reason they gave was that she lacked experience with brick and block. *Id.* In their post-interview discussion of plaintiff, however, at least one interviewer noted that she could have been a viable candidate for mason's helper. Niederhoffer Decl., Ex. 1 at 43, 51, Ex. 13; Def.'s R. 56.1 ¶ 51; Pl.'s Ctr–Stmt. ¶ 57.

Lollo deemed plaintiff's experience working with tile to be somewhat relevant to the job of bricklayer, but defended the decision to reject her, stating, "the title we're hiring is bricklayer, not tile-setter." Niederhoffer Decl., Ex. 4 at 119. In Lollo's opinion, candidates with experience laying brick were more desirable than those with experience laying tile because laying brick required greater skill. Def.'s R. 56.1 ¶ 24. According to Lollo, even working as a mason's helper was more helpful and relevant to the job than was laying tile because mason's helpers often learned how to lay brick and block. *Id.* at ¶ 26.

6. Giuseppe Grippi

The sixth and final candidate interviewed was Giuseppe Grippi. Pl.'s Ctr–Stmt. ¶ 59. Grippi had substantial experience

as a bricklayer. *Id.* Moreover, Lollo was familiar with Grippi's masonry talents because Lollo had once given Grippi a practical examination for a provisional bricklayer job, and Grippi had also worked in the TSD for a short period of time. Def.'s R. 56.1 ¶ 47. The interviewers unanimously agreed to hire Grippi for the final position in Brooklyn.

D. Events After the Interviews

After all the interviews were conducted, Akugbe informed plaintiff that she had not been selected. Pl.'s Ctr–Stmt. ¶ 60. According to plaintiff, Akugbe told her that it was because the interviewers wanted somebody "stronger." *Id.* That night, plaintiff went home and, at the suggestion of an attorney, wrote the following note: "On Feb [sic] 24, 2010 I went for an Interview [sic] with the NYC Housing Authority. This interview was from a list calling for Bricklayer Exam # 4026. There were 5 posions [sic] 6 people showed up 5 men and myself. The 5 men got the jobs. I was told I was not stroung [sic] enough."[5] Sager Decl., Ex. 26.

5 Although plaintiff testified that she wrote the note on the same day as the interview, the note itself is undated. Sager Decl., Ex. 11 at 99–100, Ex. 26.

At his deposition, Akugbe denied making this statement about plaintiff's strength and said that this subject was never discussed during the interviews.[6] Def.'s R. 56.1 ¶ 59. Indeed, the interviewers testified that plaintiff's strength was not an issue and that the job did not require any particular degree of strength. *Id.* at ¶ 38.

6 Plaintiff concedes that she was never asked any questions regarding her strength. Pl.'s Ctr–Stmt. ¶ 56.

***6** After speaking with plaintiff, Akugbe notified the other candidates-Arlia, Giannotti, Zambino, Sylvester, and Grippi-that they had been selected and asked them to fill out an employment package. *Id.* at ¶ 61. In the course reviewing Zambino's package, NYCHA's Verification Unit found him to be unqualified for employment because his bricklaying experience at Blade Contracting did not satisfy DCAS's eligibility requirements. *Id.* at ¶ 62; Pl.'s Ctr–Stmt. ¶ 62. Consequently, only Arlia, Giannotti, Sylvester, and Grippi were hired.[7] Def.'s R. 56.1 ¶ 63. After the civil service list expired on April 12, 2010, NYCHA filled the remaining bricklayer vacancy with the provisional appointment of James Brush, a mason's helper at NYCHA who had passed a practical examination. Pl.'s Ctr–Stmt. ¶ 64; Sager Decl., Exs. 34, 35. Because plaintiff had already been rejected, she was not reconsidered for the vacancy. Def.'s R. 56.1 ¶ 64.

7 While the record is sparse on the role of the Verification Unit in the hiring process, that unit presumably screened Giannotti to ensure that he satisfied DCAS's eligibility requirements. Sager Decl., Ex. 7 at 61. However, an analyst for the unit testified that if she had reviewed Giannotti's work experience, she would not have found him to be qualified. Sager Decl., Ex. 5 at 50–51. According to the analyst, being a mason's helper did not count as qualifying experience for purposes of DCAS's eligibility requirements. *Id.* at 31.

On September 12, 2011, plaintiff brought suit against NYCHA for gender discrimination, filing the complaint that underlies this action.

III. Discussion

A. Standard of Review

A motion for summary judgment is appropriately granted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(a). In this context, "[a] fact is 'material' when it might affect the outcome of the suit under governing law," and "[a]n issue of fact is 'genuine' if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 202 (2d Cir.2007) (internal quotation marks and citations omitted). "In assessing the record to determine whether there is [such] a genuine issue [of material fact] to be tried, we are required to resolve all ambiguities and draw all permissible factual inferences in favor of the party against whom summary judgment is sought." *Gorzynski v. JetBlue Airways Corp.*, 596 F.3d 93, 101 (2d Cir.2010) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)). On a motion for summary judgment, "[t]he moving party bears the initial burden of demonstrating 'the absence of a genuine issue of material fact.' " *F.D.I.C. v. Great Am. Ins. Co.*, 607 F.3d 288, 292 (2d Cir.2010) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)). Where that burden is carried, the non-moving party "must come forward with specific evidence demonstrating the existence of a genuine dispute of material fact." *Id.* (citing *Anderson*, 477 U.S. at 249). The non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts ... and may not rely on conclusory allegations or unsubstantiated speculation." *Brown v. Eli Lilly and Co.*,

654 F.3d 347, 358 (2d Cir.2011) (internal quotation marks and citations omitted).

The Second Circuit has "repeatedly emphasized 'the need for caution about granting summary judgment to an employer in a discrimination case where, as here, the merits turn on a dispute as to the employer's intent.' " *Gorzynski*, 596 F.3d at 101 (quoting *Holcomb v. Iona Coll.*, 521 F.3d 130, 137 (2d Cir.2008)). However, "[t]hough caution must be exercised in granting summary judgment where intent is genuinely in issue, summary judgment remains available to reject discrimination claims in cases lacking genuine issues of material fact." *Chambers v. TRM Copy Ctrs. Corp.*, 43 F.3d 29, 40 (2d Cir.1994) (citation omitted). Indeed, it is well established that "summary judgment may be appropriate even in the fact-intensive context of discrimination cases." *Abdu–Brisson v. Delta Air Lines, Inc.*, 239 F.3d 456, 466 (2d Cir.2001). *See also Meiri v. Dacon*, 759 F.2d 989, 998 (2d Cir.), *cert. denied*, 474 U.S. 829, 106 S.Ct. 91, 88 L.Ed.2d 74 (1985) ("Indeed, the salutary purposes of summary judgment-avoiding protracted, expensive and harassing trials-apply no less to discrimination cases than to commercial or other areas of litigation.").

B. Gender Discrimination

***7** Claims of gender discrimination under Title VII and the NYSHRL are analyzed through the three-step evidentiary burden-shifting framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). *See Pucino v. Verizon Wireless Commc'ns, Inc.*, 618 F.3d 112, 117 n. 2 (2d Cir.2010) ("We review discrimination claims brought under the NYSHRL according to the same standards that we apply to Title VII discrimination claims."). Under this framework, a plaintiff must first establish a *prima facie* case by showing that "(1) she was within [a] protected class; (2) she was qualified for the position; (3) she was subject to an adverse employment action; and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination." *Leibowitz v. Cornell Univ.*, 584 F.3d 487, 498 (2d Cir.2009). If the plaintiff makes her *prima facie* case, the burden of production shifts to "the employer to articulate some legitimate, nondiscriminatory reason" for the adverse employment action. *McDonnell Douglas*, 411 U.S. at 802. If the employer meets that burden, the plaintiff must then demonstrate that the employer's offered reasons "were not the only reasons and that the prohibited factor"-in this case gender-"was at least one of the motivating factors." *Garcia v. Hartford Police Dep't*, 706 F.3d 120, 127 (2d Cir.2013) (quoting *Back v. Hastings on Hudson Union Free Sch. Dist.*, 365 F.3d 107, 123 (2d Cir.2004)). Rather than apply this framework formalistically, however, courts may simply assume that a plaintiff has made out a *prima facie* case of discrimination and proceed to the next step in the analysis. *Morris v. Ales Group USA, Inc.*, 2007 U.S. Dist. LEXIS 47674, at *19, 2007 WL 1893729 (S.D.N.Y. June 28, 2007).

Gender discrimination claims under the NYCHRL "must be reviewed independently from and 'more liberally' than" their Title VII and NYSHRL counterparts.[8] *Loeffler v. Staten Island University Hosp.*, 582 F.3d 268 (2d Cir.2009) (citing *Williams v. N.Y. City Hous. Auth.*, 61 A.D.3d 62, 66–69, 872 N.Y.S.2d 27 (1st Dep't 2009)). The Second Circuit has described the proper analysis under the NYCHRL as follows:

> While it is unclear whether *McDonnell Douglas* continues to apply to NYCHRL claims and, if so, to what extent it applies, the question is also less important because the NYCHRL simplified the discrimination inquiry: the plaintiff need only show that [the] employer treated her less well, at least in part for a discriminatory reason. The employer may present evidence of its legitimate, non-discriminatory motives to show the conduct was not caused by discrimination, but it is entitled to summary judgment on this basis only if the record establishes as a matter of law that 'discrimination play[ed] no role' in its actions.
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> *Mihalik v. Credit Agricole Cheuvreux N. Am., Inc.*, 715 F.3d 102, 110 n. 8 (2d Cir.2013) (quoting *Williams*, 61 A.D.3d at 78, 872 N.Y.S.2d 27 n .27 (1st Dep't 2009)).

8 Section 8–107(1)(a) of the NYCHRL makes it "an unlawful discriminatory practice ... [f]or an employer or an employee or agent thereof, because of the ... gender ... of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment." N.Y.C. Admin. Code § 8–107(1)(a).

In moving for summary judgment, NYCHA argues that plaintiff fails both to establish a *prima facie* case of gender discrimination and to demonstrate pretext or discriminatory motive.

C. Analysis

1. Title VII Claim

a. *Prima Facie* Case

***8** NYCHA does not dispute that plaintiff was within a protected class and was subject to an adverse employment action, thus satisfying the first and third elements of a *prima facie* case for discrimination. Rather, NYCHA argues that plaintiff cannot satisfy the second and fourth elements, namely that she was qualified for the bricklayer position and was rejected under circumstances giving rise to an inference of discrimination. *See* Mem. of Law in Supp. of Def.'s Mot. for Summ. J. ("Def.Mem .") 15–16.

It is far from clear that plaintiff possessed the necessary qualifications to become a bricklayer. Although she had worked for ten years as a tile mechanic, the question is whether this counted as qualifying experience under DCAS's eligibility requirements. Because witness testimony and documentary evidence do not supply an answer, we look to the official job specification for guidance. It provides the following description of the duties and responsibilities of a bricklayer: "Under direction, lays brick and masonry to line and grade in or on a given structure or form of work; performs related work." *Id.* Plaintiff argues that as a tile mechanic, she "laid masonry" (tile) "to line and grade" (making it plumb and level) on "structures" (walls and floors), which falls within both the core description of the job as well as "related work." *See* Mem. of Law in Opp. to Def.'s Mot. for Summ. J. ("Pl.Mem.") 18. The record does not indicate whether NYCHA's Verification Unit would have agreed.[9] However, given the minimal burden of establishing a *prima facie* case and our obligation to view the facts in the light most favorable to plaintiff, we assume for purposes of the present motion for summary judgment that plaintiff has established that she was qualified for the position.

9 Although NYCHA is correct that plaintiff had never held the title of bricklayer, neither had Giannotti, and yet he was still hired.

We also assume that she has met the burden of showing that she was rejected under circumstances giving rise to an inference of discrimination. *See, e.g.*, *Howard v. MTA Metro–North Commuter R.R.*, 866 F.Supp.2d 196, 205 (S.D.N.Y.2011) ("Despite the elaborate process set up in *McDonnell Douglas*, Second Circuit case law makes clear that a court may simply assume that a plaintiff has established a *prima facie* case and skip to the final step in the *McDonnell Douglas* analysis, as long as the employer has articulated a legitimate, nondiscriminatory reason for the adverse employment action.") (citing cases); *Morris*, 2007 U.S. Dist. LEXIS 47674, at *19, 2007 WL 1893729 ("Rather than apply the *McDonnell Douglas* test formalistically, the Court will assume that Morris has made out a *prima facie* case of discrimination on this claim."); *Hamilton v. Mount Sinai Hosp.*, 528 F.Supp.2d 431, 439–40 (S.D.N.Y.2007) (listing cases in which the court assumed that plaintiff established a *prima facie* case of discrimination).

We therefore proceed to the next step of the *McDonnell Douglas* analysis and consider whether NYCHA has provided a legitimate, nondiscriminatory reason for not hiring plaintiff.

b. Nondiscriminatory Reason

***9** NYCHA maintains that plaintiff was rejected because she disclosed during her interview that she lacked experience laying brick and block. Def. Mem. at 17. NYCHA's burden here is merely "one of production, not persuasion." *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 142, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000). To meet this burden, NYCHA "need not prove that the [people hired instead of plaintiff] had superior objective qualifications, or that it made the wisest choice, but only that the reasons for the decision were nondiscriminatory." *Davis v. SUNY*, 802 F.2d 638, 641 (2d Cir.1986). By citing plaintiff's admittedly extremely limited experience with brick and block as its reason for rejecting her, NYCHA has met its burden.

c. Discriminatory Motive

At this final stage of the analysis, we examine whether plaintiff has produced evidence from which a rational jury could find that gender was more likely than not a motivating factor in NYCHA's refusal to hire her. Plaintiff argues that she has produced this evidence in the following form: (1) evidence that plaintiff had superior qualifications to two of the male candidates who were hired, Giannotti and Zambino; (2) the absence of any female bricklayers at NYCHA; (3) Akugbe's alleged statement to plaintiff that she had been rejected because she was not strong enough; and (4) the alleged interview question posed to plaintiff regarding whether her family obligations would interfere with her ability to work overtime. Pl. Mem. at 23–26. As explained below, this evidence falls short of raising a triable issue of fact that NYCHA's refusal to hire plaintiff was based on her gender.

First, regarding plaintiff's qualifications, the Second Circuit has held that where a plaintiff seeks to prove discriminatory motive through a discrepancy in credentials, it faces a

"weighty" burden. *Byrnie v. Town of Cromwell Bd. of Educ.*, 243 F.3d 93, 103 (2d Cir.2001)." [P]laintiff's credentials would have to be so superior to the credentials of the person selected for the job that 'no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff for the job in question.' " *Id.* (quoting *Deines v. Tex. Dep't of Protective & Regulatory Servs.*, 164 F.3d 277, 280–81 (5th Cir.1999). Although plaintiff had extensive experience working with tile, and there was evidence that tile work constituted a large part of a bricklayer's job, we cannot say that she was more qualified than—much less "so superior" to-Giannotti and Zambino, or that the interviewers acted unreasonably by hiring them and not her.[10] And while the Court would normally consider even a minor discrepancy in credentials as part of the aggregate evidence of pretext, no such discrepancy is apparent here.

10 Notably, both Giannotti and Zambino scored higher than plaintiff on the written test for bricklayer, thus undermining her discrepancy in qualifications argument.

Second, the lack of female bricklayers at NYCHA does not, by itself, compel a finding of discrimination. *See, e.g.*, *Pearson v. Merrill Lynch & Bank of Am.*, 2012 U.S. Dist. LEXIS 39456, at *26–27, 2012 WL 983546 (S.D.N.Y. Mar. 22, 2012) (holding that evidence that plaintiff was the only male employed by defendant, without more, "will not support an inference of discrimination" particularly given that he was employed in a female-dominated field); *Watson v. Arts & Entm't Television Network*, 2008 U.S. Dist. LEXIS 24059, at *47 n. 5, 2008 WL 793596 (S.D.N.Y. Mar. 26, 2008) (finding that "the mere fact that [plaintiff] may have been the only member of her protected class in her department does not give rise to an issue of fact"); *Anderson v. Hertz Corp.*, 507 F.Supp.2d 320, 328 (S.D.N.Y.2007) (holding that the fact that plaintiff was the only African–American manager hired at defendant's facility in the past 12 years was insufficient to make out a *prima facie* case of race discrimination), *aff'd*, 303 F. App'x 946 (2d Cir.2008). Without more information about the quantity, and perhaps quality, of previous female applicants, we are unable to infer a discriminatory motive from the absence of female bricklayers at NYCHA.

***10** Plaintiff's argument therefore hinges on the probative force of the two comments allegedly made to her on the day of her interview. The first-that she was not selected because of her lack of strength-is hearsay by an individual with no decisionmaking authority, where the only evidence that it was made is plaintiff's self-serving testimony and note. *See* *Shumway v. UPS*, 118 F.3d 60, 65 (2d Cir.1997) (finding that plaintiff's self-serving statements and conclusory allegations, which were unsupported by admissible evidence, were insufficient to raise a genuine issue of material fact); *Boata v. Pfizer, Inc.*, 2013 U.S. Dist. LEXIS 15580, at *10, 2013 WL 432585 (S.D.N.Y. Jan. 31, 2013) ("self-serving affidavits, sitting alone, are insufficient to create a triable issue of fact and defeat a motion for summary judgment") (citing *BellSouth Telecommc'ns, Inc. v. W.R. Grace & Co.-Conn.*, 77 F.3d 603, 615 (2d Cir.1996)). Indeed, strength was not discussed during the interview, and the interviewers testified that they did not even consider the issue because the job of bricklayer did not require much of it. Def.'s R. 56.1 ¶ 63.

The second comment-asking if plaintiff had family obligations that could interfere with her working overtime-is innocuous and gender-neutral. Moreover, like the strength comment, the only evidence that it was said is plaintiff's testimony, which is undermined by the fact that the interviewers were specifically instructed by Akugbe not to ask about family responsibilities. Niederhoffer Decl., Ex. 1 at 33. Thus, in sum, the two comments allegedly made to plaintiff are not persuasive evidence of discriminatory animus.

In conclusion, no reasonable jury could find, based on the permissible inferences to be drawn from the evidence above, that NYCHA's failure to hire her was motivated by gender. Accordingly, the Court finds that plaintiff has failed to raise a genuine issue of fact as to her Title VII claim and grants NYCHA's motion for summary judgment on that claim.

2. NYSHRL and NYCHRL Claims

As there is no longer any federal claim in this action, it is within the Court's discretion whether to exercise supplemental jurisdiction over plaintiff's remaining state and municipal law claims. *Klein & Co. Futures, Inc. v. Bd. of Trade of City of N.Y.*, 464 F.3d 255, 262–63 (2d Cir.2006).

By virtue of resolving plaintiff's Title VII claim, the Court has in fact resolved her NYSHRL claim. That is because it is well-established that the substantive standards for liability under the NYSHRL and Title VII are coextensive: "[C]laims brought under New York State's Human Rights Law are analytically identical to claims brought under Title VII." *Rojas v. Roman Catholic Diocese of Rochester*, 660 F.3d 98, 107 n. 10 (2d Cir.2011) (citation omitted). "Because the Title VII and the NYSHRL claims here arise from the

same set of operative facts and because the same legal standards apply to both, requiring Defendant [ ] to re-litigate [the NYSHRL] claim[ ] in state court would be neither fair nor convenient, nor would it serve the interest of judicial economy." *Vuona v. Merrill Lynch & Co.*, 919 F.Supp.2d 359, 393 (S.D.N.Y.2013). We therefore exercise supplemental jurisdiction over plaintiff's NYSHRL claim and grant summary judgment to NYCHA on that claim.

***11** However, a different, more liberal standard applies to discrimination claims under the NYCHRL, one with "which the [New York] state courts are more familiar." *Id.* at 394. Consequently, the Court declines to exercise supplemental jurisdiction over plaintiff's NYCHRL claim and dismisses it without prejudice. The extensive discovery already taken is likely sufficient to enable this claim to be evaluated in state court without any additional discovery, *see* *Murray v. Visiting Nurse Servs.*, 528 F.Supp.2d 257, 280–81 (S.D.N.Y.2007) (collecting cases), and plaintiff would not be prejudiced by dismissal since "New York's C.P.L.R. § 205 allows a plaintiff to recommence a dismissed suit within six months without regard to the statute of limitations." *Trinidad v. NYC Dep't of Corrs.*, 423 F.Supp.2d 151, 169 (S.D.N.Y.2006) (internal brackets omitted).

IV. Conclusion

For the reasons stated above, the Court grants NYCHA's motion for summary judgment as it relates to plaintiff's Title VII and NYSHRL claims and dismisses without prejudice her NYCHRL claim.

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