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

-- X

ELIZABETH HASBROUCK ANDERSON,

Plaintiff,

-against-

EDMISTON & COMPANY, INC.,

Defendant.

-- X

Index No.: 150407/2013

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

This memorandum of law is submitted on behalf of defendant Edmiston & Company, Inc. ("Edmiston") in support of its motion to dismiss the complaint pursuant to CPLR §3211(a)(7) on the grounds that the complaint fails to state a cause of action. [1]

PRELIMINARY STATEMENT

The Complaint contains allegations about sexist comments allegedly made in the presence of the plaintiff, Elizabeth Hasbrouck Anderson ("Anderson"), by her supervisor at Edmiston, Robert Shepherd ("Shepherd"). The complaint alleges that Anderson was offended by Shepherd's comments and that, when she complained to Shepherd about the comments, he refused to stop making such comments.

As a result, the complaint alleges, Anderson requested a transfer to Edmiston's London office. When that request was denied, the Complaint alleges, Anderson's employment with Edmiston was "terminated." (Complaint, ¶27).

The Complaint attaches various labels to the comments allegedly made by Shepherd, and the Complaint characterizes Anderson's reactions to those alleged comments.[2] The labels affixed by a plaintiff, and the plaintiff's allegations concerning her alleged reactions to those comments, are not, however, dispositive. The comments themselves must be examined and it must be determined whether they rise to a level sufficient to sustain a cause of action. As

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[1] A copy of the complaint is annexed to the affidavit of Paul T. Shoemaker, sworn to on March 13, 2013 and submitted herewith, as Exhibit A.

[2] For purposes of this motion, the allegations of the Complaint must be accepted at face value as if the facts alleged therein are true. Leon v. Martinez, 84 N.Y.2d 83, 87-88, 614 N.Y.S.2d 972, 974 (1994). Edmiston denies many of the allegations of the Complaint, but such denials will not be set forth at this time.

set forth in detail hereinafter, the alleged comments are not actionable, and the Complaint should be dismissed.

The Complaint is notable for what it does not allege. Thus, it is not alleged that Anderson applied for, and was denied, a promotion at any time during her employment with Edmiston. To the contrary, the Complaint alleges in paragraph 5 that, while employed by Edmiston, Anderson enjoyed an "increase in duties and responsibilities."

Nor does the Complaint allege that there was any name calling, sexist or otherwise, directed at Anderson by anyone or, indeed, by anyone at anyone during the time period of Anderson's employment at Edmiston. Instead, Anderson alleges only that Shepherd made comments about third parties in the presence of Anderson and others. (Complaint, ¶¶9 and 13).

Nor does the Complaint allege that Shepherd or anyone else at Anderson engaged in any sexual propositioning or improper touching of Anderson or of anyone else.

The Complaint contains no allegation of constructive discharge, and it refers to the alleged termination of Anderson's employment only in the passive voice. Thus, in paragraph 1, the Complaint states that Anderson "was effectively terminated," and in paragraph 27, the Complaint alleges, again in the passive voice, that "Anderson was terminated."

The Complaint does not allege that anyone ever told Anderson that she was fired, either in words or in substance. There is no allegation that anyone said to Anderson that she should stop coming to work. Indeed, there is not even an allegation that Edmiston stopped paying her.

The Complaint also contains no allegation that Anderson ever complained to anyone at Edmiston – other than Shepherd himself – about the alleged offensive remarks. There is no allegation of a complaint to a human resources person or to any superior of Shepherd. There is a reference to conversations allegedly had between Anderson and David Hudson ("Hudson"), a Director of Edmiston, but the Complaint does not allege that Anderson complained to Hudson but rather that Hudson contacted Anderson. (Complaint, ¶22).

Nor does the Complaint allege that Anderson went to the New York State Division of Human Rights or any other governmental agency to file a complaint.

In substance, the Complaint alleges only that Anderson's supervisor made comments in her presence that upset her, that she thereafter requested a transfer to Edmiston's London office and that, when that request was denied, she concluded that her employment was terminated.

These allegations do not state a cognizable claim for anything, let alone for the awards of "Three Million ($3,000,000) Dollars" in damages plus "Five Million ($5,000,000) Dollars" in punitive damages for a total award of "Eight Million ($8,000,000) Dollars" which are demanded repeatedly in the Complaint. (¶¶40, 41, 42, 49, 50, 51 and "Wherefore" clause). The Complaint is nothing more than a money grab and an attempt to shake down the defendant.

ARGUMENT

New York courts will not hesitate to dismiss a claim pursuant to CPLR §3211 where the allegations, taken as true, do not support the relief requested. Leon, 84 N.Y.2d at 87-88, 614 N.Y.S.2d at 974. Moreover, "bare legal conclusions are not presumed to be true and are not accorded every favorable inference." McKenzie v. Meridian Capital Group, LLC, 35 A.D.3d 676, 676, 829 N.Y.S.2d 129, 130 (2d Dep't 2006). Under this standard, the Complaint undoubtedly fails to set forth facts sufficient to sustain a cause of action under the New York City Human Rights Law ("NYCHRL").

As a threshold matter, the exact nature of Anderson's first cause of action is unclear. It is well-established that a claim for gender discrimination is separate and distinct from a claim for hostile work environment. See Magadia v. Napolitano, No. 06 Civ. 14386, 2009 U.S. Dist. LEXIS 30926, at *48 (S.D.N.Y. Feb. 26, 2009) (hostile work environment claim "is a wholly separate cause of action designed to address other types of work place behavior, like constant jokes and ridicule or physical intimidation").

However, while Anderson's first cause of action explicitly seeks recovery for "gender discrimination", certain allegations in the Complaint appear to be geared towards a claim of hostile work environment. For example, Anderson alleges in paragraph 21 of the Complaint that "Edmiston allowed and permitted a hostile and degrading work environment for women." In addition, Anderson alleges in paragraph 34 of the Complaint that "Edmiston was obligated to maintain a workplace free of hostility" and in paragraph 29 that Edmiston failed "to provide Anderson with a workplace free of discrimination." As such, insofar as Anderson is seeking to allege a claim of hostile work environment, we address such claim now.

POINT I

THE CONDUCT COMPLAINED OF DOES NOT SUPPORT A FINDING OF A HOSTILE WORK ENVIRONMENT

To state a claim for hostile work environment under the NYCHRL, a plaintiff must allege facts showing that she was treated less favorably than other employees because of her membership in a protected class. Williams v. New York City Hous. Auth., 61 A.D.3d 62, 79, 872 N.Y.S.2d 27, 40 (1st Dep't 2009). Although it is true that NYCHRL claims are subject to a more liberal judicial construction than their state and federal counterparts, New York courts agree that the NYCHRL should not operate as a "general civility code." See, e.g., Kolenovic v. ABM Indus., Inc., 2012 NY Slip Op 31959U, *9 (Sup. Ct. New York Co. July 23, 2012); Li v. Educ. Broadcasting Corp., 2011 NY Slip Op 31953U, *9 (Sup. Ct. New York Co. July 5, 2011); Caravantes v. 53rd St. Partners, LLC, No. 09 Civ. 7821, 2012 U.S. Dist. LEXIS 120182, at *53-54 (S.D.N.Y. Aug. 23, 2012). Thus, while a plaintiff need not meet the higher standard required under federal and state law of demonstrating that the discriminatory conduct was "severe and pervasive," the conduct at issue must amount to "more than petty slights or trivial inconveniences." Rozenfeld v. Dep't of Design & Constr. of City of N.Y., 875 F. Supp. 2d 189, 209 (E.D.N.Y. 2012); Williams, 61 A.D.3d at 79-80, 872 N.Y.S.2d at 41.

Further, "to be actionable, the alleged conduct must be both objectively and subjectively offensive, such that a reasonable person would find the behavior hostile or abusive and such that the plaintiff herself, did, in fact, perceive it to be so." Constantine v. Kay, 6 Misc. 3d 927, 930, 792 N.Y.S.2d 308, 311-312 (Sup. Ct. Kings Co. 2004) (internal citations omitted). As such, although Anderson may have been offended by Shepherd's alleged comments, "her own personal feelings are not enough to demonstrate that a hostile work environment was present." Chin v. New York City Hous. Auth., 2011 NY Slip Op 31900U, *30 (Sup. Ct. New York Co. July 12, 2011).

Even accepting all of the facts alleged in the Complaint as true and drawing all inferences in favor of Anderson, the conduct alleged in the Complaint fails to meet even the lower standard imposed by the NYCHRL for a hostile work environment. For one, Shepherd's alleged references to Anderson as "good girl" and to various women as "stupid", a "C-U-Next-Tuesday" or a "cow" are merely offensive utterances that simply do not rise to an actionable level. Wilson v. N.Y.P. Holdings, Inc., No. 05 Civ. 10355, 2009 U.S. Dist. LEXIS 28876, at *88-89 (S.D.N.Y. 2009) (holding that references to female employees as "girls" and black female celebrities as "whores" and "sluts" were not sufficient to establish a hostile work environment); Kolenovic v. ABM Indus. Inc., 2012 NY Slip Op 31959U, *9 (Sup. Ct. New York Co. July 23, 2012) (finding that supervisor's references to plaintiff and other women as "my bitch" did not rise to actionable level).

Moreover, Shepherd's alleged comments that he did not believe women were suited for leadership positions and that women in the yacht charter industry are "unable to make a deal" and could only be successful if they slept around, while also odious and offensive, amount to no more than "petty slights and trivial inconveniences." Wilson v. N.Y.P. Holdings, Inc., 2009 U.S. Dist. LEXIS 28876, at *88-89 (comments such as "training females is like training a dog", "women need to be horsewhipped" and "blacks are only good for playing basketball" found to be no more than "petty slights and inconveniences").

Finally, Anderson's allegations that Shepherd made offhand sexually-explicit remarks in Anderson's presence -- e.g., telling Anderson that he was "going to spank [her]" and stating to a woman at an industry lunch that "her boobs looked good" -- are also not sufficient to set forth a claim for hostile work environment. Kolenovic v. ABM Indus. Inc., 2012 NY Slip Op 31959U, *9 (Sup. Ct. New York Co. July 23, 2012) (comments such as "her boobs are always popping out", "she is wearing her thong today" and I'm going to a bachelor party . . . would you like to make some extra money" found to be "too petty and trivial to rise to an actionable level"); Magnoni v. Smith & Laquiercia, LLP, 701 F. Supp. 2d 497, 506 (S.D.N.Y. 2010) (finding that supervisor's comments regarding his sex life and references to plaintiff as "voluptuous" were not enough to constitute a hostile work environment). Accordingly, to the extent that Anderson is seeking to allege a hostile work environment, such claim must fail.

POINT II

ANDERSON HAS FAILED TO STATE A CLAIM FOR GENDER DISCRIMINATION

The facts set forth in the Complaint are also not sufficient to sustain a claim for gender discrimination under the NYCHRL. To survive a motion to dismiss on a claim for gender discrimination, a plaintiff must allege facts showing that (1) the plaintiff is a member of a protected class; (2) the plaintiff was qualified to hold the position; (3) the plaintiff suffered an adverse employment action; and (4) gender was a motivating factor for the adverse employment action. Montano v. Dep't of Educ. Of City of N.Y., 2012 NY Slip Op 32283U, *4 (Sup. Ct. New York Co. Sept. 5, 2012). While it is not disputed that Anderson is a member of a protected class and, for purposes of this motion, that she was qualified for her position, Anderson's discrimination claim fails as a matter of law because the Complaint does not sufficiently allege facts supporting the third and fourth elements of her claim, i.e., that she suffered an adverse employment action and that such action was motivated by her gender.

A. Anderson Did Not Suffer An Adverse Employment Action

An adverse employment action is defined by the New York State Human Rights Law ("NYSHRL") as "a materially adverse change in the terms and conditions of an individual's employment" that is "more disruptive than a mere inconvenience." Chin, 2011 NY Slip Op 31900U, *21 (internal citations omitted). Although the NYCHRL is more liberally construed than the NYSHRL, New York courts have held that the definition of an adverse employment action is the same under the NYCHRL. Id.; Krolick v. Natixis Sec. N. Am. Inc., 36 Misc. 3d 1227A, 2011 NY Slip Op 52525U, *3 (Sup. Ct. New York Co. Nov. 23, 2011) ("this definition of adverse employment action applies to the City Human Rights Law as well as the State Human Rights Law."). Under this definition, it is undisputable that Anderson has not suffered an adverse employment action.

As an initial matter, the limited allegations concerning Anderson's supposed "termination" by Edmiston are entirely vague and conclusory. Regarding her separation from Edmiston, Anderson merely states that "she was terminated by Edmiston on November 8, 2012." (Complaint, ¶27). Anderson does not allege that anyone ever told her that she was fired, either in words or in substance, or that she should stop coming to work. In fact, Anderson does not even allege that Edmiston stopped paying her. At most, Anderson claims that in a conversation with Hudson on November 8, 2012, Hudson conceded that continuing to work with Shepherd would make for a "difficult work environment" and that transferring to the London office was not a possibility. (Complaint, ¶¶25-26). This is not sufficient to establish that Anderson was actively "terminated" by Edmiston.

The lack of detailed allegations concerning Anderson's separation from Edmiston can most likely be explained by Anderson's statement in paragraph 1 of the Complaint that she was "*effectively* terminated by Edmiston." (emphasis added). This statement, combined with the sparse facts concerning her supposed "termination", implies that Anderson is in reality alleging that she was *constructively* terminated by Edmiston. However, to the extent that Anderson is alleging a claim for constructive discharge, such claim must fail.

To state a claim for constructive discharge, a plaintiff must set forth facts demonstrating that the employer "deliberately created working conditions so intolerable, difficult or unpleasant that a reasonable person would have felt compelled to resign." Short v. Deutsche Bank Securities, Inc., 79 A.D.3d 503, 504, 913 N.Y.S.2d 64, 66 (1st Dep't 2010). Significantly, New York courts have held that a "constructive discharge claim requires the plaintiff to 'demonstrate a greater severity or pervasiveness of harassment than the minimum required to prove a hostile working environment.'" Birkholz v. City of New York, No. 10 Civ. 4719, 2012 U.S. Dist. LEXIS 22445, at *39 (E.D.N.Y. Feb. 22, 2012). Thus, under New York law, a claim for constructive discharge "requires a further showing beyond what is necessary to establish a hostile work environment." Ortiz v. New York City Hous. Auth., No. 09 Civ. 1280, 2011 U.S. Dist. LEXIS 114801, at *27 (E.D.N.Y. Sept. 30, 2011) (internal citations and quotations omitted). In addition, "a significant passage of time where the employee endured the conditions complained of is sufficient to undermine a claim that working conditions were intolerable." Murdaugh v. City of New York, No. 10 Civ. 7218, 2011 U.S. Dist. LEXIS 23333, at *18 (S.D.N.Y. Mar. 8, 2011).

Here, Anderson alleges that she began working under Shepherd in July 2008 and that she continued to work for him for over four years. During this time, Shepherd allegedly made numerous offensive remarks in Anderson's presence. Yet, it wasn't until October 2012, when Anderson allegedly overheard Shepherd make a remark similar to ones he had made before, that Anderson chose to say anything. That Anderson apparently endured Shepherd's allegedly offensive comments without complaint for over four years seriously undermines any claim that her working conditions were so intolerable that she was forced to leave Edmiston. See Murdaugh, 2011 U.S. Dist. LEXIS 23333, at *18. Further, because Anderson has failed to allege the type of conduct necessary to sustain a claim for hostile work environment (see supra), any claim for constructive discharge must similarly fail. See Birkholz, 2012 U.S. Dist. LEXIS 22445, at *39; Ortiz, 2011 U.S. Dist. LEXIS 114801, at *27. Thus, Anderson has failed to set forth facts showing that she suffered an adverse employment action in connection with her separation from Edmiston.

In addition to failing to establish that Anderson was terminated (either actively or constructively), Anderson has not set forth facts demonstrating that Edmiston's inability to accommodate Anderson's transfer request qualifies as an adverse employment decision. Under New York law, "[t]he denial of a request for a lateral transfer is not an adverse employment action." Cunningham v. Consol. Edison, Inc., No. 03 Civ. 3522, 2006 U.S. Dist. LEXIS 22482, at *51-52 (E.D.N.Y. Mar. 28, 2006). See also Perkins v. Memorial Sloane-Kettering Cancer Ctr., No. 02 Civ. 6493, 2005 U.S. Dist. LEXIS 22541, at *50 (S.D.N.Y. Oct. 5, 2005). "This is true even where an employee has a personal preference for the transfer." Cunningham, 2006 U.S. Dist. LEXIS 22482, at *52. Thus, in Cunningham, the court held that the denial of the plaintiff's request for a transfer to a different department was not an adverse employment action where the "request for the new position appears to stem not from the job attributes of the new position, but rather, from a desire for a fresh start." Id. at *51. In addition, it has been held that where an employee did not ask to be transferred to a specific position and there is no allegation that a comparable position was even available in the alternate location, the employee could not establish that the denial of the request put him in a disadvantaged position. See Divers v. Metropolitan Jewish Health Sys., No. 06 Civ. 6704, 2009 U.S. Dist. LEXIS 2312, at *34 (E.D.N.Y. Jan. 14, 2009).

Here, Anderson claims that after concluding that she could no longer work with Shepherd because of his allegedly offensive comments, she requested a transfer to Edmiston's London office. (Complaint, ¶¶ 17-18). In response, Anderson was allegedly told that although Edmiston would love to have Anderson work in the London office, there was no room for her and the company could not afford it. (Complaint, ¶¶ 20 and 22). Notably, Anderson does not allege that she asked to be transferred to a specific position nor whether any positions were even available in London.

This set of facts simply cannot establish that Anderson suffered an adverse employment action as a result of the denial of her transfer request. As in Cunningham, the inability to accommodate Anderson's request for a transfer to the London office based solely on Anderson's preference to work with someone other than Shepherd does not qualify as an adverse employment action. Moreover, there is no allegation that the inability to accommodate the request created a significant disadvantage to Anderson because she has not alleged that she sought to be transferred to a specific position or that any positions were even available in the London office. See Divers, 2009 U.S. Dist. LEXIS 2312, at *54 (E.D.N.Y. Jan. 14, 2009).

B. Edmiston's Actions Were Not Motivated By Gender Bias

Even assuming that Anderson has set forth facts sufficient to show that she suffered an adverse employment action as a result of Edmiston's inability to accommodate her transfer request, Anderson cannot meet the fourth element for a claim for gender discrimination because the Complaint is completely devoid of any facts showing that such action was motivated by her gender. See Kwan v. Andalex Group, LLC, No. 10 Civ. 1389, 2012 U.S. Dist. LEXIS 71614, at *17 (S.D.N.Y. May 22, 2012) (holding that the "plaintiff cannot establish a prima facie case [of gender discrimination] because she has failed to put forth sufficient facts to tie her termination in any way to her gender").

More specifically, Anderson's claim must fail because allegations of discriminatory comments by a non-decisionmaker are not sufficient to establish the required link. Id. at *22 (holding that remarks made by non-decisionmaker did not raise an inference of discriminatory animus); Lambert v. Macy's East, Inc., 34 Misc. 3d 1228A, 951 N.Y.S.2d 86, 2010 NY Slip Op 52434U, *28 (Sup. Ct. Kings Co. Apr. 30, 2010) (noting that although plaintiff alleged that his supervisor told racial jokes and slurs in his presence, the supervisor "played no role in making any of the adverse employment decisions that he complained of"); Benson v. Otis Elevator Co., No. 10 Civ. 3246, 2012 U.S. Dist. LEXIS 131535, at *24-25 (S.D.N.Y. Sept. 13, 2012) (finding that where alleged offensive remarks were made by non-decisionmaker, plaintiff had failed to establish prima facie case of discrimination).

Here, while the Complaint lists several examples of offensive comments allegedly made by Shepherd, there are no allegations that Shepherd was behind the decision to deny Anderson's transfer request. In fact, there are no allegations that Shepherd ever took any adverse action against Anderson. Indeed, Anderson notes that she received positive feedback from Shepherd on multiple occasions and that she enjoyed an increase in duties and responsibilities in 2009. (Complaint, ¶5).

According to the facts alleged in the Complaint, it was Rory Trahair ("Trahair") and Hudson, not Shepherd, who denied Anderson's request to transfer to the London office. (Complaint, ¶¶20 and 22). Trahair allegedly stated that although he would love to have Anderson work for him in the London office, the company could not afford it. (Complaint, ¶20). Hudson echoed this sentiment by stating that although Edmiston would love to have Anderson work in the London office, there was no room for her. (Complaint, ¶22).

Significantly, there is not a single allegation anywhere in the Complaint demonstrating that either Trahair or Hudson harbored any discriminatory animus. At most, Hudson is alleged to have told Anderson that the London office could be a "troublesome" work environment and that a colleague in the London office had "quite the mouth on him." (Complaint, ¶23). Both of these comments are completely gender-neutral and can therefore not be relied on to establish any gender bias. <u>See</u> <u>Benson</u>, 2012 U.S. Dist. LEXIS 131535, at *26 ("Although [references to plaintiff as "slobola" and "Ms. Smartypants" were] sarcastic and/or snide, these statements are devoid of any racial connotations, and statutes prohibiting employment discrimination are 'not a workplace civility code'"). As such, Anderson has failed to set forth sufficient facts to sustain a cause of action for gender discrimination and her claim must be dismissed.

POINT III

ANDERSON HAS FAILED TO STATE A CLAIM FOR RETALIATION

Anderson has not alleged facts sufficient to sustain her second cause of action for retaliation. To successfully plead a claim for retaliation under the NYCHRL, a plaintiff must demonstrate that "(1) she has engaged in a protected activity, (2) her employer was aware that she participated in such activity, (3) she suffered an adverse employment action based upon her activity, and (4) there is a causal connection between the protected activity and the adverse action." Chin, 2011 NY Slip Op 31900U, *22.

As with Anderson's flawed claim for gender discrimination, Anderson cannot maintain a cause of action for retaliation because she has failed to show that any of the behavior alleged in the Complaint constituted an adverse action within the meaning of the NYCHRL. See id. (dismissing retaliation claim where plaintiff failed to demonstrate that any of the employment actions were adverse); Li, 2011 NY Slip Op 31953U, *10 (granting employer's motion to dismiss retaliation claim because "plaintiff cannot demonstrate that he suffered any adverse employment action"). As demonstrated above, Anderson has not set forth facts showing that she was terminated by Edmiston, either actively or constructively, nor has she demonstrated that Edmiston's inability to accommodate her transfer request was anything more than a "mere inconvenience" that would qualify as an adverse employment action. Accordingly, Anderson has failed to set forth a prima facie claim for retaliation.

POINT IV

ANDERSON IS NOT ENTITLED TO PUNITIVE DAMAGES

Anderson has not alleged facts warranting an award of punitive damages. For a plaintiff to be entitled to punitive damages under the NYCHRL, she must show either that (1) her employer engaged in intentional discrimination "with malice or reckless indifference" as to whether his actions were in violation of City law; or (2) such "egregious or outrageous" conduct from which an inference of malice or reckless indifference could be drawn. Becerril v. E. Bronx NAACP Child Dev. Ctr., No. 08 Civ. 10283, 2009 U.S. Dist. LEXIS 85383, at *7-8 (S.D.N.Y. Sept. 17, 2009).

With respect to the first type of showing, the United States Supreme Court has made clear that the term "malice and reckless indifference" must "pertain to the employer's knowledge that it may be acting in violation of federal law, not its awareness that it is engaging in discrimination." Kolstad v. Am. Dental Assoc., 527 U.S. 526, 535, 119 S. Ct. 2118 (1999). "In reaching this conclusion, the Supreme Court recognized that there will be circumstances where intentional discrimination does not give rise to punitive damages." Becerril, 2009 U.S. Dist. LEXIS 85383, at *8.

As to the type of conduct from which an inference of malice or reckless indifference could be drawn, courts require that the conduct be truly egregious or outrageous. For example, in Molina v. J.F.K. Tailor Corp., No. 01 Civ. 4016, 2004 U.S. Dist. LEXIS 7872, at *24 (S.D.N.Y. Apr. 30, 2004), the court found that punitive damages were warranted where a supervisor subject the plaintiff "to sexual exploitation on a regular basis for a period of almost three years, and threatened to terminate [plaintiff's] employment if she refused to engage in sexual relations with him. Similarly, in DeCurtis v. Upward Bound Int'l, Inc., No. 09 Civ. 5378, 2011 U.S. Dist. LEXIS 114001, at *15 (S.D.N.Y. Sept. 27, 2011), the court held that the acts of a supervisor in touching the plaintiff in a sexual manner, calling her late at night and on weekends to talk about sex and explicitly threatening her job when she objected to his behavior "were sufficiently outrageous that any reasonable employer must have known that Plaintiff's rights were being violated."

A. Edmiston Did Not Act With Malice Or Reckless Indifference

The Complaint is completely devoid of facts that would support an award of punitive damages. For one, aside from entirely conclusory allegations that "the acts of Edmiston were done with reckless indifference" (see, e.g., Complaint, ¶¶31 and 41), there are no facts alleged in the Complaint that would indicate that anyone at Edmiston intentionally acted with knowledge or reckless indifference that he or she may be violating the law. Nowhere does Anderson claim that Shepherd, Hudson or any other individual was generally familiar with anti-discrimination laws when committing the allegedly discriminatory acts. At most, Anderson merely puts forth facts that she claims demonstrate that Shepherd knew that "the London office had even more gender discrimination than the New York office." (Complaint, ¶ 24). Even assuming this were true, such allegations are not sufficient because they do not relate to Shepherd's knowledge that his actions were in violation of Anderson's protected rights. Chapkines v. N.Y. Univ., No. 02 Civ. 6355, 2004 U.S. Dist. LEXIS 2990, at *20 (S.D.N.Y. Feb. 25, 2004) (finding that plaintiff had not met the relevant standard for imposing punitive damages because "[p]laintiff has not alleged any specific facts or provided any evidence that would tend to show that the defendants discriminated against him with malice or a reckless indifference to his federally protected rights, or with an awareness that age-based discrimination is a violation of federal law”).

B. The Conduct Complained Of Is Not Egregious Or Outrageous

In addition, Anderson has not alleged conduct that is so “egregious or outrageous” that it gives rise to an inference of “malice or reckless indifference.” Anderson bases her claims entirely on a handful of inappropriate, and at times offensive, remarks allegedly made by Shepherd and on the inability of Edmiston to accommodate her request to transfer to another office, which she alleges culminated in her “termination.” While Shepherd’s behavior and Edmiston’s denial of Anderson’s request may have made for an uncomfortable working environment, these actions simply do not qualify as the type of conduct that would justify an award of punitive damages. Compare Molina, 2004 U.S. Dist. LEXIS 7872, at *24; DeCurtis, 2011 U.S. Dist. LEXIS 114001, at *15.

CONCLUSION

For all of the foregoing reasons, we respectfully request that the Court grant Edmiston's motion to dismiss the complaint and award such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 15, 2013

Respectfully submitted,

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