

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HASSAN H. SHERIF, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
 :
ASTRAZENECA, L.P., et al. : NO. 00-CV-3285
Defendants. : NO. 00-CV-3938

MEMORANDUM & ORDER

J.M. KELLY, J.

APRIL , 2001

In his Consolidated Amended Complaint, Plaintiff, Hassan H. Sherif ("Sherif") has sued Defendants Robert C. Stoner ("Stoner"), Letitia A. Baldez ("Baldez"), Chester P. Yuan ("Yuan") (collectively the "individual Defendants") and AstraZeneca, L.P. ("AstraZeneca") for: (1) discrimination based on sex, race, religion and ethnic origin pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. §§ 2000e to 2000e-17 (1994); (2) disability discrimination pursuant to Title I of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12111-12117; (3) retaliation for filing a complaint with the Equal Employment Opportunity Commission ("EEOC"), pursuant to Title VII and the ADA; (4) parallel discrimination and retaliation claims under the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Con. Stat. Ann. §§ 951-963 (West 1991); (5) defamation, libel and slander by AstraZeneca; (6) invasion of privacy by holding Sherif in a false light; (7)

negligent infliction of emotional and physical distress; and (8) aiding and abetting in a violation of the PHRA by the individual Defendants. Sherif's claims arise from his demotion and termination from employment by AstraZeneca.

The individual Defendants move to dismiss Sherif's PHRA aiding and abetting claims for failure to allege scienter or a common purpose. All Defendants move to dismiss Sherif's intentional and negligent infliction of emotional distress claims as barred by the Pennsylvania Worker's Compensation Act, 77 Pa. Con. Stat. Ann. §§ 1-1603 (West 1992), and as insufficiently pleaded to state a claim.¹

BACKGROUND

The following relevant facts are alleged in Sherif's Complaint. Sherif was employed by AstraZeneca and its predecessors in various sales and sales management positions. He was successful in building sales and won several company awards. In 1997, Sherif applied for and was hired as a Developmental Specialist in the Philadelphia Customer Sales Unit ("PCU") of Astra-Merk, a predecessor to AstraZeneca. His main duties were related to training Pharmaceutical Specialists. Baldez was

¹ The parties have previously stipulated to dismiss all Title VII and ADA claims against the individual Defendants, as originally presented in this Motion to Dismiss. Likewise, Sherif has not rebutted Defendants' argument that Pennsylvania would not recognize claims for negligent and intentional infliction of physical distress. Accordingly, those claims are also dismissed.

Director of the PCU. Baldez was on maternity leave from April through October of 1998 and Sherif was responsible for some of her Director's responsibilities. Due to a shortage of Pharmaceutical Specialists, Sherif was also responsible for sales to some customer accounts. Further, as a result of a change in his office cubicle, many of Sherif's records were in storage. In August of 1998, Sherif was informed that he had not submitted expense reports since the beginning of the year. He compiled these expense reports and submitted them in late September.

Sherif was encouraged to apply for a position as a Business Unit Planning and Operations Leader. In a meeting with Baldez, he informed her of his decision to apply for the position. Baldez informed him that she was not comfortable with his application because of questions of the timeliness and accuracy of his expense reports and that an investigation was under way. The inaccuracies in the expense reports were a reflection of initial scheduled dates for sales calls rather than actual dates of sales calls. Baldez referred to the expense inaccuracies as a terminable offense.

Sherif attended a meeting concerning the expense reports with Baldez and Stoner. Baldez informed Sherif that the late, inaccurate expense reports violated company policy. She also claimed that he violated company policy when he submitted the expense reports to someone else, despite that she was on

maternity leave when he submitted the expense reports. Stoner suspended Sherif, with pay, pending an investigation of his expenses. Sherif's voice mail and computer passwords were disabled although AstraZeneca's disciplinary policy only called for a written warning. AstraZeneca's employees were told that Sherif was temporarily unavailable and that they should respect his privacy. Sherif received several calls from co-workers who thought he was ill or in trouble.

In November of 1998, Sherif was allowed to return to work at AstraZeneca, with a demotion to Pharmaceutical Specialist and with a six month probationary period. He was assigned to the south Philadelphia territory, the farthest available from his home. AstraZeneca disciplinary policy does not provide for demotions. Sherif wrote a memorandum to Baldez, Stoner and Yuan in which he outlined differences in working conditions and discipline between Sherif and other workers in the PCU.

Yuan nominated the PCU leadership team for an award based upon their restructuring effort in the Summer of 1998. Sherif was not included in the nomination. In February 1999, Baldez gave Sherif his annual evaluation, which included all excellent ratings. Despite his evaluation, Sherif's salary remained below the previous average for Developmental Specialists and almost \$10,000 below the current average for Developmental Specialists.

Baldez criticized Sherif for asking a manager questions at a

meeting. He was told that he had to answer questions from managers but they need not answer his questions.

Sherif filed complaints with the Pennsylvania Human Relations Commission ("PHRC") and the Equal Employment Opportunity Commission ("EEOC"). Following the PHRC and EEOC complaints, Sherif was given misconfigured computer software, not visited by his supervisor in the field and his sales were not reported correctly. In April 1999, Stoner and Baldez met with Sherif concerning his sales levels. They would not accept his explanation that the computer software misreported sales. He was told he was being held to a different standard than anybody else.

Baldez criticized Sherif for taking vacation in May of 1999. Sherif followed company policy in asking for vacation and Arranged for coverage of his customers. He then received an annual pay increase of 1.5% when the average was 4.5%. Sherif was terminated on May 24, 1999.

STANDARD OF REVIEW

In considering whether to dismiss a complaint for failing to state a claim upon which relief can be granted, a court must consider only those facts alleged in the complaint and must accept those facts as true. Hishon v. King & Spalding, 467 U.S. 69, 73 (1983). Moreover, the complaint is viewed in the light most favorable to the plaintiff. Tunnell v. Wiley, 514 F.2d 971, 975 n.6 (3d Cir. 1975). In addition to these expansive

parameters, the threshold a plaintiff must meet to satisfy pleading requirements is exceedingly low: a court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle the plaintiff to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

DISCUSSION

While the tort of intentional infliction of emotional distress ("IIED") has not been specifically adopted by the Supreme Court of Pennsylvania, the Third Circuit, in Williams v. Guzzardi, 875 F.2d 46 (3d Cir. 1989), through its interpretation of Kazatsky v. King David Mem'l Park, Inc., 527 A.2d 988 (Pa. 1987), instructed district courts that they are to recognize IIED until the Pennsylvania Supreme Court definitively decides the issue. See Williams, 875 F. Supp. at 51; see also Clark v. Township of Falls, 890 F.2d 611, 623 (3d Cir. 1989); McWilliams v. AT&T Info. Sys., Inc., 728 F. Supp. 1186, 1194 (W.D. Pa. 1990). Moreover, the Pennsylvania Superior Court recognizes IIED. See Rinehimer v. Luzerne City Com. College, 539 A.2d 1298, 1305 (Pa. Super. Ct. 1988); Banyas v. Lower Bucks Hosp., 437 A.2d 1236, 1238 (Pa. Super. Ct. 1982); Jones v. Nissenbaum, Rudolph & Seidner, 368 A.2d 770, 772-73 (Pa. Super. Ct. 1976).

The Pennsylvania Workmen's Compensation Act ("WCA") does, however, bar an employee's claim of IIED against an employer. The exclusivity provision of the WCA states, "[t]he liability of

an employer under this act shall be exclusive and in place of any and all other liability to such employees" 77 Pa. Con. Stat. Ann. § 481(a); see also Glickstein v. Consolidated Freightways, 718 F. Supp. 438, 440 (E.D. Pa. 1989) (WCA bars employee's claim for IIED). Sherif argues that the retaliatory nature of Defendants' acts overcomes the WCA bar, however, in order to rise to the level of IIED, the conduct complained of must be of an "extreme or outrageous type." Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988). The conduct complained of must "go beyond all possible grounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society. Id. It would be extremely rare in the employment context for conduct to rise to the level of outrageousness necessary to prove a claim of IIED. McWilliams, 728 F. Supp. at 1194. The facts pleaded by Sherif do not rise to the requisite level of outrageousness. Clearly, Sherif's claim for negligent infliction of emotional distress is also subsumed by the WCA.

An individual supervisory employee can be held liable under the PHRA for aiding, abetting, inciting or compelling a discriminatory act. 42 Pa. Con. Stat. Ann. § 955(e). The supervisor's liability can be predicated upon direct acts of discrimination or the failure to prevent discrimination by others. Davis v. Levy, Angstreich, Finney, Baldante, Rubenstein

& Coren, P.C., 20 F. Supp. 2d 885, 887 (E.D. Pa. 1998). Here, Sheriff has sufficiently alleged that Stoner and Baldez were in supervisory positions and actively participated in his termination and Yuan was a supervisor who was made aware of and did not prevent Sheriff's discriminatory demotion and termination. Accordingly, Sheriff has adequately plead a claim of aiding and abetting under the PHRA to survive this Motion to Dismiss.

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O R D E R

AND NOW, this day of April, 2001, upon consideration of the Motion to Dismiss of Defendants Robert C. Stoner ("Stoner"), Letitia A. Baldez ("Baldez"), Chester P. Yuan ("Yuan") and AstraZeneca, L.P. (Doc. No. 10), the Response of Plaintiff, Hassan H. Sheriff, the Reply of Defendants and Plaintiff's Sur-reply thereto, it is ORDERED:

1. The Motion to Dismiss is GRANTED in part. Plaintiff's claims of negligent and intentional infliction of emotional and physical distress are DISMISSED as to all Defendants.

2. The Motion to Dismiss is DENIED in part as to

Plaintiff's claim that Stoner, Baldez and Yuan aided and abetted discrimination pursuant to the Pennsylvania Human Relations Act.

BY THE COURT:

JAMES MCGIRR KELLY, J.