

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

WILLIAM R. MAWHINNEY, JR.,	:	
Plaintiff	:	Civil Action No. 01-CV-1557
	:	
v.	:	
	:	
GMAC COMMERCIAL MORTGAGE	:	
CORPORATION,	:	
Defendant.	:	

MEMORANDUM AND ORDER

Plaintiff alleges that he was discharged based on his age, then 64, and sex, male, in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621 et seq. (“ADEA”) and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. (“Title VII”), respectively, when he was discharged from his employment on September 7, 1999.¹ It is undisputed that Plaintiff, a Vice President in the Human Resources Department, was discharged after an African-American, female former employee complained that a comment Plaintiff made to her was racist.

Generally, we use caution when considering “reverse discrimination” complaints, especially those raised by individuals disciplined or discharged for alleged acts of discrimination. However, we note that the Third Circuit, in Iadimarco v. Runyon, 190 F.3d 151 (3rd Cir. 1999), specifically held that “reverse discrimination” cases, brought by members of the normally empowered groups – whites and men, for example – must be analyzed according to the same

¹Plaintiff also alleged discrimination in violation of the Pennsylvania Human Relations Act, 43 P.S.A. §951 et seq. (“PHRA”) but his administrative filing was received by the EEOC on May 26, 2000 and subsequently cross-filed with the Pennsylvania Human Relations Commission well outside the PHRA’s firm, 180-day statute of limitations. See Zysk v. FFE Minerals USA Inc., 2001 WL 1736453 (E.D.Pa. 2001) (Van Antwerpen, J.). Accordingly, because Plaintiff failed to exhaust his administrative remedies timely, as required under the PHRA, we will dismiss Plaintiff’s state discrimination claims. On the other hand, Plaintiff’s filing, on or about the 261st day after the last alleged incident of discrimination, occurred well within the 300-day statutes of limitations of Title VII and the ADEA. Id. Thus, notwithstanding Defendant’s assertions, we may not dismiss these claims for lack of timeliness.

standards that are applied in all other discrimination actions. See id. at 160-161, rejecting a “background circumstances” addition to the McDonnell Douglas formula, thereby implicitly abrogating our opinion in McHenry v. Pa. State System of Higher Educ., 50 F.Supp.2d 401 (E.D.Pa. 1999) (Van Antwerpen, J.).

Plaintiff establishes a prima facie case of age and gender discrimination according to the McDonnell Douglas formula and provides some evidence of pretext. Specifically, Plaintiff was a 64 year-old male, discharged, and replaced with a much younger female. His supervisor and his supervisor’s superior were both younger females and, after Plaintiff’s discharge, the entire group in Human Resources where he had worked consisted of younger females. Though Defendant relied on the complaint lodged against Plaintiff in discharging him, his supervisor acknowledges that when she originally learned of the comment Plaintiff made, she did not consider it racist and took no corrective action. Plaintiff was summarily discharged, though younger men accused of discrimination previously were either given the opportunity to resign voluntarily or the benefit of progressive discipline. There is also a disputed issue of fact as to whether Plaintiff’s female superiors or Defendant’s male Chief Executive Officer recommended Plaintiff’s discharge.

Accordingly, we will deny summary judgment on Plaintiff’s Title VII and ADEA claims. An order consistent with this Memorandum follows.

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CORPORATION,	:	
Defendant.	:	

AND NOW, this 1st of April, 2002, it is hereby ORDERED that Defendant's Motion for Summary Judgment, filed January 28, 2002, is GRANTED as to Plaintiff's claims under the Pennsylvania Human Relations Act, 43 P.S.A. §951 et seq., and DENIED in all other respects.

This matter will proceed to trial.

BY THE COURT:

Franklin S. VanAntwerpen, U.S.D.J.