

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

JILL WATERS : CIVIL ACTION  
: :  
: :  
v. : :  
: : NO. 03-CV-2909  
: :  
GENESIS HEALTH VENTURES, :  
INC. :

**SURRICK, J.**

**JUNE 30, 2005**

**MEMORANDUM & ORDER**

Presently before the Court is Plaintiff Jill Waters's Motion In Limine To Preclude The Testimony Of Tara Amarhanov (Doc. No. 62) and Defendant Genesis Health Ventures, Inc.'s Response (Doc. No. 101). For the following reasons, Plaintiff's Motion will be granted.

Plaintiff, a Caucasian female, was employed by Defendant for ten years until her employment was terminated on September 23, 2002. (Doc. No. 6 at 2, 5.) On March 8, 2004, Plaintiff filed a First Amended Civil Action Complaint ("Amended Complaint"). (Doc. No. 18.) Plaintiff alleges that in June, 2002, Defendant hired Marvin Kirkland ("Kirkland"), an African-American male, as director of nursing. (Doc. No. 27 ¶ 13.) Kirkland supervised Plaintiff and other employees. The factors motivating Plaintiff's termination are in dispute. Plaintiff alleges that her termination was due to Kirkland's discriminatory animus. (*Id.* ¶¶ 16, 30.) Specifically, Plaintiff alleges reverse discrimination based upon race in violation of 42 U.S.C. § 1981. (Doc. No. 66 at 2.) Defendant claims that Plaintiff was dismissed for performance-related reasons.

Robert Creely, a Caucasian, had been employed by Defendant at its Crestview facility but resigned his position prior to May, 2003. On May 15, 2003, Creely submitted an application to Defendant seeking re-employment. Creely was interviewed for a position at Crestview by Marvin Kirkland. (Doc. No. 65 at 4.) On February 18, 2004, Creely filed a lawsuit in this Court, docketed as Civil Action No. 04-CV-0679, against this Defendant, alleging that Kirkland told him during the interview that he was on a “do not hire” list maintained by the Defendant and therefore not eligible for re-employment. (*Id.*) When Creely later found out that no such list existed, he concluded that Kirkland had discriminated against him because he is Caucasian. (*Id.*) The Creely lawsuit was dismissed on summary judgment by Memorandum and Order dated May 26, 2005. *Creely v. Genesis Health Ventures, Inc.*, No. 04-CV-0679, 2005 WL 1271876 (E.D. Pa. May 26, 2005). We concluded that Creely did not provide sufficient evidence to establish that Defendant had discriminated against him in the face of legitimate and compelling non-discriminatory reasons for Defendant’s action.<sup>1</sup> *Id.* at \*9.

Plaintiff files the instant Motion to exclude the testimony of Tara Amarhanov. Defendant has indicated that Amarhanov would only be called as a rebuttal witness to rebut testimony offered by Robert Creely. Since we have dismissed the discrimination claim filed by Creely against Defendant based upon insufficient evidence, Creely will not now be permitted to testify in this matter that he suffered discrimination at the hands of Defendant. Thus, there will be no testimony for Amarhanov to rebut. Accordingly, Plaintiff’s Motion in Limine will be granted.

An appropriate Order follows.

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<sup>1</sup>There was also compelling evidence that the decision not to rehire Creely was made by someone other than Kirkland. Kirkland was only the messenger.

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INC.	:	

**ORDER**

AND NOW, this 30th day of June, 2005, upon consideration of Plaintiff Jill Waters's Motion in Limine (Doc. No. 62, No. 03-CV-2909), and Defendant Genesis Health Ventures, Inc.'s Response thereto, it is ORDERED that Plaintiff's Motion is GRANTED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, J.