

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

DR. LESLIE M. SALKIN, : (CONSOLIDATED CASES)
DR. ALAN M. STARK, and :
DR. KENNETH G. BOBERICK : CIVIL ACTION
 :
v. :
 :
TEMPLE UNIVERSITY OF THE :
COMMONWEALTH SYSTEM OF :
HIGHER EDUCATION, et al. : NO. 05-6579

ORDER AND OPINION

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

DATE: June 26, 2006

Defendants have moved for dismissal of all claims against the individual defendants, and all claims arising under the Pennsylvania Human Relations Act, (“PHRA”), 43 Pa. C.S.A. §§ 955 *et. seq.* and the Philadelphia Code Fair Practices Ordinance (“PCFPO”). For the reasons set forth below, their motion will be granted in part and denied in part.

I. Factual and Procedural Background

In these consolidated cases, Drs. Salkin, Stark and Boberick, all dentistry professors, have sued Temple University Of the Commonwealth System of Higher Education (“Temple”), as well as Dr. Michael Plisken, Chair of the Department of Oral and Maxillofacial Medicine and Surgery; Dr. Daniel Boston, Chair of the Department of Restorative Dentistry, and Dean Martin Tansy, Dean of the School of Dentistry.

Dr. Salkin has asserted claims against Temple only, under the Age Discrimination and Employment Act, (“ADEA”), 29 U.S.C. §§ 621 *et seq.*, the PHRA and the PCFPO. Dr. Boberick has sued Temple, Dr. Boston and Dean Tansy under the same statutes. Dr. Stark has asserted claims against Temple and Dr. Plisken under all of these laws, and also under the Americans With Disabilities Act, (“ADA”), 42 U.S.C. §§ 12101 *et seq.*

All three plaintiffs initially filed administrative discrimination charges with the Philadelphia Commission on Human Relations and the United States Equal Employment Opportunity Commission. See Exhibits 2, 3, 5, 6, 8 and 9 to Defendants' motion. Defendants have conceded for the purposes of this motion that a valid and appropriate filing with the Philadelphia Commission on Human Relations constitutes the filing of a claim with the PHRA. Defendants' Memorandum at n. 2.

In their motion, Defendants maintain that individuals cannot be held liable under any of the laws invoked by the Plaintiffs. They also argue that Plaintiffs cannot sue Temple under the PCFPO because it does not apply to charitable organizations. Further, they maintain that, because of plaintiffs' improper filing under the PCFPO, their PHRA claims are not exhausted.

II. Applicable Legal Principles

A claim may be dismissed under Fed. R. Civ. Pr. 12(b)(6) only if it appears beyond doubt that the plaintiff could prove no set of facts in support of her claim that would entitle her to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Moreover, the court must consider only those facts alleged in the complaint, and accept all of the allegations as true. Hishon v. King & Spalding, 467 U.S. 69 (1984); ALA, Inc. v. CCAIR, Inc., 29 F.3d 885, 859 (3d Cir. 1994).

III. Discussion

A. Individual Liability

It is not clear from the complaints filed in these actions whether Plaintiffs even intended to sue the individual defendants under the ADA or the ADEA. In any event, they concede in their response to this motion that individual liability is not available under these statutes.

Plaintiffs' Memorandum of Law at 8.

They correctly point out, nevertheless, that individuals may be held liable under the PHRA for aiding and abetting discrimination. Dici v. Commonwealth of Pennsylvania, 91 F.3d 542, 552 (3d Cir. 1996), citing 43 Pa. C.S.A. § 955(e).

The individual defendants maintain that aiding and abetting claims against them were waived, since they were not included as respondents in the petitions Plaintiffs filed with the Philadelphia Commission on Human Relations. They cite Vuong v. J.C. Penney, Civ. A. No. 04-3940, 2005 WL 1353394 at *8 (E.D. Pa. May 31, 2005), where the judge found that claims against individuals not named respondents in a PHRA complaint were time-barred in the civil action.

Indeed, Drs. Stark and Boberick named only Temple as a respondent in their PCFPO complaints. Nevertheless, an institution can act only through individuals. Dr. Stark's complaint fully details the actions by Dr. Pliskin which he claims were discriminatory. See Dr. Stark Complaint attached to Temple's motion as Exhibit 5. Similarly, Dr. Boberick claims that behavior by Dr. Boston and Dean Tansey, as explained in his complaint, constituted discrimination. Dr. Boberick's Complaint attached to Temple's motion as Exhibit 8.

Thus, the individual defendants were aware before this case was filed that Drs. Stark and Boberick alleged that they aided and abetted Temple's acts of discrimination, although that term was not used. At this point, moreover, all parties are represented by the same counsel. Therefore, the individual defendants were aware from the time this lawsuit was initiated that their behavior was at issue. In these circumstances, where the individual defendants have not been prejudiced by counsel's mistake in failing to name them as PCFPO respondents, I am reluctant to penalize plaintiffs for improperly captioned PCFPO complaints.

For this reason, I will permit Drs. Stark and Boberick to sue Dr. Pliskin, Dr. Boston and Dean Tansey in their individual capacities. The PCFPO, like the PHRA, bans “any person” from aiding and abetting any unfair employment practice under the ordinance. § 9-1103(A)(7). The individual defendants may, therefore, be sued under this ordinance as well.

B. Temple University as a Charitable Organization

Defendants next argue that Plaintiffs’ administrative filings with the Philadelphia Commission on Human Rights were “entirely inappropriate” because Temple is excluded from liability under the PCFPO as a charity. The definition of “employer” is: “Any person who employs one or more employees exclusive of parents, spouse or children, including the City, its departments, boards and commissions, **but excluding** any fraternal, sectarian, **charitable** or religious group.” § 9-1102(f). (Emphasis supplied). Temple relies upon its tax filing status as a § 501(c)(3) organization under the Internal Revenue Code to show that it is a charitable organization.

I am not persuaded that tax filing status is determinative of whether an entity is a charitable group under the PCFPO, particularly in the case of an educational institution. Defendants have not cited any law to support their position, nor – assuming that there is no authority on point – have they put forth a strong argument as to why their position should be accepted. I note that on at least one occasion, a college was sued under the PCFPO. See Hartman v. Chestnut Hill College, Civ. A. No. 00-1400, 2000 WL 1016655 (E.D. Pa. Jul. 7, 2000). I will not dismiss Plaintiffs’ PCFPO claims on this basis.

Although a university can be sued under the PHRA, Defendants ask that the PHRA claims be dismissed on the basis that the inappropriate PCFPO filings meant that Plaintiffs had not properly exhausted their administrative remedies. Since I do not accept Defendants' argument that the PCFPO filings were inappropriate, I will reject this argument as well.

IV. Conclusions

For the reasons discussed above, I now enter the following

ORDER

AND NOW, this day of June, 2006, upon consideration of Defendants' Motion to Dismiss Claims Against the Individual Defendants and Claims Under the PHRA and the Philadelphia Fair Practices Ordinance, filed in this action as Document 11, and the response thereto, it is hereby ORDERED that the Motion is GRANTED IN PART in that all federal causes of action against individual defendants are dismissed; the Motion is OTHERWISE DENIED.

BY THE COURT:

/s/ Jacob P. Hart

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE