

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

NANETTE LAW : CIVIL ACTION
 :
 v. :
 :
 ROBERT CHALPHIN ASSOCIATES and :
 TRILOGY SYSTEMS, INC. : NO. 97-CV-3879

M E M O R A D U M O R D E R

Presently before the court is defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6).

Plaintiff filed a pro se complaint in which she appears to assert a Title VII claim. She suggests that defendants' failure to provide her with a requested job description resulted in a hostile work environment. If she was otherwise subjected to a hostile work environment for any reason prohibited by Title VII, she does not specify. She also states that her employment was terminated for a retaliatory reason but does not specify what that reason was or otherwise suggest that it was for engaging in protected conduct.

Defendants correctly contend that plaintiff's complaint fails to satisfy even the liberal pleading requirements of Rule 8(a) and does not remotely set forth a cognizable claim. Plaintiff, who has since engaged counsel, does not disagree. Rather, she asks that defendants' request for dismissal be denied and that she be given leave to file an amended complaint.

The court would be pleased to grant plaintiff leave to file an amended complaint. Indeed, in the absence of a

responsive pleading, she does not need such leave. See Fed. R. Civ. P. 15(a). The problem is that plaintiff has no amended complaint to file. Rather, her counsel suggests that he is "gathering information" which may enable him to prepare a complaint which could withstand a motion to dismiss.¹ The court will not deny a sound motion to dismiss because an adequate subsequent pleading may be forthcoming. The court, however, also will not grant the request for dismissal with prejudice when it is conceivable that a cognizable claim may exist.²

ACCORDINGLY, this day of January, 1998, **IT IS HEREBY ORDERED** that defendants' Motion to Dismiss (Doc. #5) is **GRANTED** in that the complaint in the above case is **DISMISSED**, without prejudice to plaintiff to file an amended complaint within thirty (30) days hereof.

BY THE COURT:

JAY C. WALDMAN, J.

¹ Defendants argue with some force that based upon plaintiff's underlying PHRA/EEOC complaint she cannot state a legally cognizable claim.

² The 90 day limitation period is tolled following a dismissal without prejudice for any reasonable period expressly provided by the court for the filing of an amended complaint. See Cardio-Medical Associates Ltd. v. Crozer-Chester Medical Center, 721 F.2d 68, 76 (3d Cir. 1983); Gordon v. Green, 602 F.2d 743, 747 (5th Cir. 1979); Bryn Mawr Hosp. v. Coatesville Elec. Supply Co., 776 F. Supp. 181, 185-86 (E.D. Pa. 1991); Carroll v. Colon, 608 F. Supp. 1277, 1280-81 (E.D. Pa. 1985).