

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

NORMAN K. JONES : CIVIL ACTION  
 :  
 v. :  
 :  
 THE PENNSYLVANIA MINORITY :  
 BUSINESS DEVELOPMENT :  
 AUTHORITY, et al. : NO. 97-4486

MEMORANDUM ORDER

Plaintiff is suing the Pennsylvania Minority Business Development Association ("PMBDA") and two PMBDA employees, Isabelle Smith and Eugene Hess. Plaintiff claims that defendants violated the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973 when they withdrew a \$60,000 loan offer based on the fact that plaintiff suffers from a mental disability. Based on this conduct, plaintiff also asserts claims against defendants Smith and Hess for intentional infliction of emotional distress.

Presently before the court is defendants' motion to dismiss plaintiff's claims against Ms. Smith and Mr. Hess for intentional infliction of emotional distress.

Dismissal for failure to state a claim is appropriate when it clearly appears that plaintiff can prove no set of facts to support the claim which would entitle it to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Robb v. Philadelphia, 733 F.2d 286, 290 (3d Cir. 1984). Such a motion

tests the legal sufficiency of a claim accepting the veracity of the claimant's allegations. See Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990); Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). A complaint may be dismissed when the facts alleged and the reasonable inferences therefrom are legally insufficient to support the relief sought. See Pennsylvania ex. rel. Zimmerman v. PepsiCo., Inc., 836 F.2d 173, 179 (3d Cir. 1988).

Plaintiff's amended complaint contains the following factual allegations which the court accepts as true for purposes of this motion.

Plaintiff is the president of Street Sounds Recording and Production Co. Inc. He suffers from a mental disability which has been diagnosed as an adjustment disorder with mixed emotional features. Defendant PMBDA is an agency of the Commonwealth of Pennsylvania. At all times relevant to this action, defendant Smith was the PMBDA executive director and defendant Hess was a PMBDA economic development analyst.

In the Summer of 1995 plaintiff applied to the PMBDA for a business loan. In August 1995 defendant Smith informed plaintiff that the PMBDA had approved a \$60,000 loan subject to the fulfillment of certain conditions which plaintiff was able to satisfy.

During the loan application process, plaintiff had

informed the PMBDA that he was on disability status from his previous employer and received monthly disability checks. During the PMBDA review of the loan application, defendant Smith expressed reservations about issuing a loan to plaintiff because of his disability. In August 1996, plaintiff met with defendant Hess who inquired about his condition.

In September 1996, the PMBDA, through defendant Smith, rescinded the loan offer to plaintiff. He subsequently asked the PMBDA to reconsider its decision. His request was denied and this lawsuit followed.

Plaintiff states that defendants Smith and Hess "acted intentionally to cause [him] severe emotional distress by denying him a loan based on his mental disability."

To sustain a claim for intentional infliction of emotional distress, a plaintiff must show that he suffered severe emotional distress as a result of conduct by a defendant which was "so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community."

Kazatsky v. King David Memorial Park, Inc., 537 A.2d 988, 991 (Pa. 1987). See also Bedford v. Southeastern Pa. Transp. Auth., 867 F. Supp. 288, 297 (E.D. Pa. 1994); Daughen v. Fox, 539 A.2d 858, 861 (Pa. Super.), app. denied, 533 A.2d 967 (Pa. 1988). The scope of the tort is thus extremely limited. That conduct may be

"deplorable" does not render it "outrageous" or "atrocious" for purposes of presenting an intentional infliction claim. See Clark v. Township of Falls, 890 F.2d 611, 624 (3d Cir. 1989). It is the responsibility of the court preliminarily to determine whether the alleged conduct is sufficiently extreme and outrageous to permit recovery. Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988).

Denying someone a loan because he is mentally disabled is not commendable conduct but it does not rise to the extreme level of outrageousness that Pennsylvania law requires to sustain a claim for intentional infliction of emotional distress. See, e.g., Cox, 861 F.2d at 395 (firing employee known to be in weak mental and physical condition shortly after triple by-pass heart surgery to deprive him of disability benefits insufficient to support intentional infliction claim); Andrews v. City of Philadelphia, 895 F.2d 1469, 1487 (3d Cir. 1990) (sexual harassment insufficient); Equal Employment Opportunity Comm'n. v. Chestnut Hill Hosp., 874 F. Supp. 92, 96 (E.D. Pa. 1995) (racial discrimination insufficient); Nichols v. Acme Markets, Inc., 712 F. Supp. 488, 494-95 (E.D. Pa. 1989) (same), aff'd, 902 F.2d 1561 (3d Cir. 1990); Motheral v. Burkhart, 583 A.2d 1180, 1190 (Pa. Super. 1990) (falsely accusing plaintiff of child molestation not sufficient).

Defendants correctly contend that these claims also are

barred by sovereign immunity which extends to "officials and employees [of the Commonwealth] acting within the scope of their duties" in all but several excepted circumstances.\* See 1 Pa. Cons. Stat. Ann. § 2310. Commonwealth employees acting within the scope of their duties are immune from liability even for intentional torts. See Pierce v. Montgomery County Opportunity Bd., Inc., 884 F. Supp. 965, 972 (E.D. Pa. 1995); Shoop v. Dauphin County, 766 F. Supp. 1327, 1334 (M.D. Pa. 1991), aff'd, 945 F.2d 395 (3d Cir. 1991), cert. denied 502 U.S. 1097 (1992); LaFrankie v. Miklich, 618 A.2d 1145, 1149 (Pa. Commw. Ct. 1992).

Plaintiff responds he may be able to prove that defendants Smith and Hess acted outside the scope of their duties by showing they "incorporated negative attitudes and malicious motives regarding whether a mentally disabled person should receive a loan to finance a business."

In his complaint and brief, however, plaintiff maintains that defendants Smith and Hess acted as PMBDA employees in rescinding the loan offer and denying the reconsideration request. These are the actions which allegedly caused plaintiff emotional distress. Plaintiff repeatedly states that defendants Smith and Hess acted on behalf of the PMBDA and nowhere in his complaint suggests that these defendants acted beyond the scope

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\* None of the circumstances in which the Commonwealth has waived sovereign immunity conceivably could apply in this case. See 42 Pa. Cons. Stat. Ann. § 8522.

of their duties with the PMBDA. Even assuming defendants harbored "negative attitudes" and "malicious motives" towards mentally disabled persons when they reviewed plaintiff's loan request, their involvement in the decisions regarding the loan nevertheless clearly appear to have been within their duties as Commonwealth employees.

Because it appears from the face of plaintiff's complaint that defendants Smith and Hess were acting in the scope of their duties as employees of the Commonwealth when they engaged in the conduct alleged to be "outrageous," they also are immune from liability on plaintiff's claim for intentional infliction of emotional distress. See, e.g., Moten v. Thomas, 1995 WL 376462, \*3 (E.D. Pa. June 22, 1995) (corrections officers immune on state assault and battery claims); Pansy v. Preate, 870 F. Supp. 612, 626-27 (M.D. Pa. 1994) (investigators for state Attorney General immune on claims for assault and battery, intentional infliction of emotional distress and false imprisonment); Collins v. Bopson, 816 F. Supp. 335, 341-42 (E.D. Pa. 1993) (corrections officers immune on state claim for excessive force); Shoop, 766 F. Supp. at 1327 (state trooper immune from civil rights plaintiff's state claims for assault and battery, false imprisonment, malicious abuse of civil process and intentional infliction of emotional distress).

**ACCORDINGLY**, this                    day of April, 1998, upon

consideration of defendants' Motion to Dismiss in Part Plaintiff's Amended Complaint (Doc. #10) and plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** in that plaintiff's claims for intentional infliction of emotional distress against defendants Smith and Hess are **DISMISSED**.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**