

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

MARY G. NOWOSAD : CIVIL ACTION  
 :  
 v. :  
 :  
 VILLANOVA UNIVERSITY : NO. 97-5881

**MEMORANDUM AND ORDER**

HUTTON, J.

May 19, 1999

Presently before the Court are Defendant's Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (Docket No. 17) and Plaintiff's response thereto (Docket No. 18). For the reasons stated below, the Defendant's motion is **GRANTED in part and DENIED in part.**

**I. BACKGROUND**

This case involves claims of discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e ("Title VII") (Count One), the Pennsylvania Human Relations Act, 43 P.S. § 951 ("PHRA") (Count Two), breach of contract under Pennsylvania law (Count Three), and intentional infliction of emotional distress under Pennsylvania law (Count Four). Defendant, Villanova University ("Villanova"), seeks to dismiss the action under Federal Rules of Civil Procedure 56.

Taken in the light most favorable to the nonmoving party, the facts are as follows. The Plaintiff, Mary Nowosad ("Nowosad"),

was hired by Villanova on January 7, 1987 in the telecommunications department. Nowosad was hired as the assistant manager of voice processing systems. Between 1987 and 1993, Nowosad's voice was the only voice used at Villanova on its mail system.

Nowosad claims that almost from the beginning she was subjected to sexual harassment by her supervisor, Donald Hoover. The alleged harassing behavior not only included conduct of an inappropriate sexual nature directed toward Nowosad, but also included an incident of improper physical contact by Hoover on Nowosad's daughter, who was visiting the work place. In the summer of 1993, Hoover informed Nowosad that her voice was no longer to be used in the voice mail system. Believing that the decision to remove Nowosad's voice was Hoover's response to Nowosad's refusal of Hoover's alleged improper sexual advances, Nowosad filed a complaint of sexual harassment with the Villanova sexual harassment officer, Kathleen Burns, in August of 1993.

Hoover's decision to remove Nowosad's voice from the voice mail constituted a major change in her employment duties. She was then prompted to file her complaint in 1993. Villanova's representatives testified that Hoover's decision to remove Nowosad's voice from the voice mail system triggered the filing of the 1993 complaint as Nowosad made it clear that she believed the action was taken because Hoover was not treating her fairly at work.

Reviewing Nowosad's complaint, Villanova's complaint officer, Burns, concluded that no sexual harassment had occurred as defined by Villanova's policy on sexual harassment. Nowosad filed an appeal to a three (3) member panel review board at Villanova ("Board") which, although concluding that they did not find a violation of Villanova's policy on sexual harassment, nonetheless made the following statements:

The Board is unanimous in its conclusion that Mr. Hoover repeatedly engaged in unprofessional behavior of a sexual nature. Specifically, the Board cites his advances toward Ms. Nowosad; his inappropriate behavior toward her daughter; his physical familiarity with female vendors in the office; his involvement of the office in his sexual alliance with Ms. McGinnis; and behavior that suggested to the Telecommunications staff that he had sexual alliances with other women outside the office. These instances represent examples of inappropriate behavior, and cumulatively, created a setting in which Mr. Hoover's sexual activities had a negative impact on the office.

After receipt of the Board's decision, Nowosad filed a Complaint with the Equal Employment Opportunity Commission ("EEOC") alleging sexual harassment by Hoover. In June of 1994, with the assistance of the EEOC, the Plaintiff executed a Settlement Agreement and Release ("Agreement"), resolving the claims then pending against Villanova and its staff. The Settlement Agreement, dated June 22, 1994, includes a specific provision that Villanova would not retaliate against Nowosad for filing the harassment charges. Two (2) days after the execution of the settlement agreement, Hoover was fired.

In the fall of 1994, Karen Steinbrenner, Executive Director for Villanova, attempted to remove Nowosad's voice from the voice mail system. Steinbrenner stated that she was removing Nowosad's voice from the voice mail system based on Hoover's decision to do so. In the fall of 1996, Timothy Ay, Assistant Director of Networking and Communication Services, and Robert Mays, Assistant Director Telecommunications, informed Nowosad that her voice would be removed from the voice mail system. Other than from Hoover, there were no complaints regarding the quality of Nowosad's voice on the voice mail system. Steinbrenner testified that she received no other complaints regarding Nowosad's voice, besides those from Hoover.

Thomas Bull, Director of Personnel at Villanova, testified that his only conversation regarding a complaint about Nowosad's voice, was with Hoover. Bull testified that he had no problem with Nowosad's voice. Mays testified that he could recall having two or three complaints about Nowosad's voice on the voice mail system, and that Ay and Steinbrenner were two of those complaints. No written complaints regarding Nowosad's voice were made. Mays testified that he personally found Nowosad's voice acceptable on the voice mail system and did not initiate the idea to remove her voice from the voice mail system. Ay testified that he did not personally perceive any problem with Nowosad's voice on the voice mail system. Further, Ay had no personal knowledge of

any complaints about her voice and testified that the instigation to remove her voice from the voice mail system came from Hoover.

The decision to remove Nowosad's voice from the voice mail system was a critical component of Nowosad's job responsibilities. Nowosad was responsible for the design and development of voice mail applications and the coordination of all aspects of the voice messaging and voice processing systems. Responsibility for choosing the voice for the voice mail system was solely within Plaintiff's discretion. Having her voice on Villanova's voice mail system was important to her.

When Nowosad was told about the decision to remove her voice from the voice mail system in the fall of 1996, Nowosad objected on the grounds that the decision was made solely in retaliation for Nowosad's prior complaints of sexual harassment against Hoover. Nowosad authored several memos protesting the decision to remove her voice from the voice mail system. Villanova, nevertheless, considered these objections to be meritless and insubordinate and ultimately terminated Nowosad's employment at Villanova.

On November 9, 1998, the Defendant filed its motion for summary judgment. The Plaintiff filed her response on December 28, 1998. Because the motion for summary judgment is ripe for review, the Court now considers the Defendant's motion for summary judgment.

## II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must

do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

### **III. DISCUSSION**

#### **A. Title VII**

Plaintiff asserts that she is entitled to relief under Title VII as a result of Villanova's retaliation towards her for having previously brought charges of sexual harassment against Villanova. The Defendant does not allege that the Plaintiff failed to comply with the procedural requirements of filing a charge of discrimination with the EEOC.<sup>1</sup> Thus, the Court need not address that issue here. Rather, the Defendant asserts that the Plaintiff has failed to establish sufficient evidence to present to a jury to support her claims of retaliation. The Court, therefore, considers Plaintiff's Title VII retaliation claim.

#### **1. Standard**

Title VII prohibits retaliation against employees who engage in a protected activity such as stating a claim of

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<sup>1</sup>Before an individual may file a complaint in federal court alleging discrimination in violation of Title VII, that individual must first file a charge of discrimination regarding those claims with the EEOC. 42 U.S.C. § 20000e-5(e); Seredinski v. Clifton Precision Products Co., 776 F.2d 56, 61 (3d Cir. 1985). For claims arising out of actions allegedly taken in Pennsylvania, such charge must be filed within 300 days of the occurrence of the alleged discriminatory act. See Seredinski, 776 F.2d at 61 (citing 42 U.S.C. § 20000e-5(e)). The 300-day filing period begins to run on the date the employee first receives notice of the adverse employment decision. Delaware State College v. Ricks, 449 U.S. 250, 259-261, 101 S.Ct. 498, 66 L.Ed.2d 431 (1980).

discrimination and filing suit. See 42 U.S.C. § 2000e-3(a); Durham Life Ins., Co. v. Evans, 166 F.3d 139, 157 (3d Cir. 1999). To make out a prima facie case of retaliation, the Plaintiff must show that: (1) she engaged in protected conduct; (2) her employer took adverse action against her; and (3) there was a causal link between the protected conduct and the adverse action. Kohn v. Lemmon Co., Civ.A. No.97-3675, 1998 WL 67540, \*5 (E.D. Pa. Feb. 18, 1998) (citing Kachmar v. SunGard Data Sys., Inc., 109 F.3d 173, 177 (3d Cir. 1997)). Protected activity consists of opposition to conduct prohibited by Title VII or participation in an investigation of or proceeding regarding such conduct. See 42 U.S.C. § 2000e-3(a); Walden v. Georgia-Pacific Corp., 126 F.3d 506, 513 n.4 (3d Cir. 1997) (grievances about working conditions not protected activity when they do not concern acts made unlawful by Title VII), cert. denied, 118 S. Ct. 1516 (1998); Sumner v. United States Postal Service, 899 F.2d 203, 208 (2d Cir. 1990) (Title VII "prohibits employers from firing workers in retaliation for their opposing discriminatory employment practices"). To establish the requisite causal connection, a plaintiff must proffer evidence "sufficient to raise the inference that [her] protected activity was the likely reason for the adverse action." Zanders v. National R.R. Passenger Corp., 898 F.2d 1127, 1135 (6th Cir. 1990) (citing Cohen v. Fred Meyer, Inc., 686 F.2d 793, 796 (9th Cir. 1982)). The Plaintiff must also show that the persons who took the

adverse employment action against her knew of the protected activity and acted with a retaliatory motive. Gemmell v. Meese, 655 F. Supp. 577, 582 (E.D. Pa. 1986).

After the plaintiff makes a prima facie showing, a presumption of retaliation arises that shifts the burden of production to the employer to rebut the prima facie case by producing "clear and reasonably specific" evidence that its actions were taken for legitimate, non-retaliatory reasons. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 258 (1981). If an employer meets its burden of articulating a non-retaliatory reason, the burden of production shifts back to the plaintiff, who "must have the opportunity to demonstrate that the proffered reason was not ... true." Id. at 256. The plaintiff's burden of production "merges with the ultimate burden of persuading the court that he has been the victim of intentional discrimination." Id. The plaintiff can meet the burden "either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." Id. (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 804-05 (1973)). If he successfully shows that a retaliatory motive played a motivating part in an adverse employment decision, the employer can nevertheless avoid liability by demonstrating by a preponderance of the evidence that it would still have taken the same action absent

retaliatory motive. See Price Waterhouse v. Hopkins, 490 U.S. 228, 252-53 (1989); Berger v. Iron Workers Reinforced Rodmen, Local 201, No. 97-7019, 1999 WL 169431, at \*12 (D.C.Cir. Mar.30, 1999).

## **2. Analysis**

Taking all reasonable inferences in Nowosad's favor, she has established all three elements of a prima facie case of retaliation. First, she was engaged in an activity protected by Title VII when she filed a complaint for sexual harassment.<sup>2</sup> Second, the Defendant took adverse action against Nowosad by subsequently terminating her employment. Third, Nowosad has produced sufficient evidence for a reasonable juror to conclude that she was fired because she had previously filed a sexual harassment claim against the Defendant. The persons involved in removing her voice from the voice mail system and ultimately in firing her knew that she had previously filed a sexual harassment claim against Villanova. The initial decision to remove the Plaintiff's voice from Villanova's voice mail system came from Hoover, Plaintiff's manager who she accused of sexual harassment.<sup>3</sup>

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<sup>2</sup>Title VII's § 2000e-2(a)(1) states:  
It shall be an unlawful employment practice for an employer--to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1).

<sup>3</sup>Villanova eventually fired Hoover and found that he had engaged "in unprofessional behavior of a sexual nature."

When Nowosad learned that her voice would be removed from the voice mail system, she objected. Nowosad's recording of voice mail messages was an integral part of her job responsibilities. Nowosad wrote several letters to her superiors at Villanova where she complained that the decision to remove her voice was motivated by retaliation for her having previously filed a sexual harassment claim against Villanova. She was then fired.

The Court finds that the Defendant has adequately rebut Plaintiff's prima facie case by producing evidence that its actions were taken for legitimate, non-retaliatory reasons. Steinbrenner testified that Nowosad was fired for insubordination because she refused to accept Steinbrenner's authority as her supervisor. Steinbrenner also testified that Nowosad refused to comply with a directive issued by her regarding Nowosad's job performance. Villanova's employees testified that Nowosad's voice was removed from the voice mail system because a more professional voice was desired. Nowosad, they assert, refused to accept this decision.

Nonetheless, the Plaintiff has sufficiently criticized Villanova's purported reason for its actions. Evidence before the Court reveals that few, if any, complaints were made regarding Nowosad's voice on the voice mail system. Furthermore, none of the witnesses (including Bull, Mays, and Ay) testified that they personally had a problem with Nowosad's voice. A plaintiff "need not prove at th[e summary judgment] stage that the employer's

purported reason for its actions was false, but the plaintiff must criticize it effectively enough so as to raise a doubt as to whether it was the true reason for the action." Solt v. Alpo Pet Foods, Inc., 837 F. Supp. 681, 684 (E.D. PA. 1993) (citing Naas v. Westinghouse Elec. Corp., 818 F. Supp. 874, 877 (W.D. Pa. 1993)). Accordingly, Plaintiff's claim under Title VII, which claims retaliatory discharge for filing a complaint for sexual harassment, is not dismissed.

**B. PHRC**

Plaintiff asserts that the alleged actions on the part of the Defendant constitute a violation of her rights under the Pennsylvania Human Relations Act ("PHRA"). In its motion, the Defendant raises essentially three issues. First, the Defendant contends that the Plaintiff does not have standing to present such a claim because she has not alleged that she was refused employment by Villanova on any of the bases outlined in § 955(a) of the PHRA. Second, the Defendant contends that it is not clear from the record of this case whether the Plaintiff ever filed a complaint with the Pennsylvania Human Relations Commission ("PHRC") regarding her allegations against Hoover and Villanova. The Defendant asserts that such failure by the Plaintiff would constitute a procedural barrier to her now presenting a claim in this action under the PHRA. Third, and finally, the Defendant claims that the Plaintiff has failed to establish any retaliatory action by Villanova subject

to her signing the Release and Settlement Agreement in June of 1994. Because the Court finds that the Plaintiff has failed to establish that she filed her claim with the PHRC, her claim under the PHRA is barred and the Court need not consider the Defendant's other arguments.

### **1. Filing**

To bring suit under the PHRA, a plaintiff must first have filed an administrative complaint with the PHRC within 180 days of the alleged act of discrimination. 43 Pa.S. §§ 959(a), 962. If a plaintiff fails to file a timely complaint with the PHRC, then he or she is precluded from judicial remedies under the PHRA. The Pennsylvania courts have strictly interpreted this requirement, and have repeatedly held that "persons with claims that are cognizable under the Human Relations Act must avail themselves of the administrative process of the Commission or be barred from the judicial remedies authorized in Section 12(c) of the Act." Woodson v. Scott Paper Co., 109 F.3d 913, 925 (3d Cir.1997) (citing Vincent v. Fuller Co., 532 Pa. 547, 616 A.2d 969, 974 (1992); Fye v. Central Transp. Inc., 487 Pa. 137, 409 A.2d 2 (1979); Clay v. Advanced Computer Applications, Inc., 522 Pa. 86, 559 A.2d 917 (1989); Richardson v. Miller, 446 F.2d 1247, 1248 (3d Cir. 1971) ("Since plaintiff failed to file a charge with the respective Commissions within the appropriate time periods, he is now foreclosed from pursuing the remedies provided by the Acts.")).

In Woodson, the Third Circuit held that a claimant's failure to file a verified complaint with the PHRC precluded a complainant from asserting a claim under the PHRA in subsequent litigation. Woodson, 109 F.3d at 925. The Court explained the rationale behind such strict compliance to the administrative procedures of the PHRA:

As the Pennsylvania Supreme Court has explained, the Pennsylvania legislature, recognizing the "invidiousness and the pervasiveness of the practice of discrimination," created with the PHRA "a procedure and an agency specially designed and equipped to attack this persisting problem and to provide relief to citizens who have been unjustly injured thereby."

Woodson, 109 F.3d at 925 (quoting Eye, 409 A.2d at 4). Strictly interpreting the filing requirement of the PHRA allows the PHRC to use its specialized expertise to attempt to resolve discrimination claims without the parties resorting to court. Woodson, 109 F.3d at 925.

In this case, no evidence is before the Court regarding an administrative filing with the PHRC. In her response to Defendant's motion, Nowosad claims that when she filed her complaint with the EEOC, she made a "dual filing" with the PHRC, effectively making a complaint with that agency regarding violations of the Pennsylvania law as well. Although all reasonable inferences must be made in the light most favorable to the Plaintiff, see Big Apple, 974 F.2d at 1363, a party opposing summary judgment must do more than rest upon mere allegations,

general denials, or vague statements, see Trap Rock Indus., 982 F.2d at 890. Thus, the Court finds that the Plaintiff has failed to establish that she filed a claim with the PHRC alleging violation of her rights under the PHRA. Accordingly, her claim under the PHRA is dismissed.

### **C. Breach of Contract**

The Plaintiff asserts a claim for breach of contract and alleges that the Defendant engaged in activity, which was a breach of the June 22, 1994 Settlement Agreement entered into between the parties. Nowosad asserts that Villanova breached its promise not to retaliate against her for having filed a complaint for sexual harassment against Villanova and Hoover.

In order to prove a breach of contract under Pennsylvania law, a plaintiff must show: (1) the existence of a valid and binding contract to which the plaintiff and defendants were parties; (2) the contract's essential terms; (3) that plaintiff complied with the contract's terms; (4) that the defendant breached a duty imposed by the contract; and (5) damages resulting from the breach. See Gundlach v. Reinstein, 924 F. Supp. 684, 688 (E.D. Pa. 1996) (listing elements required in breach of contract case between university and student), aff'd without op., 114 F.3d 1172 (3d Cir. 1997).

In its motion, the Defendant raises two arguments. First, the Defendant repeats its arguments regarding Plaintiff's

Title VII claim, which this Court has already addressed. Second, the Defendant contends that no evidence exists regarding any violation of the negotiated Settlement Agreement. More specifically, the Defendant claims that the Plaintiff cannot pursue her breach of contract action because the voice mail issue was not specifically addressed in the Settlement Agreement. This argument goes essentially to the fourth factor of a prima facie case for breach of contract. The Defendant does not contest that the other elements are satisfied. Thus, the Court now considers whether a genuine issue of fact exists regarding the Defendant's alleged breach of a duty imposed by the Agreement.

**1. Breach a Duty**

The only portion of the Agreement, which the Plaintiff maintains has been breached is paragraph 3, subparagraph (v) which contains non-retaliation language. Paragraph 3 does not address the voice mail system issue. Nonetheless, Villanova is not relieved of its obligation not to retaliate simply because the alleged means of retaliation was not specified in the Agreement. It is not necessary that the Agreement prohibit the specific means, which Villanova might employ as retaliation. Rather, the essential issue is whether Villanova retaliated against Nowosad regardless of the means it allegedly employed. The Court has already stated that sufficient evidence exists regarding Villanova's alleged retaliation against Nowosad for filing a sexual harassment claim

against it. Thus, because the Court finds that a genuine issue of fact exists regarding Defendant's alleged breach of contract, Plaintiff's breach of contract claim is not dismissed.

**D. Intentional Infliction of Emotional Distress**

The Plaintiff asserts a claim for intentional infliction of emotional distress. The Pennsylvania courts recognize the tort of intentional infliction of emotional distress. See Kazatsky v. King David Memorial Park, Inc., 515 Pa. 183, 190, 527 A.2d 988, 991 (1987). However, to state a cognizable claim the conduct alleged "must be 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 society." Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988). In the employment context, it is extremely rare that ordinary sexual harassment will rise to the level of outrageousness required by Pennsylvania law. Id. The Third Circuit also noted that:

[A]s a general rule, sexual harassment alone does not rise to the level of outrageousness necessary to make out a cause of action for intentional infliction of emotional distress. As we noted in Cox, 861 F.2d at 395-96, "the only instances in which courts applying Pennsylvania law have found conduct outrageous in the employment context is where an employer engaged in both sexual harassment and other retaliatory behavior against an employee." See, e.g., Bowersox v. P.H. Glatfelter Co., 677 F. Supp. 307, 311 (M.D. Pa. 1988). The extra factor that is generally required is retaliation for turning down sexual propositions.

Andrews v. City of Phila., 895 F.2d 1469, 1486-87 (3d Cir. 1990); see also Kinally v. Bell of Pa., 748 F. Supp. 1136, 1144-45 (E.D. Pa. 1990); Stilley v. University of Pittsburgh, 968 F. Supp. 252, 260 (W.D. Pa. 1996).

The Defendant raises essentially two arguments: (1) that Plaintiff has failed to produce competent medical evidence in support of her claim; and (2) that the record demonstrates Villanova's conduct was not sufficiently outrageous in character and so extreme in degree so as to go beyond all possible bounds of decency. Because the Court finds Defendant's first argument persuasive, it need not consider its other argument.

#### **1. Medical Evidence**

With regard to plaintiff's claim for intentional infliction of emotional distress, even assuming Nowosad could demonstrate the outrageousness of Defendant's conduct, her claim nevertheless fails. The Pennsylvania Supreme Court, while not specifically adopting this tort, has set forth the minimum elements that would be necessary to establish a claim of intentional infliction of emotional distress. Those elements include the fact of emotional distress which "must be supported by competent medical evidence." McMahon v. Westtown East Goshen Police Dep't., Civ.A. No.98-3919, 1999 WL 236565, \*5 (E.D. Pa. Apr. 22, 1999)

(Yohn, J.) (citing Kazatsky v. King David Memorial Park, Inc., 515 Pa. 183, 527 A.2d 988, 995 (Pa.1987)). Plaintiff has offered no such medical evidence, and therefore, cannot defeat Defendant's motion for summary judgment. See Silver v. Mendel, 894 F.2d 598, 607 n. 19 (3d Cir. 1990) (quoting Williams v. Guzzardi, 875 F.2d 46, 51 (3d Cir. 1989)) (surviving summary judgment, requires that plaintiff "present 'competent medical evidence of causation and severity' of [her] emotional distress").

An appropriate Order follows.

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

MARY G. NOWOSAD : CIVIL ACTION  
 :  
 v. :  
 :  
 VILLANOVA UNIVERSITY : NO. 97-5881

O R D E R

AND NOW, this 19th day of May, 1999, upon consideration of Defendant's Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (Docket No. 17) and Plaintiff's response thereto (Docket No. 18), IT IS HEREBY ORDERED that the Defendant's Motion is **GRANTED in part and DENIED in part.**

IT IS FURTHER ORDERED that:

(1) Count One of Plaintiff's Complaint (Title VII claim) is **NOT DISMISSED;**

(2) Count Two of Plaintiff's Complaint (PHRA claim) is **DISMISSED;**

(3) Count Three of Plaintiff's Complaint (Breach of Contract claim) is **NOT DISMISSED;** and

(4) Count Four of Plaintiff's Complaint (Intentional Infliction of Emotional Distress claim) is **DISMISSED**.

BY THE COURT:

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HERBERT J. HUTTON, J.