

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

SNEHAMAY BANERJEE :
 : CIVIL ACTION
 v. :
 : 97-4618
 DREXEL UNIVERSITY, and :
 ARTHUR BAER, individually :
 and in his official capacity :

MEMORANDUM

Broderick, J.

January 6, 1998

Presently before the Court is Defendants' Motion to Dismiss Count Two of Plaintiff's Complaint as against Arthur Baer, and Count Three of Plaintiff's Complaint as against both Defendants. For the reasons which follow, the Court will grant the Motion in part, and deny the Motion in part.

Plaintiff, a former professor at the College of Business at Drexel University, alleges that he was unlawfully denied tenure, and was subsequently dismissed from employment, on the basis of his color, race and national origin. Count One of Plaintiff's Complaint alleges a breach of contract claim against Drexel University. Count Two of Plaintiff's Complaint alleges claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e - 2000-17 ("Title VII"), and the Pennsylvania Human Relations Act, 43 Pa.Cons. Ann. §§ 951-963 ("PHRA"), against Drexel University and Arthur Baer, the former dean of Drexel's College of Business. Count Three alleges a claim against both Defendants under Section 1142 of the Higher Education Resources and Student Assistance Act ("Higher Education Act" or "HEA"), 20

U.S.C. §§ 1001-1146(a).

Defendants have filed their Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, claiming that Plaintiff has failed to state a claim upon which relief could be granted. In considering a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6), the court accepts as true all factual allegations contained in the plaintiff's complaint, as well as all reasonable inferences which could be drawn therefrom, and views them in the light most favorable to the plaintiff. See H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989); Zlotnick v. TIE Communications, 836 F.2d 818, 819 (3d Cir. 1988).

The Court will grant Defendants' Motion to Dismiss Count Two of Plaintiff's complaint insofar as it alleges a claim under Title VII against Defendant Arthur Baer. In Sheridan v. E.I. DuPont de Nemours and Co., the Third Circuit explicitly stated that "Congress did not intend to hold individual employees liable under Title VII." 100 F.3d 1061, 1078 (3d cir. 1996). Accordingly, Plaintiff can not pursue a Title VII claim against Defendant Baer as an individual employee.

However, insofar as Count Two of Plaintiff's Complaint alleges a claim against Baer under the PHRA, the Court will deny Defendants' Motion to Dismiss. In Dici v. Commonwealth of Pennsylvania, 91 F.3d 542, 552 (3d Cir. 1996), the Third Circuit recognized that § 955(e) of the PHRA provides for individual

liability because it forbids "any person, employer, employment agency, labor organization or employee," from aiding or abetting an employer's unlawful discriminatory practices. 43

Pa.Cons.Stat.Ann. § 955(e).

In the instant case, Plaintiff's Complaint alleges that Defendant Baer maliciously undermined Plaintiff's application for tenure and promotion, and recommended against Plaintiff receiving tenure. For the purposes of this 12(b)(6) Motion, these allegations sufficiently state a claim that Defendant Baer aided and abetted Drexel University in its discriminatory practices, as forbidden by § 955(e) of the PHRA. The Court will thus deny Defendant's Motion to Dismiss Plaintiff's PHRA claim against Defendant Bear.

The Court will grant Defendants' Motion to Dismiss Count Three of Plaintiff's Complaint which alleges a claim under Section 1142 of the HEA. 20 U.S.C. §§ 1142(a). Section 1142 of the HEA, set forth in the HEA's "General Provisions," Ch. 28, subch. XII, provides in relevant part:

Institutions of higher education receiving Federal financial assistance may not use such financial assistance whether directly or indirectly to undertake any study or project or fulfill the terms of any contract containing an express or implied provision that any person or persons of a particular race, religion, sex, or national origin be barred from performing such study, project, or contract, except no institution shall be barred from conducting objective studies or projects concerning the nature, effects, or prevention of discrimination, or have its curriculum restricted on the subject of discrimination, against any such person. 20 U.S.C. § 1142(a).

In his Complaint, Plaintiff alleges that Drexel University

and its College of Business have violated Section 1142 because they receive federal financial assistance and they "treated Plaintiff differently from other tenure and promotion candidates because of Plaintiff's race, color and national origin." Plaintiff seeks compensatory and punitive damages, and asks that the Court terminate federal financial assistance to Drexel University and its School of Business.

There is no evidence, however, that Section 1142 of the HEA provides an implied private right of action. The Supreme Court has enumerated four factors which should be considered in determining whether a private right of action is implied under a federal statute: (1) whether the plaintiff is one of the class for whose especial benefit the statute was enacted; (2) whether there is any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one; (3) whether it is consistent with the underlying purposes of the legislative scheme to imply a private right of action; and (4) whether the cause of action is one traditionally relegated to state law. Cort v. Ash, 422 U.S. 66, 78 (1975). The Supreme Court has stated, however, that the critical inquiry is Congressional intent. Transamerica Mortgage Advisor, Inc. v. Lewis, 444 U.S. 11, 24 (1979); Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 145 (1985).

There is nothing in the language, structure or legislative history of the HEA which indicates a Congressional intent to create an implied private right of action. Numerous courts have

held that Congress did not intend an implied private right of action for claims under subchapter IV of the HEA. See, e.g., Lavickas v. Arkansas State University, 78 F.3d 333 (8th Cir. 1996); L'Gorke v. Benkula, 966 F.2d 1346 (10th Cir. 1992); Williams v. National School of Health Tech., Inc., 836 F.Supp. 273, 279 (E.D. Pa. 1993), aff'd 37 F.3d 1491 (3d Cir. 1994). In so holding, these courts have determined that Congress intended the provisions of subchapter IV to be exclusively enforced by the Secretary of Education. Although subchapter IV deals with student federal financial assistance, there is nothing to indicate a different Congressional intent with respect to subchapter XII, or with respect to Section 1142 specifically.

Moreover, there is no evidence that Congress intended Section 1142 to provide a remedy for the discriminatory employment actions alleged in Plaintiff's Complaint. As its language makes clear, Section 1142 applies to the application of federal funds to conduct discriminatory projects or fulfill discriminatory contracts. Plaintiff does not allege in his Complaint that Defendants used federal funds to undertake a discriminatory project or study, or to fulfill the terms of a discriminatory contract. Instead, Plaintiff alleges discriminatory treatment in employment-- allegations which fall squarely within the ambit of Title VII of the Federal Civil Rights Act. Accordingly, the Court will dismiss Count Three of Plaintiff's Complaint in its entirety.

An appropriate Order follows.

