

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

JUDITH A. COX : CIVIL ACTION
 :
 v. :
 :
 :
 ANDREW H. VOGEL III, et al. : NO. 97-3906

M E M O R A N D U M

WALDMAN, J.

July 29, 1998

I. INTRODUCTION

Plaintiff is suing the partnership for which she worked and the ten accountants who were partners at the time of plaintiff's termination. She asserts a federal claim for employment discrimination under the Age Discrimination in Employment Act ("ADEA") and supplemental state law claims for violation of the Pennsylvania Human Relations Act ("PHRA"), breach of contract, breach of a duty of good faith and fair dealing and intentional infliction of emotional distress. The parties agree that Pennsylvania law governs all of plaintiff's supplemental claims.

Presently before the court is defendants' Motion for Summary Judgment.

II. LEGAL STANDARD

In considering a motion for summary judgment, the court must determine whether "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); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Arnold Pontiac-GMC, Inc. v. General Motors Corp., 786 F.2d 564, 568 (3d Cir. 1986). Only facts that may affect the outcome of a case under applicable law are "material." Anderson, 477 U.S. at 248. All reasonable inferences from the record are drawn in favor of the non-movant. Id. at 256. Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990), cert. denied, 499 U.S. 921 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)).

III. FACTUAL BACKGROUND

From the evidence presented, as uncontroverted or viewed most favorably to plaintiff, the pertinent facts are as follow.

Plaintiff was born on July 5, 1940. She was hired in 1985 at the age of forty-five by defendant Dorwart, Andrew and Company ("Dorwart") as the front office manager. Dorwart is an accounting firm in Lancaster, Pennsylvania. After ten years, plaintiff was discharged at the age of fifty-five on June 8,

1995. Of the ten individual defendants, only Mr. Stoner is no longer a partner at Dorwart.

Between 1985 and 1995, the partnership expanded from five to ten members and the front office expanded from three full-time and two part-time employees to nine full-time employees. By 1995, plaintiff's responsibilities included interviewing job applicants, training and supervising the front office staff, prioritizing and monitoring work assignments for employees under her supervision, monitoring partnership administrative and financial records, making bank deposits and keeping partners apprised of work progress. Plaintiff also developed administrative policy and procedure manuals and cross-trained personnel so they could perform work outside their job descriptions when needed.

While plaintiff reported directly to defendant Andrew Vogel III, Dorwart's managing partner, she was accountable to all partners. Counting the time of her commute, plaintiff worked up to twelve hours per day plus weekends during tax season. The work at the accounting firm was demanding as the partners "expected that the final product from the firm be in flawless condition."

Plaintiff's performance reviews for 1990, 1992 and 1993 generally indicate that her work was "very good" or "good." The reviews contain several comments praising plaintiff's

organizational abilities. They also contain criticisms regarding her strained relationships with members of the front office staff and her unwillingness to help with front office work.

Beginning in 1993, the work atmosphere at Dorwart became "tense and stressful" for plaintiff. She became "anxious, irritable and nervous" and "had difficulty concentrating." Her family physician prescribed Prozac for depression.

In June 1993 a Dorwart employee formerly supervised by plaintiff, Mindy Ault, complained about plaintiff's management of the front office. No action was taken at the time by the partnership. In early 1994, however, following a dispute concerning administrative procedures, a meeting was held among plaintiff, Ms. Ault, defendant Colleen Warren, defendant Robert Shope and members of the front office staff at which plaintiff was accused of perpetuating a "personality conflict" with Ms. Ault.¹ That accusation coupled with a perceived attempt to usurp her authority resulted in "hostility and defensiveness" on plaintiff's part.

In early 1995, plaintiff applied to Meridian Bank for a loan to finance a business her fiancé planned to open. The loan officer met with plaintiff and defendant Vogel to discuss the loan application and the cash flow projections for the proposed

¹ Ms. Warren became a partner at Dorwart on January 1, 1995. In 1994, she was a supervising accountant in Ms. Ault's department.

business. When the loan officer asked defendant Vogel if plaintiff's job was secure, he responded, "Of course, she's our office manager."

In March 1995, plaintiff asked the partnership for clerical assistance to help the front office staff cope with an unusually heavy workload. Defendant Warren helped accommodate plaintiff's request by arranging for an employee from another department to assist the front office.

On May 3, 1995 the partnership met and reviewed the performance of various department supervisors, including plaintiff. The reasons for plaintiff's termination are set forth in Mr. Vogel's affidavit.

Partners expressed frustration with plaintiff's performance, excessive delegation of responsibility and negative attitude. A majority of the partners expressed their belief that it was no longer necessary to employ an office manager as the front office procedures were well-established and set forth in a detailed manual, and the supervisory functions could be performed by a partner without the expense of an additional employee. A majority of partners believed that office morale would be improved by plaintiff's departure.

The partnership then decided by a vote of seven to three to eliminate the office manager position. Defendant Vogel was one of the three partners who voted against eliminating the

position. He did not believe the firm could function effectively without a front office manager. Defendants' averments that plaintiff's age was never discussed at the May 2, 1995 meeting or in any manner related to plaintiff's employment with Dorwart are uncontroverted.

The decision to discharge plaintiff was confirmed at a partners' meeting on May 18, 1995. The partners decided that defendant Warren, a thirty-five year old partner, would supervise the front office and that Rhonda Wolfe, a twenty-three year old proofreader whom plaintiff had trained as her back-up, would assist Ms. Warren.

On May 26, 1995, five members of the front office staff met with Mr. Vogel and Ms. Warren to express their unhappiness with plaintiff's management style. The employees were not told about plaintiff's impending termination and their comments were not relayed to plaintiff.

On June 8, 1995, plaintiff was informed by defendant Ferranti, speaking on behalf of the partnership, that the position of front office manager had been eliminated and her employment with the firm was terminated. Plaintiff received her usual \$3,500 annual bonus, as well as accrued vacation pay.

After plaintiff's discharge, defendants posted a memo to all Dorwart staff stating that the office manager position had been eliminated and that Ms. Warren would assume supervision of

the front office. Shortly thereafter, Ms. Warren met with the front office staff and reassigned plaintiff's non-supervisory responsibilities among staff members. Some duties became the shared responsibility of the front office staff. The majority of plaintiff's former responsibilities were assumed by either Ms. Warren or Ms. Wolfe. The other members of the front office staff were Kaye Beachey, age 60, Heidi Betz, age 26, Patricia Binkley, age 22, Michelle Dorsey, age 41, Miriam Kershner, age 60, Ellen Rupp, age 54, Susan Snavely, age 22, and an employee identified only as Lori, age 24.

Dorwart has not hired another office manager since plaintiff was terminated. According to uncontroverted averments of partners and staff, morale in the front office improved and productivity remained constant after plaintiff's departure.

During plaintiff's employment, Dorwart maintained an employee handbook which set forth operating policies and procedures. Although plaintiff did not develop the handbook, she was responsible for distributing it to front office personnel and was familiar with its provisions.

The handbook contains the following statement regarding the at-will status of Dorwart employees:

Employment "At-Will" Disclaimer

The Company is not able to guarantee or promise employment for any specified length of time. Periodically, it may be in the best interests of the Company to terminate employees either on an individual basis or on the basis of a reduction of the work force.

The Company reserves the right to make these decisions at its sole discretion. Accordingly, employees must realize that their employment may be terminated at any time at the option of the Company.

The index of the employee handbook notes "THIS HANDBOOK IS NOT AN IMPLIED CONTRACT." The section on resignations states that "[w]hen resignation is necessary, employees are to give at least two weeks' notice to allow time for the selection of a replacement."

IV. DISCUSSION

A. Plaintiff's ADEA and PHRA Claims

A plaintiff may sustain a claim of age discrimination with direct or indirect evidence. See Torre v. Casio, Inc., 42 F.3d 825, 829 (3d Cir. 1994). Direct evidence is overt or explicit evidence which directly reflects a discriminatory bias by a decisionmaker. See Armbruster v. Unisys Corp., 32 F.3d 768, 778, 782 (3d Cir. 1994) (analogizing direct evidence to the proverbial "smoking gun"). Indirect evidence is evidence of actions or statements from which one may reasonably infer discrimination. See Torre, 42 F.3d at 829.

Plaintiff acknowledged at her deposition that she is unaware of any comment regarding her age or its relation to her employment made by any partner while she worked at Dorwart. In the absence of direct evidence, a plaintiff may proceed under the burden shifting McDonnell Douglas analysis which plaintiff, in her brief, has done. See Simpson v. Kaye Jewelers, Div. of

Serling, Inc., 142 F.3d 639, 643-44 (3d Cir. 1998); Sempier v. Johnson & Higgins, 45 F.3d 724, 728 (3d Cir. 1995), cert. denied, 515 U.S. 1159 (1995).²

Under that analysis, a plaintiff has the burden of establishing a prima facie case of discrimination. A plaintiff may present a prima facie case of age discrimination by showing that she is over 40, that she was qualified for the position she occupied, that the position was eliminated and that the duties she performed were assumed by someone sufficiently younger to create an inference of age discrimination. Sosky v. International Mill Serv. Inc., 1996 WL 32139, *5 (E.D. Pa. Jan. 25, 1996) (citing Torre, 42 F.3d at 830-31), aff'd, 103 F.3d 114 (3d Cir. 1996). See also Simpson, 142 F.3d at 644 n.5.

Once a plaintiff has presented a prima facie case, the burden shifts to the defendant to articulate a legitimate nondiscriminatory reason for the adverse employment decision. Id.; Sempier, 45 F.3d at 728. The plaintiff may then discredit the employer's articulated reasons and show they are pretextual from which one may infer the real reason was discriminatory or otherwise present evidence from which one reasonably could find that unlawful discrimination was more likely than not a

² The same analysis is employed for Title VII, ADEA and PHRA claims. See Simpson, 142 F.3d at 643 n.4; Kelly v. Drexel Univ., 94 F.3d 102, 105 (3d Cir. 1996); Harley v. McCoach, 928 F. Supp. 533, 538 (E.D. Pa. 1996).

determinative or "but for" cause of the adverse employment action. Simpson, 142 F.3d at 644 n.5; Miller v. CIGNA Corp., 47 F.3d 586, 595-96 (3d Cir. 1995) (en banc).

To discredit a legitimate reason proffered by the employer, a plaintiff must present evidence demonstrating such weaknesses, implausibilities, inconsistencies, contradictions or incoherence in that reason that one reasonably could conclude it is incredible and unworthy of belief. Simpson, 142 F.3d at 644; Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994); Ezold v. Wolf, Block, Schorr & Solis-Cohen, 983 F.2d 509, 531 (3d Cir. 1993). The ultimate burden of proving that a defendant engaged in intentional discrimination remains at all times on the plaintiff. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 507, 511 (1993).

Plaintiff was over forty years of age when her position was eliminated, and indeed for the entire period she was employed at Dorwart. One could reasonably find that plaintiff could perform the essential functions of the office manager position. Only objective job qualifications are pertinent in establishing a prima facie case. More subjective qualities like motivation, attitude and leadership skills are better addressed at the pretext stage. See Sempier, 45 F.3d at 729. One could reasonably find that many of plaintiff's duties remained after her position was eliminated and that they were performed by

defendant Warren, age thirty-five, and Ms. Wolfe, age twenty-three. The burden of establishing a prima facie case is not an onerous one. Sempier, 45 F.3d at 728. Plaintiff's evidence is sufficient to make out a prima facie case.³

Defendants' account of the May 2, 1995 discussion and decision to eliminate plaintiff's position is uncontroverted. A majority of partners believed that with administrative procedures having been well-established and set forth in a detailed manual, a partner could provide any necessary supervision for the front office without sustaining the expense of an additional managerial employee. Also, the partners agreed that "office morale would be improved" by the departure of plaintiff.

Plaintiff has not presented competent evidence from which one reasonably could conclude that either, let alone each, of these legitimate reasons are unworthy of belief or otherwise to sustain a finding that discrimination was more likely than not a determinative cause of the adverse employment action.

Plaintiff argues it is incredible "the partners would determine that the office manager position was unnecessary" and

³ The court rejects defendants' contention that the assumption of plaintiff's supervisory duties by Ms. Warren cannot support an inference of age discrimination because she was a partner and "it is the prerogative of the employer to perform business duties rather than assign them to an employee." The latter statement regarding employers' prerogatives may generally be true. Nevertheless, an employer may not reassign duties because of the age, gender or race of the employee who was performing them.

"to assume that staff can supervise themselves." Plaintiff does not deny that front office procedures were well-established and set forth in a manual. Defendants did not state that the front office no longer needed any supervision. Rather, they concluded that any necessary supervision of the front office could be assumed by a partner without the expense of an additional employee.

That plaintiff believes the front office required a full-time supervisor does not show that defendants' reasons are pretextual. See Tenthoff v. McGraw-Hill, Inc., 808 F. Supp. 403, 405-06 (E.D. Pa. 1992) ("even though an employee may disagree with the employer's decisions, it is not for the court to second guess those decisions without evidence that age or sex was a determinative factor in the result"). See also Fuentes, 32 F.3d at 765 ("To discredit the employer's proffered reason, the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether the discriminatory animus motivated the employer, not whether the employer is 'wise, shrewd, prudent or competent.'") Billet v. CIGNA Corp., 940 F.2d 812, 825 (3d Cir. 1991) ("what matters is the perception of the decision maker"); Hicks v. Arthur, 878 F. Supp. 737, 739 (E.D. Pa.) (that a decision is ill-informed or ill-considered does not make it pretextual), aff'd, 72 F.3d 122 (3d Cir. 1995); Doyle v. Sentry Ins., 877 F. Supp. 1002, 1009 n.5

(E.D. Va. 1995) (it is the perception of the decisionmaker that is relevant). Moreover, the evidence that productivity in the front office was in fact unaffected by the new arrangement is uncontroverted.

Plaintiff herself corroborates defendants' proffered reason regarding office morale. She admits that she was "anxious, irritable and nervous" at work as early as 1993 and had become defensive and hostile. She does not contest that the front office staff was unhappy with her management style and performance reviews submitted by plaintiff herself contain criticism of her strained relations with the staff. It is uncontroverted that front office morale in fact improved after plaintiff's departure.

Aside from her own personal disagreement about the type of supervision appropriate for the front office, plaintiff points to two things. Plaintiff accuses defendant Warren of "plotting the capture of the front office" and encouraging the staff to bypass her. Plaintiff's accusation, however, is unsupported by evidence of record and, more importantly, there is no showing that any "plot" by Ms. Warren was motivated by plaintiff's age.

Plaintiff also points to a statement by Mr. Vogel that "[w]e need younger blood" to argue that age discrimination motivated her termination. In so doing, plaintiff completely ignores the context in which this statement was made and the

circumstances to which it pertains. The statement has nothing to do with plaintiff or her termination. This statement was made almost three years after the decision to terminate plaintiff. The statement was made in 1998 by Mr. Vogel at his deposition to explain why he decided to step down as managing partner in 1997 in his mid-sixties. See Armbruster v. Unisys Corp., 914 F. Supp. 1153, 1156-57 (E.D. Pa. 1996) (alleged discriminatory statement must be connected to motive of decisionmaker); Selby v. Pepsico, Inc., 784 F. Supp. 750, 757 (N.D. Cal. 1991) (plaintiff must establish connection between alleged discriminatory statement and decision to terminate).

The statement clearly does not support a finding of discriminatory animus toward plaintiff by Mr. Vogel as he dissented from the decision to terminate her. It reflects no general age animus of the other partners as the balance of his uncontroverted testimony makes clear Mr. Vogel had wanted to step down for two years but the other partners resisted at a time when he was almost ten years older than plaintiff when she was let go.

Plaintiff otherwise attempts to substitute grandiloquence for evidence. She exclaims that her "discharge reeks of discrimination." From the competent evidence of record, the court can discern nary a "whiff."

Plaintiff has failed to present evidence from which one reasonably could find that the stated reasons for her termination

are pretextual or that her age was likely a determinative factor in the termination.

Accordingly, defendants are entitled to summary judgment on plaintiff's ADEA and PHRA claims.

B. Plaintiff's State Law Contract and Tort Claims

Where all federal claims have been disposed of before trial, any supplemental state law claims are generally dismissed. See Borough of W. Mifflin v. Lancaster, 45 F.3d 780, 788 (3d cir. 1995); Lovell Mfg. v. Export-Import Bank of the U.S., 843 F.2d 724, 734 (3d Cir. 1988); Litz v. City of Allentown, 896 F. Supp. 1401, 1414 (E.D. Pa. 1995); Renz v. Shreiber, 832 F. Supp. 766, 782 (D.N.J. 1993); 13B Charles Alan Wright et al., Federal Practice and Procedure § 3567.2 (1984). When, however, the appropriate disposition of supplemental claims involving settled questions of state law is clear and such claims can be determined without further court proceedings, judicial economy is disserved by a dismissal without prejudice which would require a state court to duplicate the efforts of the federal court to reach a foreordained result. See Brazinski v. Amoco Petroleum Additives Co., 6 F.3d 1176, 1182 (7th Cir. 1993); Moore v. Nutrasweet Co., 836 F. Supp. 1387, 1404 (N.D. Ill. 1993). See also Borough of West Mifflin v. Lancaster, 45 F.3d 780, 788 (3d Cir. 1995) (although claim over which court has original jurisdiction is dismissed before trial, court may decide pendent state claims

where "considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so").

From the summary judgment record it is clear that plaintiff's state law contract and tort claims are untenable. As no useful purpose would be served by forcing the parties to proceed in state court and requiring a state judge to replicate the time expended to review the parties' submissions regarding those claims, the court will exercise its discretion and dispose of them herein.

Plaintiff contends that she had an employment contract with Dorwart on terms other than "at-will." She asserts that "the long-term relationship and mutual exchange of consideration bound the parties in contract," and that defendant Vogel's statement "Of course, she's our office manager" evidences the contract. She also points to the two week notice provision in the employee handbook. Plaintiff alleges that her sudden termination constituted a breach of contract and of the contractual duty of good faith and fair dealing.

Under Pennsylvania law, it is well established that an employer may discharge an employee with or without cause, at his pleasure, unless restrained by some contract. Smith v. Calgon Carbon Corp., 917 F.2d 1338, 1341 (3d Cir. 1990). The employee bears the burden of overcoming the presumption of at-will

employment. Murray v. Commercial Union Ins. Co., 782 F.2d 432, 435 (3d Cir. 1986). See also Schoch v. First Fidelity Bancorporation, 912 F.2d 654, 660 (3d Cir. 1990) (at-will presumption cannot be easily overcome). To rebut the presumption of at-will employment, a plaintiff must establish the existence of additional consideration other than the services she was engaged to perform, an agreement for a definite duration or an agreement specifying she will be discharged only for just cause. See Geiger v. AT&T Corp., 962 F. Supp. 637, 648 (E.D. Pa. 1997).

So long as no recognized public policy is violated, the termination of an at-will employee cannot breach a duty of good faith and fair dealing as "there is no bad faith when an employer discharges an at-will employee for good reason, bad reason or no reason at all." Green v. Bryant, 887 F. Supp. 798, 803 (E.D. Pa. 1995).

Plaintiff concedes that she had no written or express employment contract. She acknowledged at her deposition that she understood her employment with Dorwart to be at-will, consistent with the provisions of the employee handbook.⁴ Plaintiff now

⁴ Plaintiff does not contend that the employee handbook provided the terms of an employment contract. Moreover, given the handbook's reaffirmation of the at-will status of Dorwart employees and its disclaimer that it was not an implied contract, any argument that the handbook changed plaintiff's at-will status would be unavailing. See Martin v. Capital Cities Media, Inc., 511 A.2d 830, 840-41 (Pa. Super. Ct. 1986) (under Pennsylvania law, an employee handbook will not change the presumption of at-will employment unless it contains specific language to that effect, and almost any disclaimer will be held valid), alloc. denied, 523 A.2d 1132 (Pa. 1987).

suggests, however, that the ten year relationship she had with Dorwart created an enforceable contract that she would "remain employed into the indefinite future" and that the agreement is confirmed by defendant Vogel's statement "Of course, she's our office manager."

There is no evidence or suggestion that plaintiff supplied "additional consideration." If promises of "permanent" and "life-time" employment do not create employment for a term, see Murray, 782 F.2d at 435; Moorhouse v. Boeing CO., 501 F. Supp. 390, 395 (E.D. Pa.), aff'd, 639 F.2d 774 (3d Cir. 1980), Mr. Vogel's statement to a bank loan officer "Of course, she's our office manager" clearly does not evince a contract for "indefinite" future employment. The handbook provides only that "employees" are required to give two weeks notice of resignation. It says absolutely nothing with regard to advance notice of termination by the employer.

Plaintiff presents no evidence from which one reasonably could conclude that she and defendants ever entered into any employment relationship other than at-will.

Plaintiff also alleges that defendants' actions constituted the tort of intentional infliction of emotional distress. She claims she endured "hostility" from late 1993 to June 8, 1995 and that her termination was "abrupt, impersonal, cold and hard."

To sustain a claim for intentional infliction of emotional distress, a plaintiff must present evidence of extreme and outrageous conduct which is deliberate or reckless and which causes severe emotional distress. See Cox v. Keystone Carbon Co., 861 F.2d 390, 395 (3d Cir. 1988), appeal after remand, 894 F.2d 647 (3d Cir. 1990), cert. denied, 498 U.S. 811 (1990); Bedford v. Southeastern Pa. Trans. Auth., 867 F. Supp. 288, 297 (E.D. Pa. 1994); Kazatsky v. King David Memorial Park, Inc., 527 A.2d 988, 991 (Pa. 1987).

The conduct complained of 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 community." Clark v. Township of Falls, 890 F.2d 611, 623 (3d Cir. 1989); Bedford, 867 F. Supp. at 297; Kazatsky, 527 A.2d at 991; Daughen v. Fox, 539 A.2d 858, 861 (Pa. Super. Ct. 1988), appeal denied, 553 A.2d 967 (Pa. 1988). See also Rowe v. Marder, 750 F. Supp. 718, 726 (W.D. Pa. 1990) (noting cause of action limited to acts of extreme "abomination"), aff'd, 935 F.2d 1282 (3d Cir. 1991). It is for the court initially to determine if there is evidence of conduct so extreme and outrageous as to permit recovery. Cox, 861 F.2d at 395.

Conduct in the employment context will rarely rise to the level of outrageousness necessary to support an intentional

infliction of emotional distress claim. See Andrews v. City of Philadelphia, 895 F.2d 1469, 1487 (3d Cir. 1990) (sexual harassment of employee insufficient); Cox, 861 F.2d at 390 (ill-motivated or callous termination of employment insufficient); Gonzales v. CNA Ins. Co., 717 F. Supp. 1087, 1088 (E.D. Pa. 1989) (false accusations of sexual harassment of fellow employees accompanying termination insufficient); Madreperla v. Willard Co., 606 F. Supp. 874, 880 (E.D. Pa. 1985) (intentional creation of intolerable working conditions to force resignation insufficient); Cautilli v. GHF Corp., 531 F. Supp. 71, 74 (E.D. Pa. 1982) (intentionally deceiving plaintiff to deprive him of employment opportunity insufficient).

That defendants abruptly terminated plaintiff or required her to work long hours during tax season and required a flawless work product may have been stressful and unpleasant, but such conduct is not atrocious and utterly intolerable in a civilized society in view of pertinent case law.⁵

⁵ Although not specifically argued in their brief, defendants properly assert a statute of limitations defense in their answer. The limitations period for intentional infliction of emotional distress is two years. See 42 Pa. C.S.A. § 5524(2),(7) (Purdon Supp. 1997); Osei-Afriyie v. Medical College of Pennsylvania, 937 F.2d 876, 884 (3d Cir. 1991); Mincin v. Shaw Packing Co., 989 F. Supp. 710, 717 n.4 (W.D. Pa. 1997). Insofar as plaintiff's intentional infliction claim is premised on conduct before June 6, 1995, it is also time-barred.

V. CONCLUSION

Plaintiff's claims cannot be sustained on the record presented. Accordingly, defendants' motion will be granted. An appropriate order will be entered.

IN THE UNITED STATES DISTRICT COURT
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O R D E R

AND NOW, this day of July, 1998, upon
consideration of defendants' Motion for Summary Judgment and
plaintiff's response thereto, consistent with the accompanying
memorandum, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and
accordingly **JUDGMENT is ENTERED** in the above action for
defendants and against plaintiff.

BY THE COURT:

JAY C. WALDMAN, J.