SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. CAROL SHARPE** **PART** **52M**

Justice

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MARQUIS C. ANDERSON,

Plaintiff,

- v -

THE CITY OF NEW YORK, EDWARD A. CABAN, ELI J. KLEIMAN, ADAM BLOOM, GREGORY I. MACK, VANJA RADONCIC

Defendant.

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INDEX NO. 158508/2024

MOTION DATE 01/03/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 9, 11 were read on this motion to/for DISMISSAL.

Defendants The City of New York ("City"), Edward A. Caban, Eli J. Kleiman, Adam Bloom, Gregory I. Mack, and Vanja Radoncic (collectively, "City Defendants") filed a motion to dismiss plaintiff's complaint pursuant to CPLR 3211(a)(7). Plaintiff filed written opposition and City Defendants filed a reply. The motion to dismiss is denied in part and granted in part.

Plaintiff brought the instant action, under New York State Human Rights Law, Executive Law §296 ("SHRL"), and New York City Human Rights Law codified under New York Administrative Code §8-107[1] ("CHRL"), alleging that he was subjected to racial discrimination and retaliation by City Defendants and was terminated as a Probationary Police Officer ("PPO") with the New York City Police Department ("NYPD"). Plaintiff alleges that the racial discrimination included being sent for psychiatric evaluations which cannot be objectively applied as they are fraught with implicit biases. He alleges that Black or African-American PPOs were more likely than Caucasian or White PPOs to be described as "anxious, exercises poor judgment, poor credibility, failure to take responsibility for past problematic behavior, and other "subjective"

characterizations although [the Black or African-American and Caucasian or White employees] had similar backgrounds." He also alleges that Caucasian or White PPOs were not re-evaluated at the same rate as Black or African-American PPOs and that even when they were re-evaluated, they were not disqualified or fired (NYSCEF Doc. 1, Pg. 12-13, ¶¶ 60, 61). Plaintiff further alleges that City Defendants do not properly review, administer, or monitor results of the evaluations in a standardized manner to ensure there is no disparate impact to PPOs based on race, pursuant to the Uniform Guidelines on Employee Selection Procedures ("UGESP"), as adopted by the United States Equal Employment Opportunity Commission ("EEOC") under Title VII of the Civil Rights Act of 1964. Plaintiff further alleges that these failures led to unjustified restrictions on his employment and ultimately his termination, and that those actions were taken in retaliation for complaining about the disparate impact of the psychiatric evaluations and the lack of compliance by City Defendants with the UGESP.

City Defendants filed the instant motion to dismiss the complaint, pursuant to CPLR 3211(a)(7), on the grounds that plaintiff failed to file a timely notice of claim; failed to state a claim under state and city human rights laws because plaintiff was only a probationary employee not entitled to continued employment; failed to allege a facially neutral policy that created racial disparities; failed to allege that he was discriminated against because of his race; and failed to allege engagement in a protected activity or a causal connection between that activity and the subsequent termination. City Defendants opposed plaintiff's request for punitive damages which plaintiff conceded in his opposition as punitive damages cannot be awarded against a municipality.

Plaintiff opposed City Defendants' motion on the grounds that employment discrimination claims made under SHRL and CHRL are not subject to the General Obligation Law §50-e Notice of Claim requirements; that plaintiff is not precluded from relief simply because he was a

probationary employee; that plaintiff has properly stated his claims for racial discrimination, retaliation and hostile work environment under SHRL and CHRL; and that the facially neutral policy was the psychological evaluations which was applied in an arbitrary, inconsistent and subjective manner, disproportionately disqualifying Black or African American PPOs (NYSCEF Doc #1, ¶¶ 17-31).

Plaintiff alleges in his complaint that he identifies as African-American, which is a protected class under federal, state, and local laws; that he was qualified for his position as a PPO, having completed all of the pre-requisites; that he was hired as a PPO on August 9, 2022; and that he entered the police academy on October 19, 2022. After missing several days of work – first on November 8, 2022, when he was off for five days pursuant to NYPD's COVID guidelines, and again on November 15, 2022, when he again called out sick for three days – he was told to report to the Medical Division on November 18, 2022. When he returned to work on November 18, 2022, he was directed to the Psychological Evaluation Section ("PES") and met with defendant Dr. Vanja Radoncic, the department's psychologist. Following that meeting, Dr. Radoncic put him on restrictive duty and recommended private counseling. Plaintiff alleges that Dr. Radoncic never explained why he needed the counseling or why he was being put on restrictive duty. For seven months thereafter, he met with Dr. Radoncic several times, as well as a private Licensed Mental Health Counselor, Paola Disla. According to the complaint, Ms. Disla was also unclear as to why she was meeting with plaintiff, and her many attempts to reach Dr. Radoncic for clarity went unanswered. Plaintiff grew distrustful of the process and recorded some of his meetings with Dr. Radoncic without her knowledge (NYSCEF Doc. #1, at p.14, ¶¶ 71-72). In April of 2023, Dr. Radoncic recommended that he be separated from service based upon certain "data." (*id.* #1, pg.11, ¶52). Plaintiff believed Dr. Radoncic made this recommendation because of his complaints about

the biased psychological evaluations, his mistreatment, and the lack of transparency as to why he was put on restrictive duty. Plaintiff was ultimately separated from service on June 14, 2023. Plaintiff alleges that he was treated differently from Caucasian or White PPO's who were similarly situated but not subjected to the same treatment. He alleged in the complaint that he complained of inconsistencies in the way the psychiatric evaluations were administered by the PES, which has a negative impact on Black or African-American PPOs versus Caucasian or White PPOs, and that the NYPD does not regularly assess its testing, selection and retention procedures as required under the UGESP to ensure equal treatment of its PPOs (*see* NYSCEF Doc. #1, pp. 12-13, ¶¶ 59-62). Plaintiff further alleges that City Defendants' position statement, filed in response to his EEOC charge (Charge No.: 520-2023-07747), deliberately misrepresented and omitted information regarding plaintiff's psychological evaluations, attendance, and behavior, in order to justify their discriminatory and retaliatory actions leading to his termination. On April 17, 2024, plaintiff received a Notice of Right to Sue from the United States Department of Justice, and filed this action on September 15, 2024, seeking compensatory and punitive damages, and any and all statutory remedies.

General Municipal Law ("GML") requires that a Notice of Claim be filed within ninety (90) days of the alleged injury for any tort action brought against the City of New York in order to ensure the municipality has an opportunity to investigate the merits of the claim while information is still readily available (*see* GML §50-e; *Brown v City of New York*, 95 NY2d 389, 392, 740 NE2d 1078, 1079, 718 NYS2d 4, 5 [2000] ["To enable authorities to investigate, collect evidence and evaluate the merit of a claim, persons seeking to recover in tort against a municipality are required, as a precondition to suit, to serve a Notice of Claim [internal citations omitted]."]). However, the courts have established that this requirement does not apply in cases of employment

discrimination, as is alleged here, because human rights claims are not considered tort actions under GML §50-e (*see Margerum v City of Buffalo*, 24 NY3d 721, 730, 28 NE3d 515, 519, 5 NYS3d 336, 340 [2015] ["Human rights claims are not tort actions under 50-e and are not personal injury, wrongful death, or damage to personal property claims under 50-i. Nor do we perceive any reason to encumber the filing of discrimination claims. Accordingly, we conclude that there is no notice of claim requirement here."]). Further, City Defendants had notice of the discrimination claims when plaintiff filed his EEOC charge, as they investigated and filed a position statement in response. Therefore, this Court will not dismiss the complaint because a Notice of Claim was not filed by plaintiff.

There are different pleading requirements in discrimination claims filed under federal, state, and city law, which are similar but not always the same. The pleading requirements are more lenient under the SHRL and CHRL than federal law, with the CHRL being the most lenient. The Restoration Act passed by the City Council in 2005 "...was enacted to ensure the liberal construction of the City HRL by requiring that *all* provisions of the City HRL be construed "broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible." *Albunio v City of New York*, 16 NY3d 472, 477-78, 947 NE2d 135, 922 NYS2d 244 [2011]" (*Bennett v Health Mgt. Sys., Inc.*, 92 AD3d 29, 34, 936 NYS2d 112, 116 [1st Dept 2011]; *see Loeffler v Staten Island Univ. Hosp.*, 582 F3d 268, 278 [2009]["...claims under the City HRL must be reviewed independently from and 'more liberally' than their federal and state counterparts"]).

Pleadings which are the subject of a CPLR 3211 motion to dismiss are liberally construed, the court is to accept the facts as alleged in the complaint to be true, accord plaintiff "the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within

any cognizable legal theory." (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972, 638 NE2d 511 [1994]). "...[T]he question is whether plaintiffs have a cause of action, not whether they have properly labeled or artfully stated one..." (*Chanko v Am. Broad. Cos. Inc.*, 27 NY3d 46, 52, 29 NYS3d 879, 49 NE3d 1171 [2016]; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 635, 389 NYS2d 314, 357 NE2d 970 [1976]). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus..." (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19, 832 NE2d 26, 31, 799 NYS2d 170, 175 [2005]), and "a motion to dismiss pursuant to CPLR 3211 (a) (7) must be denied "unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it" (*Guggenheimer v Ginzburg*, 43 NY2d at 275)" (*Sokol v Leader*, 74 AD3d 1180, 1182, 904 NYS2d 153, 156 [2nd Dept 2010]).

Both the SHRL and CHRL prohibit discrimination against an employee based on that employee's race. In order for a claim to survive, the plaintiff must show that "...(1) that he/she is a member of a protected class, (2) that he/she was qualified for the position, (3) that he/she was subjected to an adverse employment action (under State HRL) or he/she was treated differently or worse than other employees (under City HRL), and (4) that the adverse or different treatment occurred under circumstances giving rise to an inference of discrimination" (*Harrington v City of New York*, 157 AD3d 582, 584, 70 NYS3d 177, 179-180 [1st Dept 2018]).

"...[E]mployment discrimination claims brought under the City and State HRLs are generally analyzed under a lenient notice pleading standard, whereby the plaintiff need not plead specific facts, but must only give the defendants "fair notice" of the nature and grounds of the claims" (*Walker v Triborough Bridge & Tunnel Auth.*, 220 AD3d 554, 554, 198 NYS3d 46, 48

[1st Dept 2023]; *see Lively v Wafra Inv. Advisory Group, Inc.*, 211 AD3d 432, 180 NYS3d 92 [1st Dept 2022]; *Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 885 NYS2d 74 [1st Dept 2009]).

"A finding of discriminatory practice may be based on proof of discriminatory intent or proof of discriminatory impact" (*NY State Off. of Mental Health, Manhattan Psychiatric Ctr. v NY State Div. of Human Rights*, 223 AD2d 88, 90, 645 NYS2d 926 [3d Dept 1996]). Under the SHRL, "[t]o establish a prima facie case of disparate impact, plaintiff has the burden of showing, "that a facially neutral practice" had a disproportionate effect on a protected class [internal citation omitted]" (*Emmer v Trustees of Columbia Univ. in the City of N.Y.*, 2014 NY Misc LEXIS 2131, *12 [Sup Ct NY County April 24, 2014]). Under the CHRL, the requirement is to show that any policy or practice results in a negative impact on a protected group (*see Ellis v City of New York,* 2024 NY Misc LEXIS 1384, *15 [Sup Ct, NY County 2024]). "To establish prima facie a claim for disparate treatment, a plaintiff must set forth that "the plaintiff is a member of a protected class, was qualified for the position, and was terminated or suffered some other adverse employment action, and that the discharge or other adverse action occurred under circumstances giving rise to an inference of discrimination." *Baldwin v Cablevision Sys. Corp.*, 65 AD3d 961, 965, 888 N.Y.S.2d 1 (1st Dept 2009)" (*id.* at 12-13). Plaintiff's allegations must be more than mere legal conclusions (*Askin v Dept. of Educ. of the City of NY*, 110 AD3d 621 [1st Dept 2013]). "Whether a plaintiff can ultimately establish [his or her] allegations is not part of the calculus in determining a motion to dismiss" (*EBC I, Inc.*, 5 NY3d at 19; *see Brown v Riverside Church in the City of N.Y.*, 231 AD3d 104, 216 NYS3d 144 [1st Dept 2024]). Furthermore, City Defendants did not provide any evidence or undisputed facts that outright disprove plaintiff's allegations warranting a dismissal. Viewing the facts alleged in plaintiff's complaint as true, this Court finds that plaintiff has sufficiently pled a claim of racial discrimination.

"Under both the State and City Human Rights Laws, it is unlawful to retaliate against an employee for opposing discriminatory practices" (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 312, 786 NYS2d 382 [2004]). "To make out a prima facie claim of retaliation under the State HRL, a plaintiff must show that (1) he/she has engaged in a protected activity, (2) his/her employer was aware of such activity, (3) he/she suffered an adverse employment action based upon the activity, and (4) a causal connection exists between the protected activity and the adverse action [internal citation omitted]" (*Harrington*, 157 AD3d at 585). "To make out a prima facie case of retaliation under the City HRL, plaintiff was required to show that "(1) [she] participated in a protected activity known to defendant[ ]; (2) defendant[ ] took an action that disadvantaged [her]; and (3) a causal connection exists between the protected activity and the adverse action" (*Fletcher v Dakota, Inc.*, 99 AD3d 43, 51-52, 948 NYS2d 263 [1st Dept 2012])" (*Cadet-Legros v NY Univ. Hosp. Ctr.*, 135 AD3d 196, 206, 21 NYS3d 221 [1st Dept 2015]).

City Defendants argue that plaintiff does not meet his retaliation claim because "raising concerns" about City Defendants' psychological evaluation process does not rise to the level of protected activity (NYSCEF Doc. #11, pg. 13). Plaintiff's complaint stated that, "he did not file any racial discrimination complaints with the Office of Equity and Inclusion because he was trying to remain under the radar and graduate as such complaints are 'highly' discouraged within the NYPD despite the department's policies" (NYSCEF Doc. #1, pg. 11 ¶ 54). Accepting plaintiff's allegation that he "expressed concerns regarding the biased psychological evaluations and his treatment based on race" (*id.* at 81), he failed to establish that City Defendants had any knowledge that he made a complaint of unlawful discrimination as he failed to state when and to whom he made such complaints *(see Campbell v NY City Dept. of Educ.*, 200 AD3d 488, 489, 160 NYS3d 12 [1st Dept 2021]), and he failed to establish a causal connection between the protected activity

and the adverse action (*see generally, Cadet-Legros,* 135 AD3d at 206-207). As such, the claim of retaliation must be dismissed under both the SHRL and the CHRL

Plaintiff improperly raised a claim of hostile work environment for the first time in his opposition to City Defendant's motion (*Myers v. Doherty*, 2025 N.Y. App. Div. LEXIS 6691*4, 243 A.D.3d 529 [1st Dept 2025] ["Plaintiff's hostile work environment claim, which was improperly raised for the first time in his opposition to defendants' motion, also fails on the merits."]). "The lack of discriminatory animus is likewise fatal to plaintiffs causes of action for hostile work environment [internal citation omitted]" (*Pelepelin v City of NY*, 189 AD3d 450, 452, 137 NYS3d 316 [1st Dept 2020]). Under the CHRL, a plaintiff must only allege that they were treated less well than other employees based on discriminatory animus and the court must look at the totality of the circumstances in order for a hostile work environment claim to survive (*Hernandez v Kaisman,* 103 AD3d 106 114, 957 NYS2d 53 [1st Dept 2012]). Here, plaintiff failed to allege any circumstances that rise to the level of an inference of discriminatory animus under the SHRL or CHRL (*see Chin v NY City Hous. Auth.*, 106 AD3d 443, 965 NYS2d 42 [1st Dept 2013]).

Probationary employees are protected by all federal, state and local laws regarding discrimination, and "[i]n the absence of statute or rules to the contrary, the sole requirement in discharging a probationary employee is that the act be done in good faith" (*D'Aiuto v Department of Water Resources*, 51 A.D.2d 700, 701, 379 NYS2d 409 [1st Dept 1976]). A PPO may be discharged for "almost any reason, or for no reason at all" as long as it is not "in bad faith or for an improper or impermissible reason" (*Matter of Swinton v Safir*, 93 NY2d 758, 762, 763, 720 NE2d 89, 697 NYS2d 869 [1999]; *see Matter of Berenhaus v Ward*, 70 NY2d 436, 517 NE2d 193, 522 NYS2d 478 [1987]; *Matter of York v McGuire*, 63 NY2d 760, 469 NE2d 838, 480 NYS2d

320 [1984]; *Matter of Duncan v Kelly*, 9 NY3d 1024, 1025, 88 NE2d 872, 853 NYS2d 260 [2008]). Here, plaintiff may commence a lawsuit for racial discrimination in his capacity as a PPO. It is hereby:

ORDERED, that City Defendants' motion to dismiss plaintiff's claims for racial discrimination under the SHRL and the CHRL is denied; it is further

ORDERED, that City Defendants' motion to dismiss plaintiff's claims for retaliation under the SHRL and the CHRL is granted; it is further

ORDERED, that City Defendants' motion to dismiss plaintiff's claim for hostile work environment under the SHRL and the CHRL is granted; it is further

ORDERED, that City Defendants shall serve a copy of this Order with Notice of Entry within ten (10) days of the date of this Order, and file proof of service of same, to all parties and the Clerk of the General Clerk's Office; and it is further

ORDERED, that service of this Order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter, or if it is an e-file case, shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-filing" page on the court's website).

This constitutes the Decision and Order of the Court.

ENTER:

January 22, 2026
DATE

HON. CAROL SHARPE, J.S.C.
HON. CAROL SHARPE
J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[X]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE