Simmons-Grant v Quinn Emanuel Urquhart & Sullivan, LLP
2016 NY Slip Op 32478(U)
December 14, 2016
Supreme Court, New York County
Docket Number: 150935/13
Judge: Joan M. Kenney
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY - - PART 8

KISSHIA SIMMONS-GRANT,

Plaintiff,

- against -

QUINN EMANUEL URQUHART & SULLIVAN, LLP,

Defendant.

Index No.: 150935/13

DECISION/ORDER

KENNEY, JOAN, J.:

In this action, plaintiff Kisshia Simmons-Grant (Simmons) alleges that her former employer, defendant Quinn Emanuel Urquhart & Sullivan, LLP (Quinn Emanuel, or the firm), discriminated against her based on her race, in violation of the New York City Human Rights Law (Administrative Code of the City of New York [Administrative Code] § 8-107 *et seq.*) (NYCHRL). Quinn Emanuel moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint.

BACKGROUND

The facts of this case have been set out in some detail in the decision in a prior related federal action, with which the court presumes the parties are familiar. *See Simmons-Grant v Quinn Emanuel Urquhart & Sullivan, LLP*, 915 F Supp 2d 498 (SD NY 2013) (the federal decision) (cited herein as 915 F Supp 2d at _). The following background information, as relevant to this motion, is drawn from that decision, as well as the parties' submissions on this motion, which include papers submitted in the

federal action.

Simmons, an African American attorney, was employed by defendant Quinn Emanuel as an hourly contract, or staff, attorney, from November 2006 until her resignation on August 5, 2010. 915 F Supp 2d at 500; *see* Simmons Deposition, April 24, 2012 (P. 2012 Dep.), Ex. 1 to Affirmation of James Halter in Opposition to Defendant's Motion (Halter Aff.), at 51, 52, 134. Quinn Emanuel is a large California-based law firm, with offices around the world, including one in New York City. Affidavit of Rebecca Fogler (Fogler Aff.), Ex. H to Affirmation of Lawrence Sandak in Support of Defendant's Motion (Sandak Aff.), ¶¶ 5-6. It employs contract attorneys primarily to perform document review work, on a project by project basis, when the firm's associates and partners need additional help. Deposition of Peter Calamari, May 9, 2012 (Calamari Dep.), Ex. 5 to Halter Aff., at 21, 39. Contract attorneys are paid on an hourly basis, and are paid only for hours actually worked. 915 F Supp 2d at 500; P. 2012 Dep. at 54.

Contract attorneys may be assigned to do "first level," "second level," or "privilege" review. First level review is the initial review of documents to determine responsiveness and privilege; second level is a further review to check responsiveness and privilege; and privilege review involves a third level review of privileged documents. Deposition of Todd

Riegler, May 8 and 11, and June 6, 2012 (Riegler 2012 Dep.), Ex. 3 to Halter Aff., at 104-105, 108; P. 2012 Dep. at 117-118. Although plaintiff thought the higher levels of review were preferable, what level of review an attorney worked was a matter of personal preference, and contract attorneys are paid the same hourly rate regardless of the level of review they perform. *Id.* at 118-119, 121-122; *see* Affidavit of Alana Martin, Ex. F to Sandak Aff, ¶ 13; Affidavit of Natalie Pierre, Ex. G to Sandak Aff., ¶ 9. The number of hours billed for any project did not depend on the level of review performed, but on the nature of the particular project. P. 2012 Dep. at 119-120. There is no standard number of hours that contract attorneys work, as each sets his or her own hours. *Id.* at 102.

At Quinn Emanuel, contract attorneys usually received assignments from the contract attorney coordinator, but could also directly contact associates or other contract attorneys at the firm to request work. 915 F Supp 2d at 500; P. 2012 Dep. at 87-88, 89-90, 97-98. On September 1, 2009, Todd Riegler (Riegler), then a contract attorney at Quinn Emanuel, became the Senior Discovery Attorney and the New York contract attorney coordinator, "responsible for managing the pool of contract attorneys and assessing who was able to work on cases." 915 F Supp 2d at 500. Prior to becoming attorney coordinator, Riegler selected attorneys only for two projects on which he worked as

senior contract attorney. 915 F Supp 2d at 500; Riegler 2012 Dep. at 34-35, 40-41. Until September 2009, Kevin Olsavsky (Olsavsky), a former office manager at Quinn Emanuel, coordinated contract attorney assignments. P. 2012 Dep. at 79, 92-93.

Plaintiff testified that, from the time she started in 2006 through 2008, she was satisfied with her work, believed that assignments were fairly distributed, and did not believe Olsavsky or anyone else discriminated against her. *Id.* at 93, 102-104. She also was satisfied with the overall number of hours she billed in 2009, which was 150 hours more than she billed in 2008 (*id.* at 106); and she was satisfied with the monthly hours she billed for most months in 2009, including September, October, and November, after Riegler became coordinating attorney. *Id.* at 108-111.

In November 2009, when plaintiff was working on a document review project for Quinn Emanuel's client, Ambac, Riegler asked her if she was "willing" to move to the Morgan Stanley/Safeguard (Morgan Stanley) project, which he described as a very large project with overtime available. *See* Emails, Ex. 9 to Halter Aff. She agreed to switch, although she asserts that she wanted to stay on the Ambac project. *Id.*; P. 2012 Dep. at 123-124. Another African American attorney, Ramon Osborne (Osborne), also was asked to move from the Ambac project to the Morgan Stanley project, and, he attested, he did so "gladly," because the Ambac

project was winding down and the Morgan Stanley project offered overtime. Osborne Aff., Ex. E to Sandak Aff., ¶¶ 8, 9. Plaintiff was upset by the transfer request because she and Osborne were taken off the Ambac project, while two white attorneys were not asked to switch, which made her think that Riegler was racist or was distributing work in a discriminatory manner. P. 2012 Dep. at 125-126, 127-128. The two white attorneys, Alana Martin (Martin) and Laura Ricciardi (Ricciardi), remained on the Ambac project and were assigned to second level review, although plaintiff thought they were not qualified to do that work. *Id.* at 176-178. Other attorneys, including other African American attorneys, also remained on the Ambac project. *Id.* at 126.

In December 2009, after plaintiff started working on the Morgan Stanley project, the client decided to discontinue its use of Quinn Emanuel attorneys for first level document review, and, as a result, plaintiff and eight other attorneys assigned to the project suddenly had no work. 915 F Supp 2d at 500-501. As plaintiff testified, some Quinn Emanuel contract attorneys, including at least two African American attorneys, stayed on the Morgan Stanley project to do second level document review. P. 2012 Dep. at 159-160, 164-165.

In January 2010, plaintiff was assigned to the United Guaranty document review project, but due to a delay in delivery

of the documents to the firm, the project did not commence until February 2010. 915 F Supp 2d at 501. Plaintiff returned to the Ambac project until the United Guaranty project began. *Id.* Plaintiff billed 70 hours in December 2009, and 48 hours in January 2010, the two lowest billing months she had during her tenure at the firm.

Once work on the United Guaranty project began in February 2010, plaintiff worked "a lot of hours on that case" and "supervised on site." P. 2012 Dep. at 167. Plaintiff was assigned second level and privilege review, and had supervisory responsibilities on the project, along with two other African American attorneys. *Id.* at 169-170. She worked on the United Guaranty project until she left the firm in August 2010, and from February through July 2010, she worked about 150 hours per month. *Id.* at 167-168.

On February 11, 2010, plaintiff requested a meeting with Peter Calamari, the managing partner of Quinn Emanuel's New York office, "to discuss the system by which contract attorneys receive work." Email, Ex. 12 to Halter Aff. She met with him the next day, and told him that she thought work was being distributed to contract attorneys unfairly and based on race. P 2012 Dep. at 58. She complained that Riegler favored Martin and Ricciardi, who, plaintiff testified, were given supervisory roles on the Ambac case when they did not understand as much as she did

about privilege. *Id.* at 60, 61-63.

After meeting with plaintiff, Calamari notified Quinn Emanuel's human resources director that a complaint was made, and asked Riegler to provide information regarding past work assignments to contract attorneys and how assignments were made. *See* Emails, Exs. 13, 14 to Halter Aff. Calamari reviewed the information provided by Riegler, which did not include information on attorneys' races, and concluded that plaintiff's lower hours in December 2009 and January 2010 were not suspicious or the result of misconduct. 915 F Supp 2d at 501; Calamari Dep. at 118. He notified plaintiff in late February 2010 that he found nothing unusual or suspicious about discrepancies in the total hours billed by various contract attorneys, and he advised her to contact him if any particular assignments seemed unfair or if any particular individuals seemed to be getting preferential treatment. 915 F Supp 2d at 501; Calamari Dep. at 110-111, 115-116. Plaintiff replied that she would review her notes for past incidents, but she provided no further information to Calamari. *Id.* at 116; 915 F Supp 2d at 501. On July 21, 2010, following an incident with a co-worker on the United Guaranty project, and because her request for an immediate transfer was denied, she tendered her resignation, effective August 5, 2010.

Plaintiff commenced an action in the U.S. District Court for the Southern District of New York in October 2011, alleging race

discrimination and retaliation under Title VII of the Civil Rights Act of 1964 (42 USC § 2000e *et seq.*) (Title VII), the New York State Human Rights Law (Executive Law § 296) (NYSHRL), and the NYCHRL. In January 2013, the District Court granted summary judgment to Quinn Emanuel, dismissing plaintiff's claims under Title VII and declining to exercise supplemental jurisdiction over the NYSHRL and NYCHRL claims. Plaintiff then brought this action, asserting claims under the NYCHRL for race discrimination and retaliation. The retaliation claim was dismissed on appeal by the First Department, on collateral estoppel grounds. *See Simmons-Grant v Quinn Emanuel Urquhart & Sullivan, LLP*, 116 AD3d 134 (1st Dept 2014). Defendant now seeks dismissal of the remaining claim.

DISCUSSION

Legal Standards

It is well settled that on a motion for summary judgment, the moving party must make a prima facie showing of its entitlement to judgment as a matter of law, by submitting evidentiary proof in admissible form sufficient to demonstrate the absence of any material issues of fact. *See* CPLR 3212 (b); *Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 (2014); *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980). Once such showing is made, the opposing party must show, also by producing evidentiary proof in admissible form, that genuine

material issues of fact exist which require a trial of the action. *See Jacobsen*, 22 NY3d at 833; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986).

The evidence must be viewed in a light most favorable to the nonmoving party (*Branham v Loews Orpheum Cinemas, Inc.*, 8 NY3d 931, 932 [2007]), and the motion must be denied if there is any doubt as to the existence of a triable issue of fact. *See Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 (1978). The opposing party, however, must show "the existence of a bona fide issue raised by evidentiary facts." *IDX Capital, LLC v Phoenix Partners Group LLC*, 83 AD3d 569, 570 (1st Dept 2011), *affd* 19 NY3d 850 (2012) (citation omitted); *see Kornfeld v NRX Technologies, Inc.*, 93 AD2d 772, 773 (1st Dept 1983), *affd* 62 NY2d 686 (1984). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to raise a material question of fact. *Zuckerman*, 49 NY2d at 562.

In employment discrimination cases, courts also urge caution in granting summary judgment, since direct evidence of an employer's discriminatory intent is rarely available. *See Ferrante v American Lung Assn.*, 90 NY2d 623, 629 (1997); *Bennett v Health Mgt. Sys., Inc.*, 92 AD3d 29, 43-44 (1st Dept 2011). Nonetheless, summary judgment remains available in discrimination cases, even under the more liberal NYCHRL, and is appropriate when "the evidence of discriminatory intent is so slight that no

rational jury could find in plaintiff's favor." *Spencer v International Shoppes, Inc.*, 2010 WL 1270173, *5, 2010 US Dist LEXIS 30912, *16 (ED NY 2010) (internal quotation marks and citation omitted); *see e.g. Fruchtman v City of New York*, 129 AD3d 500 (1st Dept 2015); *Melman v Montefiore Med. Ctr.*, 98 AD3d 107, 127-128 (1st Dept 2012); *Bennett*, 92 AD3d at 45-46; *see also Kerman-Mastour v Financial Indus. Reg. Auth., Inc.*, 814 F Supp 2d 355, 367 (SD NY 2011).

NYCHRL

Under the NYCHRL, it is unlawful for an employer to fire or refuse to hire or employ, or otherwise discriminate in the terms, conditions and privileges of employment, because of, as pertinent here, an individual's race. Administrative Code § 8-107 (1) (a). The NYCHRL, as is now well recognized, is intended to be more protective than its state and federal counterparts and, accordingly, its provisions must be liberally construed to accomplish "the uniquely broad and remedial purposes" of the law. Administrative Code §§ 8-101, 8-130; *see Romanello v Intesa Sanpaolo, S.p.A.*, 22 NY3d 881, 885 (2013); *Albunio v City of New York*, 16 NY3d 472, 477-478 (2011); *Williams v New York City Hous. Auth.*, 61 AD3d 62, 66 (1st Dept 2009). To that end, courts must conduct an "independent liberal construction analysis in all circumstances, even where state and federal civil rights laws have comparable language." *Id.*; *see Bennett*, 92 AD3d at 34;

Velazco v Columbus Citizens Found., 778 F3d 409, 411 (2d Cir 2015).

Claims brought under the NYCHRL must be analyzed under both the burden-shifting framework established in *McDonnell Douglas Corp. v Green* (411 US 792 [1973]), for cases brought pursuant to Title VII, and "the somewhat different 'mixed-motive' framework recognized in certain federal cases." *Melman*, 98 AD3d at 113; *see Hudson v Merrill Lynch & Co.*, 138 AD3d 511, 514 (1st Dept 2016); *Kaiser v Raoul's Restaurant Corp.*, 112 AD3d 426, 427 (1st Dept 2013). To prevail on a motion for summary judgment, defendant must show "that there is no evidentiary route that could allow a jury to believe that discrimination played a role in the challenged action." *Bennett*, 92 AD3d at 39-40; *see Melman*, 98 AD3d at 113-114; *Furfero v St. John's Univ.*, 94 AD3d 695, 697 (2d Dept 2012).

Under *McDonnell Douglas*, the plaintiff has the initial burden to establish a prima facie case of employment discrimination, that is, the plaintiff must show that she or he is a member of a protected class, was qualified for the position held, and was terminated from employment or suffered another adverse employment action, under circumstances giving rise to an inference of discrimination. *See Stephenson v Hotel Empls. & Restaurant Empls. Union Local 100 of the AFL-CIO*, 6 NY3d 265, 270-271 (2006); *Hudson*, 138 AD3d at 514; *Melman*, 98 AD3d at 113-

114. If the plaintiff establishes a prima facie case, the burden then shifts to the defendant to rebut the presumption of discrimination by demonstrating that there was a legitimate, nondiscriminatory reason for its employment decision. If the defendant makes such a showing, the plaintiff then must produce evidence of pretext or, under the NYCHRL, show that "unlawful discrimination was one of the motivating factors, even if it was not the sole motivating factor," for the employer's actions. *Melman*, 98 AD3d at 127; *see Hudson*, 138 AD3d at 514; *Bennett*, 92 AD3d at 39; *Williams*, 61 AD3d at 78 n 27.

The critical inquiry under the NYCHRL is whether the plaintiff can establish by a preponderance of the evidence that she has been "treated less well" than similarly situated employees because of her protected status. *Id.* at 78; *see Julius v Department of Human Resources Admin.*, 2010 WL 1253163, 2010 US Dist LEXIS 33259, *13 (SD NY 2010). While a plaintiff need not show that an employment action was "materially" adverse under the NYCHRL, "a plaintiff must still link the adverse employment action to a discriminatory motivation . . . . [or] her claims fail." *Sotomayor v City of New York*, 862 F Supp 2d 226, 258 (ED NY 2012) *affd* 713 F3d 163 (2d Cir 2013), citing *Williams*, 61 AD3d at 71-72.

In this case, it is undisputed that plaintiff is a member of a protected class based on race, and was qualified for her

position, but defendant disputes that she was subjected to any discriminatory adverse action, and contends that she cannot establish a prima facie race discrimination claim. Defendant further contends that, even if plaintiff could make a prima facie showing, she cannot show that Quinn Emanuel's legitimate, nondiscriminatory reasons for its decisions were false or pretextual.

Analysis

Plaintiff's claim, essentially the same as her claim in the prior federal action, is that Riegler discriminated against her and other African American contract attorneys by assigning them less work, and lower level review work, than non-African American contract attorneys, which "directly translated into fewer hours" and less income for her and other African American contract attorneys at Quinn Emanuel. First Amended Complaint (Complaint), Ex. B to Sandak Aff., ¶¶ 12, 15. Plaintiff seeks to differentiate the instant complaint from the complaint in the federal action by alleging that all non-African American attorneys, not just white attorneys, were given preferential treatment as compared to African American attorneys. *Id.*; *see* Plaintiff's Memorandum of Law in Opposition to Defendant's Motion (P. Memo of Law), at 1 n 3.

However, while plaintiff contends that discovery in this matter made clear that African American contract attorneys were

disfavored as compared to all non-African American contract attorneys, she offers no evidence to support such claims. By her own testimony, her complaint is about the discriminatory way that assignments were "distributed to individuals who were white" and the preferential treatment white attorneys received on projects, and how that preference was reflected in the number of hours that white attorneys worked. Simmons Deposition, August 6, 2015 (P. 2015 Dep.), Ex. 2 to Halter Aff., at 53, 65-66. She testified that her discrimination claim is based on the number of hours she billed and "the way [she] was treated as opposed to the other staff attorneys who were white." *Id.* at 20, 21. She also testified, as did Calamari, that she complained to him that white attorneys were being given preferential treatment; and the two attorneys she specifically identified as receiving preferential treatment, Martin and Ricciardi, were white. P. 2012 Dep. at 60; Calamari Dep. at 22; Complaint, ¶ 20.

Notwithstanding that NYCHRL discrimination claims must be independently analyzed under more liberal standards than claims under federal or state law, "[a] federal court's factual findings under the federal analytical framework *may* preclude state courts from adjudicating city law claims." *Simmons-Grant*, 116 AD3d at 140 (emphasis in original). Collateral estoppel applies to "strictly factual question[s] not involving application of law to facts or the expression of an ultimate legal conclusion" (*id.*),

and here, "the federal court's decision collaterally estops plaintiff[ ] from relitigating many discrete factual issues that were decided against [her] in the federal action." *Hudson*, 138 AD3d at 515. As relevant to the race discrimination claim in this case, the federal court found that plaintiff's statistical information "falls short of an evidentiary proffer sufficient to raise a genuine issue of fact as to whether she was treated differently from relevant comparators as a result of Riegler's alleged racial bias." 915 F Supp 2d at 505 n 3.

This court further finds that plaintiff's statistical evidence is not probative of discrimination for other reasons, some of which were cited in the federal decision, including that her statistics cover all of 2009, when Olsavsky, not Riegler, was the coordinating attorney making assignments until September 2009. 915 F Supp 2d at 505 n 3. Plaintiff's statistics also exclude a number of white attorneys working in 2009 and 2010; and include, as the highest billing attorneys, a white law clerk who did not work as a contract attorney until December 2009, and Riegler, whose hours billed as coordinating attorney included administrative and management work not conducted by other contract attorneys. P. 2015 Dep. at 27, 29, 47-48. Further, although Ricciardi, who started working at the firm in April 2009, was one of two white attorneys identified by plaintiff as receiving preferential treatment, she was not included in

plaintiff's statistics; and evidence shows that she worked, on average, significantly less hours than plaintiff during 2009. *See* P. 2012 Dep. at 140; Spreadsheets, Ex. 14 to Halter Aff., Ex. 7 to Sandak Aff. Plaintiff testified that she did not know how the statistical charts underlying her complaint were created, or why some white attorneys were or were not included. P. 2015 Dep. at 22-23, 26-27. As to plaintiff's hours, evidence shows that her billed hours were higher than most of the white attorneys for most of the months of 2009 and 2010. *Id.* at 39-40, 50, 65.

Plaintiff's statistics also fail to take into account personal preferences of attorneys or other non-discriminatory explanations for disparities in the number of hours billed, even though, as plaintiff testified, contract attorneys set their own schedules, and work no set number of hours. "[S]tatistical evidence purporting to show the effects of discrimination is not probative of an employer's intent where no effort is made to account for other possible causes of the disparity." *Fahmy v Duane Reade, Intl., Inc.*, 2006 WL 1582084, *7, 2006 US Dist LEXIS 37703, *22-23 (SD NY 2006), citing *Bickerstaff v Vassar College*, 196 F3d 435, 450 (2d Cir 1999); *Hollander v American Cyanamid Co.*, 172 F3d 192, 202 (2d Cir 1999). Moreover, contrary to plaintiff's apparent argument, "in the absence of other evidence of . . . discrimination, the statistics alone are insufficient to defeat summary judgment." *Hudson*, 138 AD3d at 517; *see Pierson v*

New York City Dept. of Educ., 2011 WL 6297955, 2011 NY Misc LEXIS 5829, *14, 2011 NY Slip Op 33161(U), *affd* 106 AD3d 579 (1st Dept 2013); *Martin v Citibank, N.A.*, 762 F2d 212 (2d Cir 1985) ("statistical proof alone cannot ordinarily establish a prima facie case of disparate treatment").

Plaintiff claims, however, that even if there was not a significant difference between the average number of hours she billed and the average number of hours other contract attorneys billed, the alleged discrimination went "beyond just the hours that were worked" and included preferential treatment of white attorneys and how work was distributed to white attorneys as compared to African American attorneys. P. 2015 Dep. at 21, 22, 65-66. She testified that she believed Riegler discriminated against all African American contract attorneys, although no African American contract attorney ever told her that he or she felt discriminated against by Riegler, and she acknowledged that she could not "really speak to" how other African American contract attorneys were treated by Riegler. P. 2012 Dep. at 146, 147-148. She never heard Riegler make a racist remark or heard from anyone else that he had made a racially discriminatory comment (*id.* at 264-265), and her complaint alleges no specific instances when Riegler gave assignments based on race.

Plaintiff testified that Olsavsky, who was the coordinating attorney until September 2009, did not discriminate. P. 2012

Dep. at 93, 102-103, 103-104 and testified that she was satisfied with her hours for most of 2009. *Id.* at 106.

While she claims that "the assignment system in general" was discriminatory (P. Memo of Law, at 1-2) because some white attorneys "were assigned more projects or allowed to stay on projects" and were given more second level review on projects (P. 2015 Dep. at 87-88), she identified no specific instances when white attorneys were assigned more projects (*id.* at 89); and her support for this claim rests primarily on defendant's decisions to transfer her from the Ambac project to the Morgan Stanley project in November 2009, and to assign her to the United Guaranty project in January 2010. As found in the federal decision, however, there were legitimate, nondiscriminatory reasons for those assignments and the consequent reduction of plaintiff's billed hours in December 2009 and January 2010. With respect to the Morgan Stanley project, the federal court found, "[p]laintiff does not dispute that the decision that resulted in [plaintiff's] loss of income was made solely by the client" and was made after her transfer to the project. 915 F Supp 2d at 504. The federal court also found that, as the first level review work to which she was assigned admittedly was "not inherently better or worse than second-level or privilege review work," her preference for one level over another did not demonstrate an adverse action, material or otherwise. *Id.*

Similarly, as to plaintiff's assignment to the United Guaranty project and the delay resulting in loss of work in January 2010, the federal court found that "[i]t is undisputed that the lack of work on the United Guaranty matter in January arose from a post-assignment delay in document delivery. The assignment, at the time it was made, thus did not constitute an adverse employment action." *Id.* at 504-505.

Plaintiff does not dispute that defendant has shown legitimate nondiscriminatory reasons for plaintiff's reduced hours resulting from the Morgan Stanley and United Guaranty assignments. *See* P. Memo of Law, at 21-22. Rather, plaintiff argues that discovery has uncovered several projects staffed by Riegler, not addressed in the federal action, which demonstrate that he discriminated based on race. *Id.* at 22. Plaintiff's argument that these projects, including one in 2008 and one in July 2009, raise questions about racial bias, is rejected by the court, as it is unsupported by anything more than the conclusory assertion that the failure to select plaintiff for all of the projects demonstrates racial bias. *See Campbell v Cellco Partnership*, 860 F Supp 2d 284, 296 (SD NY 2012) (even under NYCHRL, plaintiff must "do 'more than cite to [her] mistreatment and ask the court to conclude that it must have been related to [her] race'"[citation omitted]). Plaintiff's own testimony also directly contradicts the assertions.

Plaintiff clearly testified that the only two instances in which she felt discrimination played a part were the transfer from the Ambac project to the Morgan Stanley project and the United Guaranty assignment, and other than those two assignments, there was no project which she believed she was or was not assigned to because of her race. P. 2015 Dep. at 85-86. She also testified that she experienced no discrimination from 2006 through 2008, and no discrimination when Olsavsky was coordinating attorney. She further did not identify any instances when white attorneys were assigned more projects, or, other than Ambac, any projects on which white attorneys remained because of race. *Id.* at 87-89.

Plaintiff also submits no evidence to show that Riegler did not assign African American attorneys to second level review, or preferred to give second level review to white attorneys, other than her testimony that he favored Martin and Ricciardi by giving them second level review assignments on the Ambac project. *Id.* at 90-91; P. 2012 Dep. at 176-177. Although she contends that she did not see African American attorneys being selected for second level review (P. 2015 Dep. at 91-92), and claims her assignment to first level review on the Morgan Stanley project was discriminatory, she testified that two African American attorneys were retained on Morgan Stanley to do second level review, and, as far as he knew, no white attorneys were. P. 2012

Dep. at 164-165. She also stated that she did not know whether other African American attorneys were assigned second level review in other cases. P. 2015 Dep. at 93.

In addition, she and two other African American attorneys admittedly were assigned second level review and supervisory roles on the United Guaranty project. While she claims that the United Guaranty project was less preferable than other projects because it was conducted off site, she makes no showing that she was disadvantaged by doing second level review on this project, and her dissatisfaction with the location does not raise an issue of fact as to whether her assignment was discriminatory.

In view of the evidence presented here, as well as the findings in the federal action, plaintiff fails to show, or raise a triable issue of fact as to whether similarly situated white contract attorneys were treated more favorably than plaintiff, or whether discrimination played any part in the manner in which plaintiff was given assignments. *See Hudson,* 138 AD3d at 516 ("no basis to conclude that [race] played any role in the methodology employed"); *see also Whitfield-Ortiz v Department of Educ. of the City of New York,* 116 AD3d 580, 581 (1st Dept 2014) (claim dismissed where no showing that "similarly situated individuals who did not share plaintiff's protected characteristics were treated more favorably than plaintiff").

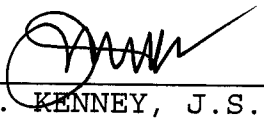
Accordingly, it is

ORDERED that defendant's motion for summary judgment is granted and the complaint is dismissed, with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: December 14, 2016

ENTER:



JOAN M. KENNEY, J.S.C.