Watkins v New York City Health & Hosps. Corp.
2018 NY Slip Op 31054(U)
May 11, 2018
Supreme Court, New York County
Docket Number: 152836/2013
Judge: Alexander M. Tisch

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 52

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DR. ROBERT L. WATKINS III,

Plaintiff,

- against -

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, DR. ZAFAR SHARIF individually as an aider and abettor, and on behalf of NYCHHC and DR. CHARLES NNADI, individually as an aider and abettor and on behalf of NYCHHC,

Defendants.

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DECISION & ORDER

Index No.: 152836/2013

ALEXANDER M. TISCH, J.

In this employment discrimination action, defendants New York City Health and Hospitals Corporation, Dr. Zafar Sharif and Dr. Charles Nnadi, move, pursuant to CPLR 3212 for an order granting them summary judgment dismissal of the complaint.

Plaintiff, Dr. Robert L. Watkins III, a former resident at the Harlem Hospital Center (the Hospital), opposes.

For the reasons set forth more fully below, defendants motion is granted.

Background

Plaintiff, a former resident in the psychiatry department at the Hospital, alleges that he was subjected to disparate treatment and a hostile work environment based on his race and ethnicity, African-American, during his first and second year at the hands of Nnadi, the deputy director of the psychiatry department, a black Nigerian, and Shafir, a Nigerian-born, Pakistani man and the director of the psychiatric department since September 2010. Plaintiff claims that

there was a caste-like system of discrimination, which protected South Asians and Nigerian-born residents over African-American residents. Though plaintiff testified that he was yelled at and berated by a few physicians throughout his tenure as a resident at the Hospital, he is not alleging that anyone other than Drs. Nnadi and Sharif treated him differently because of his race and/or ethnicity (plaintiff 2/18/15 tr at 31). He alleges that over the four years that he was at Harlem Hospital, of approximately 28 residents in the psychiatry program, more than three-quarters were either Nigerian or East Asian (*id.* at 31-32). Plaintiff testified that during the first two years of his residency he was subject to "daily harassment," "constant[] belittling," criticism, and sarcasm from Nnadi (*id.* at 136).

Plaintiff's Applications and Acceptance into the Residency Program

In 2009, plaintiff applied and was accepted into the residency program at the Hospital. In June 2010, a human resources' background check revealed that plaintiff failed to disclose two prior convictions for driving while intoxicated (DWI).[1] Plaintiff explained that he inadvertently failed to disclose his convictions because he did not read the full question on the application.

Plaintiff met with the then-residency program director, Dr. Maurice McKnight. Plaintiff was not allowed to continue the residency program in 2010. However, a few months later, plaintiff was extended another position as a medical chart reviewer, which plaintiff accepted. McKnight approved the hire.

In September 2010, plaintiff again applied to the Hospital's residency program for the following year, which would begin July 2011. Plaintiff contacted Sharif, the chair of the

[1] At the time the DWI convictions were discovered, plaintiff was in the midst of orientation for the residency program, which was set to begin in July 2010.

psychiatric department at the Hospital, and explained his disqualification from the program the previous year. Sharif obtained approval from the Hospital's executive director, Palmer, as well as the medical director, to accept plaintiff into the residency program. Plaintiff was one of two candidates who were hired directly by Sharif from within the Hospital that year.

Plaintiff's First Post Graduate Year (PGY 1) July 1, 2011 to June 30, 2012

According to defendants, at the very start of his residency, plaintiff displayed competency issues. In May 2012, five psychiatry residents were identified as performing below expectations and required professional improvement, and were asked to meet individually with the "Educational Policy Committee" (EPC) of the psychiatry department. Of those with said performance issues, there was at least one Asian resident; and two black, Nigerian residents. Plaintiff met with the EPC. The EPC, which included Nnadi among four other doctors, unanimously approved plaintiff's promotion to PGY 2. While plaintiff was found to have met expectations in most of the core competency areas, he was marked below expectations in "medical knowledge." In addition, it was noted that while being recommended for promotion to PGY 2, plaintiff needed "further detail in clinical documentation and . . . timeliness of same;" "to submit case logs in a timely manner;" "significant improvement in PRITE scores;" and "to pursue academic endeavors" (defendants' exhibit 00010). Plaintiff was promoted to the next year of his residency.

Plaintiff's Second Post Graduate Year (PGY 2) July 1, 2012 to June 30, 2013

Plaintiff continued his residency to PGY 2 on July 1, 2012. Plaintiff's performance issues persisted, raising concerns about not only plaintiff's medical knowledge and competency as a psychiatrist, but also raised concerns about patients' safety. In particular, it was noted that

plaintiff stayed late often working until midnight or 1:00 a.m. the following day, which poses safety concerns to patients and residents. Despite repeated warnings, plaintiff continued to work over his hours limit, reasoning that he needed the extra time to complete his work.

In October 2012, the EPC, which at that time, included Nnadi and five other psychiatry department members, provided plaintiff with a remediation plan for the period of October 22, 2012 to January 21, 2013. The EPC recommended that plaintiff's caseload be reduced and that he not be assigned any high-risk patients. Several areas of concern regarding plaintiff's performance were raised at that time, including: basic orientation, communication, documentation, basic psychiatric knowledge, organization skills and time management, and patient responsibility. Plaintiff was given specific goals for improvement in each specified area of concern and specific means to achieve such goals, such as working with the attending psychiatrist on how to conduct a proper patient assessment. The EPC deferred making a decision as to whether to extend plaintiff an invitation for the following academic year pending satisfactory progress on his remediation plan. Plaintiff received written notice that if he failed to meet the identified goals in his remediation plan, it could result in a nonrenewal of his contract for the following year.

Plaintiff takes issue with the idea of being put on probation, as he claims he was doing well in all areas, with the exception of Dr. Nnadi's evaluations, and contends that the only reason he was put on an improvement plan was because plaintiff is African-American (plaintiff 2/20/15 tr at 125). Plaintiff refused to sign the remediation plan because he felt it was unwarranted and unjust (*id.* at 128-129). Plaintiff testified that when he was in Nnadi's rotation, he was subject to "daily harassment," "constant[] belittling," criticism, and sarcasm from Nnadi, however, he

provided little details about what specifically was said (*id.* at 136), except that on a few occasions Nnadi called plaintiff "lazy" and on one occasion, he called plaintiff a "trickster" after plaintiff did not fully complete an assignment.

In January 2013, plaintiff's probation was extended, which he believes was discriminatory because there was no formal assessment of his performance (*id.* at 146). Plaintiff admits he did not know whether the EPC reviewed any documents when making the determination to extend the probation (*id.* at 148).

Thereafter, plaintiff's performance, according to defendants, began to improve. While Nnadi noted that some areas were below the minimum PGY2 level of competence, such as medical knowledge, patient care skills and clinical judgment, plaintiff showed improvement in psychiatric interviewing, progress notes and assessments. The EPC unanimously approved to renew plaintiff's contract for the following academic year, post graduate year 3 (PGY 3).

At around the same time plaintiff was being offered a spot in the residency PGY 3, plaintiff was to make a case presentation to Sharif. Plaintiff requested and was granted more time to prepare. Despite the extension, plaintiff presented the case of the wrong patient, and failed to consult with any of the attending psychiatrists who managed the patient that was to be under plaintiff's care. Moreover, plaintiff did not follow the EPC's recommendation about seeking guidance for others in the department. Defendants found the presentation "grossly deficient."

Plaintiff was warned that he could face suspension, however, he was not suspended, but given his poor performance, he was assigned to the hospital library for two weeks to complete a research project and refresh his knowledge of certain basic psychiatric concepts. Plaintiff claims

that Nnadi threatened to suspend him, but that Human Resources would not approve the suspension. Once the assignment was completed, plaintiff went back to working in his unit.

In April 2013, plaintiff's remediation concluded. Plaintiff confirms that after April 2013, i.e., during PGY 3, he did not feel as though he had been treated discriminatorily. Plaintiff was extended a spot for the PGY 3, which began on July 1, 2013.

Plaintiff's Acceptance of a Texas Fellowship Following PGY 3 (July 2014)

In October 2013, plaintiff applied to Woodhull hospital, but ultimately decided to go to Texas because he "liked that program better. [He] felt more of . . . a connection with the staff there ... closer to go home to [his] parents" (plaintiff 5/8/15 tr at 79-80). San Antonio was, admittedly, plaintiff's first choice (*id.* at 80). In July 2014, after advancing through PGY 3, plaintiff transferred to a two-year fellowship program in Texas, where plaintiff is originally from.

Plaintiff's Testimony Regarding the Atmosphere of Discrimination and Hostile Work Environment

Plaintiff's testimony is replete with a number of inconsistencies. For example, plaintiff testifies that there were at least 13 people, many of whom are white, Asian and/or Nigerian, who resigned or were forced to resign, some are still employed and others fired, that were subject to harassment and mistreatment because they were black and African-American, including Dr. Knight, Dr. Grace, Dr. Madeuke, Dr. Prosper, Dr. Taylor, Dr. Carol Roberts, Yvonne McDowell, Dennis Donovan, Simone Watts, Mamie White, Mr. Robinson, Dr. Victoria Chema, Dr. Annie Agerin, Dr. James Abinishe, a woman by the name of "Julie", Ann Calendar, Dr. Chenadue, Dr. Acareli (*id.* at 55-67). However, plaintiff later testifies that they were not mistreated but rather, are all witnesses to him being treated unfairly. Moreover, he could not recall any instances of

what they specifically witnessed (*id.* at 82-88).

Plaintiff testified that Dr. Nahar is an example of South Asians being treated more favorably. Specifically, he testified that Nahar was observed verbally attacking patients and residents and that many complaints were raised against her, and yet she still works there (*id.* at 58-59). Plaintiff admitted Nahar received some disciplinary action and resigned from that position, and took a part-time position in the psychiatry department at the Hospital (*id.* at 65-66). Plaintiff also testified that Dr. Acareli, a black Nigerian and the current program director of the resident's program, had also been harassed by Sharif (*id.* at 67-68).

Plaintiff also testified that he was subject to yelling and berating from both Drs. Khurana, an attending doctor in the psychiatric emergency department and Nahar (*id.* at 72, 78). However, though plaintiff testified that Khurana called plaintiff incompetent and said she did not want to work with him, plaintiff could not recall the specifics of what was said by Nahar; nor could he recall and specifics concerning any mistreatment towards other employees or residents at the Hospital (*id.* at 72-23, 78, 82).

Discussion

In order to grant summary judgment, there must be no material or triable issues of fact presented. It is well established that "'[t]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact'" (*Wolff v New York City Tr. Auth.*, 21 AD3d 956, 956 [2d Dept 2005], quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The party opposing the motion must then come forward with sufficient evidence to create an issue of fact for the consideration of the jury (*Pinto v Pinto*, 308 AD2d 571, 572 [2d

Dept 2003]).

Under both the New York State Human Rights Law (NYSHRL) and the New York City Human Rights Law (NYCHRL), it is an unlawful discriminatory practice for an employer, because of an individual's race, to refuse to hire or discharge such individual, or to otherwise discriminate against such individual in the terms, conditions and privileges of employment (Executive Law § 296 [1] [a]; Administrative Code of the City of New York [Administrative Code] § 8–107 [1] [a]). "On a claim of discrimination, plaintiff has the initial burden to prove by a preponderance of the evidence a prima facie case of discrimination" (*Ferrante v American Lung Assn.*, 90 NY2d 623, 629 [1997], citing *Texas Dept. of Community Affairs v Burdine*, 450 US 248, 252–253 [1981]; *McDonnell Douglas Corp. v Green*, 411 US 792, 802 [1973]).

To support a prima facie case of discrimination under both the NYSHRL and NYCHRL, plaintiff must demonstrate: (1) that he/she is a member of the class protected by the statute; (2) that he/she was qualified for the position; (3) that he/she suffered an adverse employment action; and (4) that the circumstances that occurred give rise to an inference of [gender] discrimination (*Ferrante*, 90 NY2d at 629 [citation omitted]; *Melman v Montefiore Med. Ctr.*, 98 AD3d 107, 112 [1st Dept 2012]; *Bennett v Health Mgt. Sys., Inc.*, 92 AD3d 29 [1st Dept 2011]). Once a plaintiff meets his or her initial burden, the burden shifts to the defendant to demonstrate that the action(s) taken against the plaintiff were for legitimate, nondiscriminatory reasons (*Melman*, 98 AD3d at 113-114). The plaintiff must then bear the burden "to prove that the legitimate reasons proffered by defendant were merely a pretext for discrimination" (*Ferrante,* 90 NY2d at 629-630; *Godbolt v Verizon New York*, 115 AD3d 493, 494 [1st Dept 2014]; *Melman*, 98 AD3d at 114; *see also Casablanca v New York Times Co.*, 47 Misc 3d 1215[A] at *7, 2015 NY Slip Op

50629[U] [Sup Ct, NY County 2015]).

Under the NYCHRL's more liberal standard, once a defendant has offered its nondiscriminatory reasons, the court should "proceed to see whether 'no jury could find defendant liable under any of the evidentiary routes - *McDonnell Douglas* [burden shifting], mixed motive, direct evidence, or some combination thereof" (*Casablanca,* 47 Misc 3d 1215[A], *9, quoting *Bennett*, 92 AD3d at 45; *Fruchtman v City of New York*, 2014 NY Slip Op 30703[U] [Sup Ct, NY County 2014], *affd* 129 AD3d 500 [1st Dept 2015]). The court must evaluate the claims with regard for the NYCHRL's "uniquely broad and remedial purposes'" (*Williams v New York City Housing Auth.*, 61 AD3d 62, 66 [1st Dept 2009]). To establish a discrimination claim under the NYCHRL plaintiff has to prove by a "preponderance of the evidence that [he/]she has been treated less well than other employees because of [his/]her [protected status]" (*id.* at 78).

With respect to plaintiff's prima facie case, there is no dispute that, as an African-American, he is a member of a protected class, and that he was qualified for employment. Defendants contend, however, that plaintiff has not established a prima facie case as plaintiff fails to demonstrate any adverse action that was taken against him giving rise to an inference of discrimination.

To establish an adverse employment action, there must be a "materially adverse change in the terms and conditions of employment," such as a termination, demotion, decrease in salary or loss of title (*Messinger v Girl Scouts of U.S.A.*, 16 AD3d 314, 314-315 [1st Dept 2005] [citation omitted]; *Weeks v New York State*, 273 F3d 76, 85 [2d Cir 2001]). Here, plaintiff alleges that he was subject to "microscopic scrutiny" and placed on a performance improvement plan. However, such actions do not constitute adverse employment actions (*Forrest v Jewish Guild for*

the Blind, 3 NY3d 295, 307 [2004] ["shouting" and "being yelled at" "do not rise to the level of adverse employment actions"]; *Chin v New York City Hous. Auth.*, 106 AD3d 443, 444 [1st Dept 2013] [being "yelled at, subjected to excessive scrutiny" is neither "an adverse employment action [] under the [NYSHRL]" or a disadvantage to plaintiff under the NYCHRL]; *Silvis v City of New York*, 95 AD3d 665, 665 [1st Dept 2012] [plaintiff's being subject "to a relentless stream of reprimands is not sufficient to establish a prima case of discrimination" where she received a satisfactory end-of-year performance rating, and none of the reprimands resulted in any reduction in pay or privileges"]; *Rodas v Estee Lauder Cos., Inc.*, 2010 NY Slip Op 33199[U] [Sup Ct, NY County 2010] ["being unfairly micro-managed" is not actionable and amounts to a "mere inconvenience or annoyance" and not demonstrative of an adverse employment action]).

While plaintiff claims that he was the only African-American resident, and that Nigerians and Asians were treated more favorably, plaintiff has not established an adverse employment action that occurred because of his race and/or national origin. Plaintiff, while placed on a remediation plan, was ultimately promoted to the next post graduate year. Plaintiff after completing PGY 3, with no incidents of discrimination, transferred because he "liked the program better" and would be living closer to his parents (plaintiff 5/8/15 tr at 79-80).

Moreover, the same individuals who plaintiff claims discriminated against him by micro managing him and putting him on probation, were the same actors who hired and/or promoted him to the next post graduate year, which belies an inference of discrimination (*Dickerson v Health Mgt. Corp. of Am.*, 21 AD3d 326, 329 [1st Dept 2005]). Plaintiff was not the only resident put on a remediation plan, several of plaintiff's class mates, who were either Asian or African born were also placed on remediation plans (Nnadi tr at 66-69). There is documentation

that plaintiff, a resident, needed to improve and defendants were trying to provide the means for him to do so. Ultimately, plaintiff's performance improved and he was promoted in spite of, and perhaps as a result of, being placed on an improvement plan.

Likewise, plaintiff points to no comments from any supervisor or coworker concerning his race or national origin. Rather, he claims that Nnadi called him "lazy", between three and five times, and a "trickster", which he claims are historical stereotypes used against African-Americans. In addition, plaintiff claims that on one occasion Nnadi stated to plaintiff "you are trying to show off your little skills" (plaintiff aff, ¶ 19). However, "[s]tray remarks such as [this], even if made by a decision maker, do not, without more, constitute evidence of discrimination" (*Godbalt*, 115 AD3d at 494, quoting *Melman*, 98 AD3d at 125).

In opposition, plaintiff fails to address any of the facts with respect to his race and/or national origin discrimination claims. Rather, he relies on four recent affidavits, including his own, all of which are sworn to on September 20, 2017, more than three years after plaintiff left the residency program and two years after plaintiff was deposed. Such self-serving affidavits are insufficient to defeat defendants' summary judgment motion as they contradict plaintiff's deposition testimony and appear to be tailored to avoid the consequences of that testimony (*Garcia v Good Home Realty, Inc.*, 67 AD3d 424, 425 [1st Dept 2009]; *Hartman v Mountain Val. Brew Pub*, 301 AD2d 570, 570-571 [2d Dept 2003]).

Even if the court was to find that plaintiff established a prima facie case of discrimination, defendants offer a legitimate, nondiscriminatory business reason for placing plaintiff on a remediation plan. Plaintiff, a resident, admittedly made a number of errors in his performance, including failure to perform duties as instructed, poor communication, and

noncompliant absences, as well as defendants' documented deficiencies, including insubordination and lack of medical knowledge and defendants were working with plaintiff to improve in those areas so that he could be promoted to the next post graduate year, which he did. Plaintiff fails to rebut any of defendants' reasons as pretextual but simply relies on speculation, supposition and conclusory allegations that the actions were taken because he is African-American (*Uwoghiren v City of New York*, 148 AD3d 457 [1st Dept 2017]; *Chin*, 106 AD3d at 444; *Hartman*, 301 AD2d at 571 [speculative and conclusory assertions are insufficient to defeat summary judgment]).

As plaintiff fails to meet his burden, the court grants defendants' motion for summary judgment dismissal of the NYSHRL and NYCHRL claims of race and national origin discrimination.

Hostile Work Environment

> "Until recently, New York State courts routinely analyzed this element of the hostile workplace environment claims in the same manner, whether brought under the [NYSHRL] or the [NYCHRL]. Courts subjected both types of claims to the 'severe and pervasive' standard. Under this standard, courts were required to dismiss hostile work environment claims brought under the State and City Human Rights Laws where the environment was not objectively hostile because the behavior complained of amounted to no more than 'mild' or 'isolated' incidents that could not be said to permeate the workplace"

(*Hernandez v Kaisman*, 103 AD3d 106, 112-113 [1st Dept 2012]). However, in *Williams v New York City Hous. Auth.* (61 AD3d 62 [1st Dept 2009]), the First Department concluded that the standard no longer applied to the NYCHRL. Ultimately, the *Williams* court held that in order to find liability under NYCHRL,

> "the primary issue for a trier of fact in harassment cases, as in other terms

> and conditions cases, is whether the plaintiff has proven by a preponderance of the evidence that she has been treated less well than other employees because of her gender. At the summary judgment stage, judgment should normally be denied to a defendant if there exist triable issues of fact as to whether such conduct occurred"

(*id.* at 78).

Therefore, this court will analyze the NYSHRL and NYCHRL hostile work environment claims separately.

NYSHRL

Under the NYSHRL,

> "[i]n order to make out a prima facie case, a plaintiff must prove (1) that she is a member of a protected class; (2) that the conduct or words upon which her claim of sexual harassment is predicated were unwelcome; (3) that the conduct or words were prompted simply because of her gender; (4) that the conduct or words created a hostile work environment which affected a term, condition or privilege of her employment; and (5) that the defendant is liable for such conduct"

(*McIntyre v Manhattan Ford, Lincoln-Mercury*, 175 Misc 2d 795, 802 [Sup Ct, NY County 1997]). Hostile work environment claims brought under the NYSHRL are governed by the same standards of the federal law under Title VII (*Lenart v Coach Inc.*, 131 F Supp 3d 61, 66 [SD NY 2015]). "[I]solated remarks or occasional episodes of harassment will not support a finding of a hostile or abusive work environment" (*Ferrer v New York State Div. of Human Rights*, 82 AD3d 431, 431 [1st Dept 2011] [internal quotation marks and citation omitted]). A 'hostile work environment' exists when, as judged by a reasonable person, [the workplace] 'is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the plaintiff's employment" (*McIntyre*, 175 Misc 2d at 802 [internal quotation marks and citation omitted]). "In determining whether a plaintiff was subject to a hostile work

environment", a court will look to the totality of the circumstances, considering "the frequency of the discriminatory conduct, its severity, whether it was physically threatening or a mere offensive utterance and whether it unreasonably interfered with the plaintiff's work performance" (*id.* at 803).

As discussed in detail above, plaintiff has not established that he suffered an adverse employment action (*see Forrest*, 3 NY3d at 307; *Chin*, 106 AD3d at 444; *Silvis*, 95 AD3d at 665). Likewise, plaintiff has not demonstrated an environment at that is sufficiently severe or pervasive to constitute a hostile work environment under the NYSHRL (*see e.g.*, *Donahue v Asia TV USA Ltd.*, 208 F Supp 3d 505, 516 [SDNY 2016] [comments that Americans were lazy and litigious was not severe and pervasive enough to sustain a claim under NYSHRL]).

Here, the alleged actions of the defendants, consisting entirely of occasional offensive comments, do not rise to the level of creating a hostile work environment under the NYSHRL's severe and pervasive standard. Additionally, there is no evidence that any of the alleged belittling and yelling that occurred during the first two years of his residency was racially motivated (*Marshall v New York City Bd. of Elections,* 322 Fed Appx 17, 18-19 [2d Cir 2009] [allegations that the plaintiff's supervisor "displayed a violent temper, stood over her with clenched fists on several occasions, disparaged her educational background, and engaged in crass behavior" while troubling did not support a claim for hostile work environment as discrimination laws are "not a general civility code for the . . . workplace; it prohibits only harassment that is disciminatory"]; *Edwards v New York State Unified Court Sys.*, 2012 WL 6101984 [SD NY Nov. 20, 2012, No. 12 Civ. 46 (WHP)] [dismissing hostile work environment claim because plaintiff's allegations that her supervisors told her to work all day, yelled at her, and closely monitored her

does not describe contact sufficiently severe or pervasive to state a claim]). Therefore, this branch of the motion is granted as a matter of law.

NYCHRL

The NYCHRL hostile work environment claim, however, "does not require either materially adverse employment actions or severe or pervasive conduct" (*Mihalik v Credit Agricole Cheuvreux N. Am., Inc.*, 715 F 3d 102, 114 [2d Cir 2013]). Rather, it requires a showing that "the alleged discriminatory conduct in question does not represent a 'borderline' situation" but exceeds "what a reasonable victim of discrimination would consider 'petty slights and trivial inconveniences'" (*Williams*, 61 AD3d at 80). Whether statements may have been isolated is irrelevant in analyzing the claim under the NYCHRL, as a single comment may be actionable under the statute (*Hernandez*, 103 AD3d at 115; *Williams*, 61 AD3d at 84, n 30).

Here, however, plaintiff provides little detail concerning the specific treatment he received except to say that Nnadi constantly yelled at him and referred to plaintiff as lazy on three to five occasions over the course of three years, and called him a trickster on one occasion. In *Donahue v Asia TV USA Ltd.* (208 F Supp 3d 505), the Southern District of New York, in interpreting the NYCHRL found that the plaintiff's national origin claim survived as defendant told plaintiff that Americans were lazy and suggested retirement (*see also Gonzalez v EVG, Inc.*, 123 AD3d 486, 487-488 [1st Dept 2014] [constant use of language degrading women, telling of sexually explicit jokes, and overt viewing of pornography in the workplace can be characterized as being subject to differential treatment sufficient to sustain NYCHRL hostile work environment claim]; *Okeke v New York & Presbyterian Hosp.*, 275 F Supp 3d 470, 486 [SD NY 2017] [regularly calling the plaintiffs "too old" "incompetent" "slow" and "lazy" found "more

than sufficient to sustain jury's verdict on NYCHRL claim]).

However, even if the court were to find as stated above, there is no evidence that defendants' behavior was motivated because of his protected status (*see Inman v City of New York*, 2011 WL 4344015, *7 [SDNY Sept. 13, 2011] [though defendant called employees lazy and "loads of shit", there was no evidence that the behavior was racially motivated]).

Here, plaintiff fails to raise a triable issue as to whether racial or national origin discrimination can be inferred from defendants' actions, therefore, the branch of the summary judgment motion seeking dismissal of plaintiff's hostile work environment claims under the NYCHRL is granted (*see e.g., Lambert v Macy's E., Inc.*, 34 Misc 3d 1228[A], *11-12 [Sup Ct, Kings County 2010], *affd* 84 AD3d 744 [2d Dept 2011]).

Conclusion

Accordingly, it is ORDERED that the motion for summary judgment by defendants New York City Health and Hospitals Corporation, Dr. Zafar Sharif and Dr. Charles Nnadi is granted and the complaint is dismissed.

Dated: May 11, 2018

ENTER: _____

A.J.S.C.

HON. ALEXANDER M. TISCH