

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

SELINA ROBERTS,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
UNIVERSITY OF PENNSYLVANIA,	:	
et al.,	:	
Defendants	:	NO. 00-3377

M E M O R A N D U M

Newcomer, S.J.

March , 2001

Defendants, the Pennsylvania Human Relations Commission (the "PHRC") and Homer Floyd, have filed a Motion to Dismiss. That Motion is currently pending before the Court.

I. BACKGROUND

Selina Roberts ("Roberts") is the plaintiff in this matter, and she has filed her Complaint pro se. Roberts names the following defendants in her Complaint, defendants the Court has classified into three groups: 1) The University of Pennsylvania defendants: a) the Trustees of the University of Pennsylvania; b) Shelley Green, former General Counsel to the University of Pennsylvania; c) Neal Hamburg, former Associate General Counsel to the University of Pennsylvania; and d) Walter Wales, former Deputy Provost to the University of Pennsylvania; e) Claire Fagan, former Interim President to the University of Pennsylvania; 2) the PHRC defendants: a) the PHRC; and b) Homer Floyd, the Executive Director of the PHRC; and 3) the Equal

Employment Opportunity Commission (the "EEOC") defendants: a) the EEOC; b) Charles Brown, Coordinator for State and Local Programs of the EEOC; and c) Marie M. Tomasso, the Local Director of the EEOC.

Plaintiff alleges that the University of Pennsylvania terminated her employment and discriminated against her in violation of Title VII, and is liable to her for defamation. Additionally, plaintiff alleges that the PHRC defendants and the EEOC defendants are liable to plaintiff under Title VII and 42 U.S.C. § 1983 because those defendants failed or refused to fully and fairly investigate her claims of employment discrimination.

Plaintiff alleges the following facts which this Court must accept as true for the purposes of today's decision. The University of Pennsylvania employed plaintiff as the Assistant Director of its Afro-American Studies Program from October 1991 until January 1994, when the University of Pennsylvania terminated her employment. When terminated, plaintiff was a doctoral student in Temple University's political science department.

While plaintiff was employed at the University of Pennsylvania, Dr. John Roberts, Director of the Afro-American Studies Program sexually harassed plaintiff using sexual language. Additionally, when plaintiff spoke to Mr. Roberts about her potential resignation from her position, Mr. Roberts

stated that he would not give her a good reference if she resigned, and when plaintiff requested he provide annual evaluations, he refused. When plaintiff reminded Dr. Roberts about her idea for an evaluation, Dr. Roberts allegedly struck plaintiff with a door.¹ When Dr. Roberts refused to provide an evaluation a third time, plaintiff filed a formal grievance with the Office of Staff Relations.

Thereafter, plaintiff complained to William Holland, the Vice President of Human Resources, but Holland allegedly told plaintiff that she should not "air dirty laundry", because such conduct could damage the University's African-American community and Dr. Roberts. Plaintiff then complained to defendant Walter Wales, Holland's supervisor, who did not take any action on plaintiff's behalf. Instead, the University of Pennsylvania terminated her employment, and the following day, Dr. Roberts allegedly assaulted plaintiff by choking her and holding her off the ground by her neck.

Then, plaintiff filed a formal grievance with the University, and the grievance panel recommended that plaintiff be transferred to another department. Upon receipt of the grievance panel's decision, plaintiff appealed to defendant Claire Feagan,

¹With respect to each of the preceding allegations, and most of the specific allegations plaintiff makes in her Complaint, plaintiff fails to provide even approximate dates for their occurrence. Thus, the Court cannot provide those dates in its decision today.

the interim President of the University of Pennsylvania at that time, who stated she was in agreement with the panel's decision. Plaintiff contends that the University of Pennsylvania defendants, and Allen Green who is not named as a defendant, and whose position is unknown to the Court, conspired to terminate plaintiff in violation of her rights, and that contrary to defendants' likely claim, she did not perform her work poorly, as she received "good" performance reviews in 1991 and 1992.

Sometime after she pursued her claim through the University of Pennsylvania's internal grievance procedure, plaintiff filed a claim with the PHRC. In April 1998, the PHRC made an initial finding of no discrimination in plaintiff's case. Then, on June 29, 1998, plaintiff received a letter from the PHRC indicating that the PHRC had closed the case, and informing plaintiff of her rights. Accordingly, plaintiff submitted a timely request for a hearing, but on February 25, 1999, plaintiff received a letter from the PHRC denying that request. Plaintiff alleges that the PHRC failed to investigate all of the defendants that plaintiff named. Accordingly, the plaintiff alleges that the PHRC refused or failed to conduct a complete, fair and full investigation of her rights.

Sometime during or before plaintiff filed her Complaint with the PHRC, plaintiff also filed her case with the EEOC. However, on September 12, 1994, the EEOC indicated that the PHRC

would first investigate her Complaint, and that the EEOC would review the PHRC's decision if plaintiff sought the EEOC's review. After the PHRC closed plaintiff's case, the EEOC sent plaintiff a letter on April 19, 1999 indicating that the EEOC would review the PHRC's decision. Then, on June 29, 2000, plaintiff received a letter from the EEOC explaining that the EEOC had adopted the findings of the PHRC. Plaintiff alleges that like the PHRC, the EEOC failed or refused to conduct a full, fair, and complete investigation of plaintiff case.

Finally, plaintiff alleges that the University of Pennsylvania defendants are liable to plaintiff for defamation because they communicated false and defamatory information to members of the Graduate Department of Political Science at Temple University where plaintiff was student.

In light of the above facts, the Court now turns to the PHRC defendants' Motion to Dismiss.

II. DISCUSSION

A. Legal Standard

On a motion to dismiss, the district court must read a pro se plaintiff's allegations liberally and apply a less stringent standard to the pleadings of a pro se plaintiff than to a complaint drafted by counsel. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Gibbs v. Roman, 116 F.3d 83, 86 n. 6 (3rd Cir. 1997).

When evaluating a Motion to Dismiss pursuant to Federal

Rule of Civil Procedure 12(b)(6), the Court must accept each allegation in a well pleaded complaint as true. See Albright v. Oliver, 510 U.S. 266, 268 (1994). Additionally, a Motion to Dismiss should only be granted if the Court finds that no proven set of facts would entitle the plaintiff to recovery under the filed pleadings. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

B. PHRC Defendants' Motion

The PHRC defendants first argue that plaintiff claims that they are liable to plaintiff under Title VII, and that plaintiff's Title VII claim against them should be dismissed because the PHRC defendants were never plaintiff's employer. Title VII provides, in relevant part, that "[i]t shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). While it is unclear whether plaintiff does make a Title VII claim against the PHRC defendants, to the extent she does, the PHRC was not plaintiff's employer. Consequently, the Court will dismiss plaintiff's Title VII claim against those defendants.

The PHRC defendants then contend that plaintiff's

section 1983 claim against them should be dismissed because they are immune from such suits under the Eleventh Amendment.² The Amendment has long been interpreted to prohibit suits in federal court against a state by the defendant state's own citizens. See Hans v. Louisiana, 134 U.S. 1, 18 (1890). Today, Eleventh Amendment immunity extends to entities that are arms of the state. See Laskaris v. Thornburgh, 661 F.2d 23, 25 (3rd Cir. 1981) (holding that the Eleventh Amendment covers "department or agencies of the state having no existence apart from the state"). The PHRC is, without question, a Pennsylvania state agency and thus eligible for Eleventh Amendment Immunity. See 43 PA. CONS. STAT. § 957 (West 2001).

A state may lose its Eleventh Amendment immunity only if Congress explicitly abrogates it in a particular statute, or a state can waive it with regard to a particular statute. See Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 238 (1985). The Supreme Court has held that § 1983 was not intended to abrogate a State's Eleventh Amendment immunity. See Kentucky v. Graham, 473 U.S. 159, 169 n. 17 (1985) (citing Quern v. Jordan, 440 U.S. 332 (1979) and Edelman v. Jordan, 415 U.S. 651 (1974)). Here, Congress has not abrogated Pennsylvania's immunity, and

²The Eleventh Amendment provides, "The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any foreign state."

Pennsylvania has not waived it, see 1 Pa. Cons. Stat. § 2310 (West 2001). Thus, the PHRA is immune from plaintiff's suit.

In addition, the Eleventh Amendment immunizes state officials acting in their official capacities from § 1983 claims for damages. See Graham, 473 U.S. at 169. However, the Eleventh Amendment does not bar suits against state officials sued in their individual capacities. See Hafer v. Melo, 502 U.S. 21, 28 (1991). It is unclear whether plaintiff sues Homer Floyd in his official or individual capacity. Given plaintiff's pro se status, and the severe allegations she raises, this Court will not assume that plaintiff only sues Homer Floyd in his official capacity. Thus, to the extent plaintiff sues Homer Floyd in his official capacity, Floyd is immune from suit. On the other hand, to the extent she sues Floyd in his individual capacity, Floyd is not immune.

Finally, the PHRC defendants argue that plaintiff's claim against Homer Floyd should be dismissed because plaintiff has failed to allege, and cannot allege, that Floyd was personally involved in the denial of her constitutional rights. The Court cannot rule on this argument at such an early stage of the litigation, especially in light of plaintiff's pro se status. However, should it become clearer that Floyd had no involvement in the denial of plaintiff's constitutional rights, he remains free to raise the issue again.

Accordingly, and for the foregoing reasons, defendants' Complaint shall be dismissed, in part, against the PHRC defendants.

An Order will follow.

Clarence C. Newcomer, S.J.