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

RICHARD PAWLAK	:	
	:	CIVIL ACTION
v	:	
	:	
SEVEN SEVENTEEN HB	:	NO. 99-CV-5390
PHILADELPHIA CORP. NO. 2	:	
t/a ADAM'S MARK HOTEL, ET AL.	:	

SURRICK, J. **MARCH 24, 2005**

MEMORANDUM & ORDER

Presently before the Court is Defendants Seven Seventeen HB Philadelphia Corp. No. 2 and HBE Corporation's Motion for Summary Judgment (Doc. No. 70, 99-CV-4541).[1] For the following reasons, Defendants' Motion will be granted.

I. BACKGROUND

A. Summary of Facts

In August, 1992, Plaintiff was hired as the Director of Advertising and Promotions at the Philadelphia Adam's Mark Hotel ("Hotel"), which is owned by Defendants. (Pawlak Dep. at 6.) Plaintiff was responsible for advertising and publicizing the different components of the Hotel, such as its restaurants, Quincy's Night Club ("Quincy's"), Players' Sports Bar, sales, and catering. (*Id.* at 10, 26-28.) Plaintiff understood that the goal of his advertising and promotional activity was to "increase or maintain revenue" for every segment of the Hotel. (*Id.* at 56.)

[1] Defendants' Motion for Summary Judgment and Reply were filed under a different docket number, No. 99-CV-4541, pursuant to an order issued by the Honorable Edmund V. Ludwig, consolidating this case with *Stephen v. Seven Seventeen HB Philadelphia Corp. No. 2*, Civ. A. No. 99-4541 (E.D. Pa. filed Sept. 10, 1999). (Doc. No. 22.) After the case was reassigned to this judge, we vacated the consolidation. (Doc. No. 28.)

One of Plaintiff's responsibilities was to advertise and promote Quincy's to increase its business during the "slower" nights of the week, including Monday evenings. (*Id.* at 78-79.) Beginning in January, 1994, Plaintiff developed and promoted a weekly event at Quincy's called "Motown Monday." (*Id.* at 95.) This weekly event, which featured local disc jockey ("DJ") Joe Callari playing "Motown[,] Philly classics[,] classic R&B[,] and old school hip-hop" music, attracted a predominantly African-American clientele. (*Id.* at 93; Callari Dep. at 6-8, 66, 94.) By all accounts, "Motown Mondays" was a successful event. Plaintiff testified that it averaged approximately $6000 in gross revenue per night. (Pawlak Dep. at 93.) This was a dramatic increase from previous Monday promotions. (Callari Dep. at 8; Pawlak Dep. at 93, 95-96; Freyne Dep. at 32.) Based on this experience, Adam's Mark hotels in other cities, including Kansas City, Charlotte, Saint Louis, and Indianapolis, implemented similar promotional events. (Pawlak Dep. at 96-97.)

On March 14, 1995, Plaintiff was called into the office of Chris Steinfals, the Hotel's general manager, and Steinfals informed Plaintiff that the Hotel's owner, Fred Kummer, had visited an Adam's Mark Hotel in Indianapolis the previous evening.[2] (*Id.* at 98-100.) Steinfals said that Kummer was "very angry and upset" to see a large crowd of African-Americans at the Indianapolis hotel's Motown Monday event, and that Kummer had called that morning to demand the immediate cancellation of "Motown Mondays" in all of the Adam's Mark hotels. (*Id.* at 98-101, 105-07.)

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[2] Plaintiff also testified that Jim Gough, the Hotel's food and beverage director, was in attendance at the meeting. (Pawlak Dep. at 100-01.) Neither party submitted an affidavit or deposition testimony from Gough regarding the alleged March 14, 1995, conversation between Steinfals and Plaintiff.

Other testimony contradicts Plaintiff's account of the circumstances surrounding the termination of Motown Monday. Steinfals denied having any conversation with Kummer regarding Motown Monday. (Steinfals Dep. at 5-7.) Steinfals recalled that it was his decision to terminate Motown Monday and move the event to Sunday night. (*Id.* at 5.) Kummer asserts that he had no involvement in the cancellation of Motown Mondays at the Hotel, and that he did not recall having any conversations with any Philadelphia employee regarding changing the music or programming format at Quincy's. (Kummer Dep. at 10, 12-14.) Kummer also did not believe that he visited the Indianapolis Adam's Mark in March, 1995, when a Motown Monday event was taking place.[3] (*Id.* at 10.) Moreover, Kevin Gallagher, the Executive Assistant Manager at the Indianapolis Adam's Mark in 1995, confirmed that Kummer never visited the Indianapolis hotel during Gallagher's tenure. (Gallagher Dep. at 11.) Finally, Jimmy England, a bartender at the Indianapolis Adam's Mark from 1985 to 1998, remembered that the only discussion of Motown Monday involving Kummer that he witnessed occurred in 1998, not 1995. (England Dep. at 5-8, 16-18.) England overheard a conversation between Kummer, Anton Piringer (another executive at HBE Corporation), and the Indianapolis hotel's food and beverage manager

[3] Defendants also submitted the affidavit of Shelva Ludwig, Kummer's Executive Administrative Assistant, in support of Kummer's statement that he did not recall visiting the Indianapolis Adam's Mark during a Motown Monday event. Ludwig refers to the itinerary that she prepared for Kummer, which states that on the morning of March 13, 1995, Kummer was scheduled to fly on HBE Corporation's private plane from St. Louis, Missouri, departing at 6:20 am, and arrive in Gary, Indiana, at 7:15 am. (Ludwig Aff. Ex. A.) The flight log prepared by the plane corresponds with the itinerary. (*Id.* Ex. D.) Ludwig states that after arriving in Gary, Kummer took a private car to an 8:00 am meeting in Highland, Indiana. (Ludwig Aff. ¶ 2.) According to Ludwig, Indianapolis, Indiana is an approximately three-hour drive from Highland, and it would have been Kummer's normal practice to fly that distance in the corporate plane rather than travel by car. (*Id.*) The itinerary prepared by Ludwig indicates that Kummer returned later that day in the corporate plane, but does not indicate a time of departure from Gary or arrival in St. Louis. (*Id.* Ex. A.)

regarding the clientele at Motown Mondays in Indianapolis. (*Id.* at 5-7.) Shortly after this 1998 conversation, the Motown Monday event in Indianapolis was cancelled.[4] (*Id.* at 7-8, 17-18.)

On March 14, 1995, Plaintiff wrote a memorandum to Steinfals (with carbon copies sent to Gough and Patrick Freyne, the Hotel's controller), urging them not to cancel Motown Mondays. (Pawlak Dep. at 108-09; Doc. No. 70, 99-CV-4541, Ex. E.) The memorandum stated as follows:

> By any criterion or method of measurement, the alteration or suspension of the Monday night promotion at Quincy's/Philadelphia namely the 14-month-old "MOTOWN MONDAY", would have disasterous [sic] consequences.
>
> In revenue alone, "Motown Monday" generates an average of $6000 in beverage and cover charge every Monday evening, and is rarely, if ever, affected by inclement weather or holiday weekends. This average revenue figure has been steadily on the increase since the promotion's inception. On February 20 (Presidents' Day), revenue was nearly $8000.
>
> In demographics, "Motown Monday" attracts an affluent, professional audience of African-American and Caucasian patrons, who use the evening as an opportunity to both "network" and socialize. No other promotion in the nightclub has developed such an attractive demographic of 35+ year old professional adults.
>
> From a programming perspective, no other night at Quincy's/Philadelphia, with the exception of our Thursday night "Memories Reunion" with Jerry Blavat, offers music with such universal appeal; in fact the musical programming for either night is virtually identical to the other. This type of musical programming has proven attractive enough to motivate us to offer it on Fridays as well, in order to attract this desirable 35+ year old adult professional audience.
>
> From a competitive standpoint, "Motown Monday" is a unique phenomenon: a combination of targeted marketing, an incredibly popular DJ, and an unusually loyal audience. In the fickle culture of Philadelphia nightlife, where nightclub habitués blindly follow the guiding influence of "the latest thing", we have done the impossible: we have cornered the market, with an audience that

[4] England remembered that the conversation involving Kummer occurred in 1998 because his relationship with the Indianapolis hotel terminated shortly afterwards. (England Dep. at 17-18.)

> would have left us long ago, had we offered more mundane entertainment. And we have cultivated this audience, expanded its scope ethnically, and grown it impressively. We have established Quincy's/Philadelphia as an innovator, rather than as a follower, and have offered a broad range of weekly entertainment options.
>
> The alteration or suspension of "Motown Monday" would prove to be a public relations disaster, from a political, cultural, ethnic, financial and competitive standpoint. "Motown Monday" is a successful promotion worth preserving, a cultural event worthy of cultivation within a highly desireable [sic] adult demographic, and a financially successful phenomenon that has not yet reached its full potential.

(Doc. No. 70, 99-CV-4541, Ex. E.)

Plaintiff wrote this memorandum after attending the meeting with Steinfals and Gough. (Pawlak Dep. at 108-09). According to Plaintiff, he did not send a copy of the memorandum to Kummer and Piringer because Steinfals had instructed him not to address correspondence to the executives directly. (*Id.* at 109.) Instead, Steinfals assured Plaintiff that Steinfals would forward the memorandum to Kummer. (*Id.*) Steinfals acknowledged receiving Plaintiff's memorandum, but did not recall promising Plaintiff that the memorandum would be forwarded to Kummer. (Steinfals Dep. at 42-43.) Nor did Steinfals have any recollection of actually sending it to Kummer. (*Id.*) Kummer indicated that he never received any memorandum or other communication from Plaintiff with regard to Motown Mondays. (Kummer Dep. at 15-16.)

Later the same week, Steinfals, Gough, and Plaintiff decided to move the Motown event to Sunday nights. (Pawlak Dep. at 112.) The Sunday event was renamed "Philly Sound Sunday" and Plaintiff was instructed "to remove any reference to Philly Sound Sunday or Motown Monday . . . . [f]rom our print advertising." (*Id.* at 114, 123, 155.) However, documents in the record indicate that starting in April, 1995, the Sunday night event was consistently marketed in

Quincy's promotions as "Motown Sunday." *See* Doc. No. 70, 99-CV-4541, Ex. A at AWL01126 ("Coming in April: We're Moving! Motown . . . Monday Becomes Motown . . . Sunday!"); *id.* at AWL01289-AWL01292, AWL01297-AWL01298 (advertising "Motown Sunday" from April 7, 1995, to July 30, 1995); *id.* at AWL01305-AWL01307 (advertising "Motown Sunday" in October 1995). From November 1995 until December 1998, the Sunday event was referred to by a variety names, including "Motown Sundays," "Motown Sounds," "Motown Favorites," and "Philly Sound Sundays," in promotional materials, including advertisements in the *Philadelphia Daily News* and *Philadelphia Weekly*. (Doc. No. 70, 99-CV-4541, Ex. L.) The Sunday night event retained DJ Joe Callari and played the same genre of music as Motown Mondays. (Callari Dep. at 66.) It also continued to consistently advertise Callari in its promotional materials. (Doc. No. 70, 99-CV-4541, Ex. L.)

After writing the memorandum, Plaintiff continued to express his dissatisfaction with the fate of the Motown Monday event. (Pawlak Dep. at 152.) According to Plaintiff, Steinfals reiterated Kummer's desire to "rid the hotel of black patrons in the night club" in response to

> [a]ny occasion in which I angrily mentioned the fact that they were screwing around with our night club and ruining our business. Which I made many—I never let it go. During the entire tenure of Mr. Steinfals' general managership [sic], I never let it go. I was just a thorn in the side, and I just never let it go.

(*Id.* at 152-53.)

Steinfals testified that he never retaliated against Plaintiff in response to his memorandum. (Steinfals Dep. at 43.) In March 1995, Steinfals completed an annual performance review for several employees at the Hotel, including Plaintiff. (*Id.*; Doc. No. 70, 99-CV-4541, Ex. O.) Plaintiff received a positive review. (*Id.*) Steinfals indicated that Plaintiff

was "meeting objectives" and that he would be "rehired today." (*Id.*) In July 1995—ten months before Plaintiff's termination—Steinfals resigned as General Manager, and Gene Anderson replaced him. (Steinfals Dep. at 5; Anderson Dep. at 5.) In October 1995, Plaintiff received what he called a "glowing review" from Anderson and a salary increase. (Pawlak Dep. at 160.) In January 1996, Plaintiff received another reasonably positive performance review from Anderson. (*Id.*; Doc. No. 70, 99-CV-4541, Ex. P.) Anderson noted that all quantifiable objectives, such as increased marketing and exposure for the Hotel's restaurants, bar, and Quincy's, were being met, and that Plaintiff's professional competence was satisfactory or exceptional in all categories of evaluation. (Doc. No. 70, 99-CV-4541, Ex. P.) He also stated that Plaintiff's strongest management attribute was in executing assignments, and noted that "Rich has followed directions and completed all assigned tasks diligently and effectively." (*Id.*) Anderson gave Plaintiff an overall evaluation of "average." (*Id.*)

In January 1996, Piringer hired a consultant called Worldwide Entertainment to assist in event programming at the Hotel. (Pawlak Dep. at 126-27.) In February 1996, Worldwide Entertainment consultant John Ralston eliminated most of the local DJs who had worked at Quincy's, except for Joe Callari, and redesigned the nightclub's programming. (*Id.* at 129.) Ralston's stated goal was to "lighten up the night club." (*Id.*) Plaintiff interpreted this to mean to attract more white customers to Quincy's and to discourage black patrons. (*Id.*) According to Plaintiff, Ralston stopped speaking to him because he refused to agree with Ralston's plans, and because Plaintiff "was pointedly angry at him for firing disc jockeys that we had worked hard to recruit and hire." (*Id.* at 132.)

Plaintiff's employment was terminated on May 6, 1996, nearly fourteen months after

writing the memorandum protesting the cancellation/alteration of Motown Mondays. (*Id.* at 157.) According to Plaintiff, Anderson told Plaintiff that he was being terminated because Anderson was dissatisfied with the direction of the Hotel's advertising promotions. (*Id.* at 158.) Plaintiff received no further explanation from Anderson. (*Id.*) While attending a fiscal performance review meeting with Kummer in St. Louis, Kummer recommended to Anderson that Anderson fire Pawlak based on the Hotel's poor performance in food and beverage revenues.[5] (Anderson Dep. at 8.) Anderson testified that he never saw Plaintiff's March 14, 1995, memorandum to Steinfals, nor did he have any discussions with Pawlak or Kummer regarding the memorandum. (*Id.* at 20, 31-32.) Anderson also testified that Pawlak had never complained to him regarding discrimination towards African-American patrons at Quincy's or the Hotel. (*Id.* at 31-32.) Plaintiff disputes these statements, stating in a declaration attached to his Memorandum in Opposition to Defendants' Motion for Summary Judgment that he

> repeatedly told General Manager Eugene Anderson that what Worldwide Entertainment was doing was blatant racial discrimination, that I refused to be a party to racial discrimination . . . from the day I was told that Worldwide Entertainment was sent by Kummer to 'lighten up the crowd' and get rid of Black customers to the day I was fired[.]

(Doc. No. 26 Ex. A ¶ 3.)

On the day Plaintiff was terminated, Plaintiff telephoned Vincent Alberici, the Hotel's executive chef, and stated that he believed he was fired because of "[d]eclining revenues and that the general manger set him up to get terminated." (Alberici Dep. at 23.) Alberici said that Plaintiff never mentioned that Plaintiff's employment was terminated on account of his race or in

[5] Freyne, who accompanied Anderson on the trip to St. Louis, confirmed that at the meeting, Kummer told Anderson to fire Plaintiff. (Freyne Dep. at 119-20.)

retaliation for protecting black customers. (*Id.* at 24.)

In his deposition, Plaintiff was asked why he filed an unlawful discrimination complaint against the Hotel with the Pennsylvania Human Relations Commission ("PHRC"). (Pawlak Dep. at 200.) Plaintiff gave the following explanation:

> A: I felt I was wrongfully terminated.
>
> Q: And why did you think you were terminated?
>
> A: I was never given a reason.
>
> Q: But you say you thought it was wrongful.
>
> A: To be successful and not have any grounds for termination nor was any given to me on the day I was fired, even after asking, may I ask why I am being fired, no, you may not. Okay, that's wrongful termination, as I understand it.
>
> Q: What is the basis here for the last sentence in your charge [with the Pennsylvania Human Relations Commission]?
>
> A: In conversations with my attorney and in discussing the nature of my job and the things that had happened and the nature of what had happened to the night club in specific, I believed I was made to be a scapegoat for declining revenues in the Quincy's night club. At least to the corporate office.
>
> Q: Changes in the night club during what period of time?
>
> A: From, let's say, the end of '95 through May of '96 . . . .

(*Id.*) Later in the deposition, when asked what the basis of his legal claim against the Hotel was in this action, Plaintiff responded:

> A: Wrongful termination.
>
> Q: Based on what?
>
> A: No reason for my termination, no warning or my termination or any

dissatisfaction with my work and the sense that I was being associated with declining revenues in a night club.

Q: . . . [W]hy do you think that's wrongful or why is that termination based on those reasons wrongful?

A: Because I had nothing to do with the declining revenues of the night club. The responsibility for the night club's success was taken away from my direct involvement and placed in the hands of an outside party who did not successfully change, reprogram, or do anything with the night club that resulted in the positive effect that the corporate office thought they wanted to have.

(*Id.* at 222.)

Plaintiff's replacement was a white male named Mark Guttesman. (Anderson Dep. at 30.)

B. Procedural History

On October 3, 1996, Plaintiff filed a Complaint with the PHRC, alleging that he was terminated abruptly, without warning and without reason. (Doc. No. 70, No. 99-CV-4541, Ex. R at AWL00040.) On May 20, 1998, the PHRC dismissed the complaint, finding that "the facts of the case do not establish that probable cause exists to credit the allegations of unlawful discrimination." (*Id.* Ex. S.)

On October 22, 1999, Plaintiff initiated this action by filing a complaint against Defendants in the Court of Common Pleas of Philadelphia County for alleged violations of the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. Ann. §§ 951-963. (Doc. No. 1 Ex. A.) Count I of the Complaint asserts a claim for unlawful retaliation in violation of 43 Pa. Cons. Stat. Ann. § 955(d). (*Id.* ¶ 25.) Count II asserts a claim for intentional race discrimination in violation of 43 Pa. Cons. Stat. Ann. § 955(a). (*Id.* ¶ 26.) Defendants removed the case to

federal court on October 29, 1999. (Doc. No. 1.) Defendants' Motion seeks summary judgment on both counts of Plaintiff's Complaint.

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see also Big Apple BMW, Inc. v. BMW of N. Am., Inc.*, 974 F.2d 1358, 1362 (3d Cir. 1992). The moving party bears the burden of proving that no genuine issue of material fact is in dispute. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) ("[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] . . . which it believes demonstrate the absence of a genuine issue of material fact." (citing Fed. R. Civ. P. 56(c))). Once the moving party carries this initial burden, the nonmoving party "may not rest upon . . . mere allegations or denials of the adverse party's pleadings," but instead "must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

A genuine issue of material fact exists when a finder of fact could reasonably return a verdict in favor of the non-moving party with respect to that issue. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The non-moving party must raise "more than a mere scintilla of evidence in its favor," and cannot survive by relying on unsupported assertions, conclusory allegations, or mere suspicions. *Williams v. Borough of West Chester*, 891 F.2d 458, 460 (3d Cir. 1989); *see also Anderson*, 477 U.S. at 248 ("Only disputes over facts that might affect the

outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted."). Instead, a genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson*, 477 U.S. at 248. In making this determination, we must view facts and inferences in the light most favorable to the nonmoving party, and we will not resolve factual disputes or make credibility determinations. *Siegel Transfer, Inc. v. Carrier Express, Inc.*, 54 F.3d 1125, 1127 (3d Cir. 1995). If there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law, then we must grant summary judgment. Fed. R. Civ. P. 56(c).

In employment discrimination and retaliation cases arising under the PHRA, courts apply the burden-shifting framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Dici v. Pennsylvania*, 91 F.3d 542, 552 (3d Cir. 1996); *Gomez v. Allegheny Health Servs., Inc.*, 71 F.3d 1079, 1084 (3d Cir. 1995). Under the *McDonnell Douglas* test, the plaintiff bears the initial burden of establishing a prima facie case of discrimination or unlawful retaliation. *McDonnell Douglas Corp.*, 411 U.S. at 802. Once a prima facie case is established, the burden shifts to the employer to articulate a legitimate, non-discriminatory reason for the adverse employment action. *Krouse v. Am. Sterilizer Co.*, 126 F.3d 494, 500 (3d Cir. 1997). If the employer articulates a non-discriminatory reason for the action, the plaintiff has the ultimate burden to establish by a preponderance of the evidence that the defendant's articulated reason is merely a pretext for discrimination. *Id.* at 501. In the absence of direct evidence of discrimination, a plaintiff may rely on circumstantial evidence to demonstrate weaknesses, inconsistencies, implausibilities, or contradictions in the employer's explanation for its action "so

as to permit a reasonable factfinder to infer that the employer did not act for the proffered reasons." *Shaner v. Synthes*, 204 F.3d 494, 503 (3d Cir. 2000) (citing *Fuentes v. Perskie*, 32 F.3d 759, 764-65 (3d Cir. 1994)).

III. DISCUSSION

A. Intentional Race Discrimination

Plaintiff alleges that Defendants engaged in intentional race discrimination, in violation of 43 Pa. Cons. Stat. Ann. § 955(a), by terminating his employment as Director of Advertising and Promotion in the Hotel. (Compl. ¶¶ 6, 21, 25.) Section 955(a) of the PHRA makes it unlawful for an employer to discriminate against any individual with respect to compensation or terms, conditions, or privileges of employment on the basis of race.[6] 43 Pa. Cons. Stat. Ann. § 955(a) (West 1991 & Supp. 2004); *see also* 42 U.S.C. § 2000e-2(a) (2000). To establish a prima facie case of discriminatory discharge under the PHRA, a plaintiff must establish that: (1) he is a member of a protected class; (2) he was qualified for the position; (3) he was discharged; and (4) others not in the protected class were treated more favorably. *Josey v. John R. Hollingsworth Corp.*, 996 F.2d 632, 638 (3d Cir. 1993); *Williams v. Seven Seventeen HB Phila. Corp.*, 51 F. Supp. 2d 637, 641 (E.D. Pa. 1999).

Plaintiff is Caucasian. (Compl. ¶ 1.) Because Plaintiff is white, Defendants suggest that Plaintiff is alleging a case of reverse discrimination. (Doc. No. 70, 99-CV-4541, at 14-15.) Section 955(a) applies to claims of reverse discrimination. *See, e.g., Waters v. Genesis Health*

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[6] Claims of intentional race discrimination under the PHRA are analyzed under the same framework as a Title VII claim, "as Pennsylvania courts have construed the protection of the two acts interchangeably." *Weston v. Pennsylvania*, 251 F.3d 420, 425 n.3 (3d Cir. 2001); *see also Goosby v. Johnson & Johnson Med., Inc.*, 228 F.3d 313, 317 (3d Cir. 2000) (holding that Title VII and PHRA discrimination analyses are identical).

Ventures, Inc., 2004 U.S. Dist. LEXIS 25604, Civ. A. No. 03-CV-2909, at *10-11 (E.D. Pa. Dec. 21, 2004); *Grande v. State Farm Mut. Auto. Ins. Co.*, 83 F. Supp. 2d 559, 562 (E.D. Pa. 2000); *Bailey v. Storlazzi*, 729 A.2d 1206, 1213 (Pa. Super. Ct. 1999); *see also McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 283 (1976) (holding that Title VII is "not limited to discrimination against members of any particular race" and that it prohibits "racial discrimination in private employment against Whites on the same terms as racial discrimination against non-Whites"). In *Iadimarco v. Runyon*, 190 F.3d 151 (3d Cir. 1999), the Third Circuit explained that in a reverse discrimination claim, "all that should be required to establish a prima facie case in the context of 'reverse discrimination' is for the plaintiff to present sufficient evidence to allow a fact finder to conclude that the employer is treating some people less favorably than others based upon a trait that is protected under [the PHRA]." *Id.* at 160. Where there is an absence of direct evidence of discrimination, "a plaintiff who brings a 'reverse discrimination' suit . . . should be able to establish a prima facie case . . . by presenting sufficient evidence to allow a reasonable fact finder to conclude (given the totality of the circumstances) that the defendant treated plaintiff 'less favorably than others because of [his] race, color, religion, sex, or national origin.'" *Id.* at 163 (quoting *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 577 (1978)).

Here, Plaintiff has failed to produce any evidence from which a reasonable fact finder could conclude that he was terminated because of his race. Plaintiff does not suggest, in either his Complaint or in his deposition, that he was discriminated against because he was white. Nor does Plaintiff present any evidence that white employees at the Hotel were treated less favorably than non-white employees. In fact, Plaintiff appears to be asserting the exact opposite—that Defendants engaged in widespread discrimination against black customers and employees at

Quincy's and the Hotel. Plaintiff claims that Defendants' CEO, Kummer, repeatedly made racist statements about black customers and discriminated against black employees,[7] (Doc. No. 28 at 4-9), and that Kummer and other Hotel managers systematically attempted to provide lower-quality service to African-American patrons of Quincy's in order to "lighten up the night club." (*Id.* at 12-17.) In addition, Plaintiff testified at his deposition that he believed Hotel management discriminated against black employees. He stated that the Hotel had "a tendency not to promote black employees into management positions," and that Arnold Williams, an African-American bartender at Quincy's, was fired because of his race. (Pawlak Dep. at 177-79.)

Plaintiff does not point to any evidence that white employees at the Hotel were treated less favorably than employees of other races.[8] In fact, Plaintiff's entire response to Defendants'

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[7] For example, Plaintiff cites the deposition testimony of Freyne, the Hotel's former controller, who stated that Kummer said the Hotel should not have hired blacks to serve as salespersons, only as doormen (Doc. No. 26 at 5 (citing Freyne Dep. at 58)), and that Kummer fired a black waiter because Kummer did not like the way he looked. (*Id.* (citing Freyne Dep. at 93-95.)) Plaintiff also refers to allegations made in *EEOC v. HBE Corp.*, No. 93-0722, 1996 U.S. Dist. LEXIS 22014 (E.D. Mo. Feb. 8, 1996), *aff'd in part and rev'd in part*, 153 F.3d 543, 550-53 (8th Cir. 1998), where plaintiffs presented testimony by managers at the St. Louis Adam's Mark Hotel that Kummer had made numerous racist comments regarding that hotel's hiring of blacks. *Id.* at *5-8.

[8] Plaintiff was replaced by Mark Guttesman, a white male. (Anderson Dep. at 30.) While it is not necessary to establish that the person allegedly discriminated against was replaced by a person of a different racial background in order to establish a prima facie case of intentional discrimination, *Pivirotto v. Innovative Sys.*, 191 F.3d 344, 354 (3d Cir. 1999), such evidence may be relevant to a finding of nondiscrimination. *See, e.g.*, *Nieto v. L&H Packing Co.*, 108 F.3d 621, 623 (5th Cir. 1997) (finding that plaintiff's replacement by an individual with the same protected characteristics, "[w]hile not outcome determinative, . . . is certainly material to the question of discriminatory intent"); *Cumpiano v. Banco Santander P.R.*, 902 F.2d 148, 155 (1st Cir. 1990) ("[T]he attributes of a successor employee may have evidentiary force in a particular case . . . ."); *see also Thomas v. Ethicon, Inc.*, Civ. A. No. 93-3836, 1994 U.S. Dist. LEXIS 5773, at *7 (E.D. Pa. May 3, 1994) ("Federal courts have held that a race discrimination plaintiff in a termination case fails to establish a prima facie case where he cannot prove that he was replaced by a non-minority worker and there is no other evidence to support an inference of

Motion for Summary Judgment on the intentional discrimination claim is simply one sentence which states:

> The record in this case establishes that Kummer's decision to terminate Pawlak's employment was part and parcel of an overall policy to discriminate *against blacks.*"

(Doc. No. 26 at 32 (emphasis added).) Allegations that Defendants treated black employees less favorably than white employees obviously provide no support for the theory that Plaintiff, as a white male, was discriminated against based on his race. Because Plaintiff has failed to present any evidence that he was treated less favorably because of his race, he has not established a prima facie case of intentional race discrimination. Defendants therefore are entitled to summary judgment on this claim.

B. Retaliation

Next, Plaintiff asserts that Defendants unlawfully retaliated against him in violation of 43 Pa. Cons. Stat. Ann. § 955(d) for opposing Defendants' racially discriminatory policies directed at black patrons of Quincy's.

The PHRA states that it is an unlawful discriminatory practice

> [f]or any person, employer, employment agency or labor organization to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act, or because such individual has made a charge, testified or assisted, in any manner, in any investigation, proceeding or hearing under this act.

43 Pa. Cons. Stat. Ann. § 955(d) (West 1991 & Supp. 2004). In order to establish a prima facie case of illegal retaliation under the PHRA, a plaintiff must show the existence of: "'(1) [a]

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discrimination.").

protected employee activity; (2) [an] adverse action by the employer either after or contemporaneous with the employee's protected activity; and (3) a causal connection between the employee's protected activity and the employer's adverse action.'"[9] *Fogleman v. Mercy Hosp., Inc.*, 283 F.3d 561, 567-68 (3d Cir. 2002) (quoting *Krouse*, 126 F.3d at 500). We must determine whether Plaintiff has pointed to sufficient evidence for a reasonable person to conclude that he can establish each of the three requirements of the prima facie case.

1. Protected Activity

Under the PHRA, an employee engages in protected activity if he or she "oppose[s] any practice forbidden by [the PHRA]." 43 Pa. Cons. Stat. Ann. § 955(d). This provision, also known as the "opposition clause," encompasses a variety of actions and statements that may be construed as complaints to an employer. As the Third Circuit has noted, the opposition clause "does not require a formal letter of complaint to an employer or the EEOC as the only acceptable indicia of the requisite 'protected conduct' . . . ." *Barber v. CSX Distrib. Servs.*, 68 F.3d 694, 702 (3d Cir. 1995). Instead, acceptable forms of protected activity under the opposition clause may include "informal protests of discriminatory employment practices, . . . making complaints to management, writing critical letters to customers, protesting against discrimination by industry or society in general, and expressing support of co-workers who have filed formal charges." *Sumner v. U.S. Postal Serv.*, 899 F.2d 203, 209 (2d Cir. 1990).

The focus of a protected activity claim rests, however, with the "message . . . conveyed,

[9] Claims of retaliation under the PHRA are analyzed consistent with similar claims arising under Title VII and 42 U.S.C. § 1981. *Pamintuan v. Nanticoke Mem'l Hosp.*, 192 F.3d 378, 385 (3d Cir. 1999); *Gomez*, 71 F.3d at 1083-84; *United Brotherhood of Carpenters & Joiners of Am. v. Pa. Human Relations Comm'n*, 693 A.2d 1379, 1383 & n.8 (Pa. 1997).

and not the medium of conveyance." *Barber*, 68 F.3d at 702. At a minimum, the allegedly protected activity must express, either "explicitly or implicitly," "oppos[ition] [to] discrimination on the basis of" some protected characteristic, such as race, gender, age, or disability. *Id.*; *see also Hicks v. ABT Assocs., Inc.*, 572 F.2d 960, 969 (3d Cir. 1978) (stating that an employee must "oppos[e] allegedly discriminatory practices by his employer" to qualify as protected activity). Complaints that are "too vague" or that make a "general complaint about unfair treatment" without alleging that the employer engaged in unlawful discriminatory conduct do not qualify as protected activity. *Barber*, 68 F.3d at 702. "'[A] plaintiff need not prove the merits of the underlying discrimination complaint, but only that he was acting under a good faith, reasonable belief that a violation'" of anti-discrimination laws had occurred in order to establish the existence of a protected activity. *Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1085 (3d Cir. 1996) (quoting *Griffiths v. CIGNA Corp.*, 988 F.2d 457, 468 (3d Cir. 1993)); *see also* EEOC Compliance Manual (CCH) ¶ 3004 ("[I]n order for [Title VII] to apply, the charging party's or complainant's belief that the practice or activity which (s)he opposes is an unlawful employment practice must be reasonable. Actions based on a belief that, given all the surrounding circumstances, is not reasonable and in good faith will not be protected . . . .").

Plaintiff asserts that his March 14, 1995, memorandum opposing the cancellation or alteration of "Motown Mondays" qualifies as a protected activity. (Doc. No. 26 at 23-24.) We disagree. Plaintiff's memorandum does not allege, either explicitly or implicitly, that Defendants engaged in racially discriminatory conduct. Instead, the memorandum appears to be merely a complaint about the negative business ramifications of the "alteration or suspension" of the event. (Doc. No. 70, 99-CV-4541, Ex. E.) It discusses the average revenue generated each

Monday ($6000), and how the event attracts "an affluent, professional audience" that is an "attractive demographic" for the nightclub. (*Id.*) The memorandum continues to explain that Motown Monday "is a financially successful phenomenon" because of the event's "targeted marketing, an incredibly popular DJ, and an unusually loyal audience," and that the proposed changes "would have disasterous [sic] consequences." (*Id.*) In his deposition, Plaintiff further explained the business rationale behind his opposition to changes to Motown Mondays:

> Q: Why was [the cancellation or alteration of Motown Mondays] stupid?
>
> A: Because we were there to make revenue. That's why we were there. It wasn't a little night we kind of cherished. It was a huge money maker that was just a phenomenal success in every way, shape, or form.

(Pawlak Dep. at 111.)

Opposition to the merits of a business decision, without an allegation of illegal race discrimination, cannot constitute a protected activity under the PHRA. *See, e.g.*, *Bell v. Safety Grooving & Grinding, LP*, 107 Fed. Appx. 607, 609 (6th Cir. 2004) (finding that plaintiff did not engage in a protected activity because, "[a]t most, [plaintiff] complained to [defendant] about the company's business decision"); *see also* Douglas E. Ray, *Title VII Retaliation Cases: Creating a New Protected Class*, 58 U. Pitt. L. Rev. 405, 410 (1997) (stating that "opposition to employer business dealings . . . may not be protected" under Title VII). Although Plaintiff's memorandum does assert, towards the end, that the cancellation of Motown Monday would be "a public relations disaster, from a political, cultural, ethnic, financial, and competitive standpoint" (Doc. No. 70, 99-CV-4541, Ex. E.), this statement is too vague to support a claim that Plaintiff had

alleged that Defendants were engaging in discriminatory activity.[10] Instead, to engage in protected conduct, an individual must "explicitly or implicitly" communicate that the illegal discriminatory act "was the reason" for the complaint. *Barber*, 68 F.3d at 702; *see also Harry v. City of Philadelphia*, Civ. A. No. 03-661, 2004 U.S. Dist. LEXIS 11695, at *31 (E.D. Pa. June 18, 2004) ("[A] complaint to or about an employer must specifically include an allegation of an unlawful practice, such as racial discrimination, in order to constitute 'opposition' that would qualify as a 'protected activity.'"); *Rachel-Smith v. FTData, Inc.*, 247 F. Supp. 2d 734, 748 (D. Md. 2003) (finding that plaintiff did not commit a protected act because she failed to communicate to her supervisor that she opposed his activity because it was illegal). Here, Plaintiff's memorandum fails to allege, either explicitly or implicitly, that he opposed the changes to Motown Mondays because he believed they constituted unlawful race discrimination. Accordingly, Plaintiff's writing and distribution of the March 14, 1995, memorandum was not a protected activity.

Plaintiff also asserts that he engaged in protected activity by refusing to cooperate with John Ralston, an employee of Worldwide Entertainment (a firm hired by Defendants to manage Quincy's programming), because Plaintiff objected to Ralston's programming changes and his "firing [of disc jockeys] that played music that appealed to Blacks," both of which he alleges were motivated by racially discriminatory reasons. (Doc. No. 26 at 24.) Plaintiff's objections to

[10] We note that it is not clear from the record that Defendants ever made any substantial change to the Motown Monday promotion, other than changing the date to Sunday night. As previously noted, Defendants retained the same DJ, played the same genre of music, and continued to market the Sunday night event with a "Motown" theme. (Callari Dep. at 66; Doc. No. 70, 99-CV-4541, Exs. A, L.) In fact, Quincy's explicitly advertised that the Monday event was merely being moved to Sunday nights. *See* Doc. No. 70, 99-CV-4541, Ex. A at AWL01126 ("Coming in April: We're Moving! Motown . . . Monday Becomes Motown . . . Sunday!").

these changes, however, does not qualify as a protected act. Opposition to changes in a nightclub's music programming and selection cannot serve as the basis for a retaliation claim. *See, e.g.*, *Stearnes v. Baur's Opera House, Inc.*, 788 F. Supp. 375, 378 (C.D. Ill. 1992) (holding that "[a] bar's music selection cannot be grounds to find that it engages in discriminatory conduct"), *remanded with instructions to dismiss for lack of jurisdiction*, 3 F.3d 1142 (7th Cir. 1993); *Plummer v. Bolger*, 559 F. Supp. 324, 331 (D.D.C. 1983) (concluding that plaintiff did not have a Title VII claim for intentional discrimination when he "was forced to listen to black-oriented music" and "was denied a change of radio stations"); *cf. Phillips v. Interstate Hotels Corp. #L07*, 974 S.W.2d 680, 682 (Tenn. 1998) ("[A]n establishment's music selection cannot serve as grounds for discrimination under the Tennessee Human Rights Act."). As the *Stearnes* court stated:

> The Civil Rights Act of 1964 does not require places of public accommodation to cater the musical tastes of all of its patrons. If music selection was a basis for a discrimination suits, a fundamentalist [C]hristian could sue a club which played music containing offensive lyrics for religious discrimination; or women could sue employers whose musical selections contained perceived sexist lyrics for sex discrimination. This Court does not believe that Congress intended such a result when it passed the Civil Rights Act of 1964. Rather, all that the Act requires is that all patrons be admitted and served without discrimination.

Stearnes, 788 F. Supp. at 378. We find this reasoning persuasive. If attempts to encourage (or discourage) the attendance of a particular demographic through changes to a club's music selection created a cause of action for race discrimination, the courts would be inundated with such claims. As another court has noted:

> Businesses have the right to target strategic markets comprised of specified classes or groups of individuals. For example, a club may choose to target black patronage by playing a certain style of music which, in management's

> opinion, will attract its target market. A non-black individual, however, should not have a cause of action for discrimination merely because that club's musical format is not preferred by the non-black patron. If this Court were to adopt such a rule, all public facilities potentially would be forced to play diversified music that would cater to every racial and ethnic group to avoid possible discrimination suits.

Phillips, 974 S.W.2d at 686. Because changes in Quincy's musical formatting and promotion cannot be reasonably construed as a violation of Title VII or the PHRA, Plaintiff's opposition to such changes cannot qualify as a protected activity. *See Aman*, 85 F.3d at 1085 (holding that to qualify as a protected activity, an individual must have a reasonable belief that a violation of anti-discrimination laws occurred). Plaintiff has thus failed to establish this prong of the prima facie case of retaliation.[11]

2. Causation

Another element of the prima facie case of retaliation is the existence of a causal

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[11] Plaintiff also alleges that he engaged in protected activity by complaining to Anderson that Worldwide Management's actions were racially discriminatory. (Doc. No. 26, Ex. A ¶ 3.) However, these alleged complaints—raised for the first time in response to Defendants' Motion for Summary Judgment—were not previously made in the Complaint. The Complaint's only reference to potentially protected activity is the March 14, 1995, memorandum to Steinfals (Compl. ¶ 14, Ex. A.); there is no mention of subsequent verbal complaints to Anderson (or to any other employee of Defendants, for that matter). Likewise, in the EEOC filing, Plaintiff did not allege that he was terminated in retaliation for any verbal complaints made to Anderson. (Doc. No. 70, 99-CV-4541, Ex. R at AWL00040.) In addition, Plaintiff acknowledged in his extensive deposition that he discussed Worldwide Management's changes with Anderson, but never stated that he had verbally complained or opposed them because he believed the changes were discriminatory. (Pawlak Dep. at 264-65.) While "[t]here are situations in which sworn testimony can quite properly be corrected by a subsequent affidavit," such as when "the witness was confused at the earlier deposition or for some other reason misspoke," *Martin v. Merrell Dow Pharms., Inc.*, 851 F.2d 703, 704 (3d Cir. 1988), there is no indication in the affidavit that Plaintiff was in any way confused or misspoke when he did not testify that he had opposed Worldwide Management's changes to Anderson. Accordingly, we reject the suggestion that Plaintiff's affidavit creates a genuine issue of material fact.

In any event, as previously noted, because mere changes to a nightclub's music format do not constitute unlawful race discrimination, even if Plaintiff did complain about them to Anderson, it would not constitute a protected activity under the PHRA.

connection between the employee's protected activity and the adverse action. *Fogleman*, 283 F.3d at 567-58. Here, we conclude that even if Plaintiff's March 14, 1995, memorandum constituted a protected activity, Plaintiff has not provided sufficient evidence of a causal connection between his actions and his subsequent termination.

"The element of causation, which necessarily involves an inquiry into the motives of an employer, is highly context-specific." *Kachmar v. Sungard Data Sys.*, 109 F.3d 173, 178 (3d Cir. 1997); *see also Farrell v. Planters Lifesavers Co.*, 206 F.3d 271, 283-84 (3d Cir. 2000) ("[I]n cases where a plaintiff must illustrate a 'causal link' for purposes of establishing retaliation, or show that certain conduct was 'used' as a basis for employment decisions, a plaintiff may rely upon a broad array of evidence to do so."). For example, a plaintiff may rely on the temporal proximity between the protected conduct and the subsequent adverse employment action, *Farrell*, 206 F.3d at 280, or on her employer's inconsistent reasons for terminating her, *Abramson v. William Paterson Coll.*, 260 F.3d 265, 289 (3d Cir. 2001), or on "'other types of circumstantial evidence,' such as evidence of a 'pattern of antagonism' occurring between the protected activity and the adverse action." *Merit v. Southeastern Pa. Transp. Auth.*, 315 F. Supp. 2d 689, 707 (E.D. Pa. 2004) (quoting *Robinson v. Southeastern Pa. Transp. Auth.*, 982 F.2d 892, 894 (3d Cir. 1993)).

Here, the record taken as a whole is not sufficient to establish a causal link between Plaintiff's actions and his termination. The time between the March 14, 1995, memorandum and Plaintiff's discharge, fourteen (14) months later, does not create an inference of the existence of a causal connection. In order for the timing of an alleged retaliatory action alone to be sufficient to establish the causal link, the timing "must be 'unusually suggestive' of retaliatory motive before

a causal link will be inferred." *Krouse*, 126 F.3d at 503; *see also Clark County Sch. Dist. v. Breeden*, 532 U.S. 268, 273-74 (2001) ("[C]ases that accept mere temporal proximity between an employer's knowledge of protected activity and an adverse employment action as sufficient evidence of causality to establish a prima facie case uniformly hold that the temporal proximity must be 'very close.'" (citations omitted)). Here, the fourteen month gap between the memorandum and Plaintiff's termination, absent a pattern of other adverse actions or "other intervening retaliatory acts" by Defendants,[12] *see Farrell*, 206 F.3d at 208, cannot create an inference that Plaintiff was fired for authoring the memorandum. *See, e.g.*, *Williams v. Phila. Hous. Auth. Police Dep't*, 380 F.3d 751, 760 (3d Cir. 2004) (holding that interval of more than two months between protected activity and termination, absent any other evidence, was insufficient to create inference of retaliation); *Brennan v. Norton*, 350 F.3d 399, 420 (3d Cir. 2003) (nine month interval insufficient); *Richmond v. Oneok, Inc.*, 120 F.3d 205, 209 (10th Cir. 1997) (three month interval insufficient); *Hughes v. Derwinski*, 967 F.2d 1168, 1174-75 (7th Cir. 1992) (four month interval insufficient). There is also no evidence of any adverse actions taken against Plaintiff during this fourteen month period; in fact, Plaintiff received two positive performance reviews and a pay raise during this period. (Pawlak Dep. at 160; Steinfals Dep. at 43.) Moreover, there is no evidence the two individuals involved in the decision to terminate Plaintiff's employment, Fred Kummer and Eugene Anderson, were aware of or had ever seen Plaintiff's memorandum. (Kummer Dep. at 15-16; Anderson Dep. at 20, 32.) Because these

[12] Where the temporal proximity between protected activity and allegedly retaliatory conduct is missing, "courts may look to the intervening period for other evidence of retaliatory animus." *Krouse*, 126 F.3d at 503-04. This evidence may include, but is not limited to, "demonstrative acts of antagonism or acts actually reflecting animus." *Farrell*, 206 F.3d at 287.

individuals had no knowledge of Plaintiff's alleged protected activity, Plaintiff cannot establish a causal link between the memorandum and the termination of his employment. *See Breeden,* 532 U.S. at 273 (holding that district court's granting of summary judgment was appropriate because there was no indication that the individual responsible for plaintiff's termination had knowledge of her allegedly protected activity).

In addition, Plaintiff's own deposition testimony presents compelling evidence of the lack of a causal connection between his alleged protected activity and the termination of his employment. In his deposition, Plaintiff testified that he believed his employment was terminated because of declining revenues at Quincy's:

> Q: And why did you think you were terminated?
>
> . . . .
>
> A: In conversations with my attorney and in discussing the nature of my job and the things that had happened and the nature of what had happened to the night club in specific, *I believed I was made to be a scapegoat for declining revenues in the Quincy's night club*. At least to the corporate office.

(Pawlak Dep. at 200 (emphasis added).) Later in the deposition, Plaintiff again acknowledged that he believed his employment was terminated because he was "associated with declining revenues in a night club." (*Id.* at 222.) Moreover, another witness, Vincent Alberici, testified that Plaintiff called him on the day he was fired, and explained that his termination was for "[d]eclining revenues." (Alberici Dep. at 23.) This explanation is consistent with Defendants' position that Plaintiff's employment was terminated because of the Hotel's "poor performance of food and beverage revenues," not in retaliation for protected conduct. (Anderson Dep. at 8; *see*

also Doc. No. 26 Ex. B.)

Plaintiff points to the above-mentioned affidavit, which was submitted in connection with his Memorandum in Opposition to Defendants' Motion for Summary Judgment, and asserts that it creates a genuine issue of material fact on the issue of causation. The affidavit states that Plaintiff's "repeated objections to the [Hotel's] racially discriminatory policies and refusal to cooperate with Worldwide Entertainment were the reasons why defendants terminated my employment." (Doc. No. 26 Ex. A ¶ 5.) However, this affidavit directly contradicts Plaintiff's deposition testimony, in which he clearly stated that he believed he was being terminated for Quincy's declining financial performance. (Pawlak Dep. at 200, 222.) The Third Circuit has held that "[w]hen, without a satisfactory explanation, a nonmovant's affidavit contradicts earlier deposition testimony, the district court may disregard the affidavit in determining whether a genuine issue of material fact exists." *Hackman v. Valley Fair*, 932 F.2d 239, 241 (3d Cir. 1991); *see also Martin*, 851 F.2d at 706 (holding that "when a party contradicts, without satisfactory explanation, his or her prior testimony" in an affidavit in opposition to summary judgment, "the subsequent affidavit does not create a *genuine* issue of material fact"). Here, Plaintiff's bald statement, unsupported by any details, offers no explanation for his belated change of position regarding the rationale for his termination. Accordingly, Plaintiff's affidavit does not create a genuine issue of material fact for trial.

Under the circumstances, we conclude that Plaintiff has failed to produce sufficient evidence of a causal link between Plaintiff's memorandum and his subsequent termination fourteen months later. Defendants therefore are entitled to summary judgment on this claim as well.

IV. CONCLUSION

Because there is insufficient evidence for a reasonable factfinder to conclude that Plaintiff has established a prima facie case of either intentional race discrimination or retaliation for his termination, Defendants' Motion will be granted.

An appropriate Order follows.

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

RICHARD PAWLAK	:	
	:	CIVIL ACTION
v	:	
	:	
SEVEN SEVENTEEN HB	:	NO. 99-CV-5390
PHILADELPHIA CORP. NO. 2	:	
t/a ADAM'S MARK HOTEL, ET AL.	:	

ORDER

AND NOW, this 24th day of March, 2005, upon review of Defendants' Motion for Summary Judgment (Doc. No. 70, 99-CV-4541), and all papers in support thereof and in opposition thereto, it is hereby ORDERED that Defendants' Motion for Summary Judgment is GRANTED and Plaintiff's Complaint is DISMISSED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge