

KRISTIN HYMAN,

Plaintiff,

v.

HUDSON COUNTY SHERIFF'S
OFFICE, HUDSON COUNTY SHERIFF
FRANK X. SCHILLARI, in his
Professional and Personal capacity
and HUDSON COUNTY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.: HUD-L-2169-17

(Civil Action)

BRIEF IN SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

Defendants Hudson County Sherriff's Office ("the County") and Hudson County Sheriff Frank X. Schillari ("Schillari") (collectively, "Defendants") submit this Motion for Summary Judgment for the dismissal of the Complaint of Plaintiff Kristin Hyman ("Hyman") in its entirety, with prejudice.

Plaintiff, a candidate for Officer of the Hudson County Sheriff's Office, was terminated from her position based on her submission of false statements, under oath, during the pre-employment process and for conduct unbecoming a member of the Hudson County Sheriff's Department. Specifically, Plaintiff lied **under oath** by withholding material information on her employment application and during the pre-employment screening process regarding:

- (1) Her prior employment as a pornography actress and dominatrix for hire;
- (2) The nature of the "fetish business" she owned and operated prior to her employment with the Sheriff's Department;
- (3) Her aliases;
- (4) Her social media history; and
- (5) Her failure to file tax returns in violation of Federal and State law.

After Plaintiff became aware that she was being investigated for lying during the pre-employment screening process, she filed an internal complaint alleging sexual harassment. Once she was notified that she was suspended pending the outcome of the investigation into her misconduct, she filed the instant lawsuit. Both of these claims were clearly filed in an attempt to manufacture a cause of action against Defendants and to protect her employment.

After two years of discovery, Plaintiff can not produce any evidence to sustain her sexual harassment and unlawful retaliation claims against Defendants. Additionally, she has taken no depositions and submitted no expert reports.

Plaintiff's Complaint should be dismissed with prejudice. Plaintiff cannot show that she was subjected to severe or pervasive sexual harassment under the law. Even if she could show that she was sexually harassed, Plaintiff's sexual harassment claim should still be dismissed, because the County is entitled to a defense to this claim, pursuant to Aguas v. State of New Jersey, 220 N.J. 494 (2015), since it had an adequate sexual harassment policy in place that was properly enforced.

Plaintiff's unlawful retaliation claims should also be dismissed. All of the relevant evidence shows that Plaintiff was suspended because the Sheriff's Department received information that Plaintiff lied under oath during the pre-employment screening process. Moreover, Plaintiff admitted during her deposition that she was aware of no information or evidence showing that her suspension resulted from her internal sexual harassment complaint.

This matter is presently scheduled for trial June 11, 2019. **Plaintiff consented on the record during the April 12, 2019 oral argument on Defendants' Motion to Dismiss Plaintiff's Complaint for failure to provide discovery, to permit this Motion to be filed returnable less than 30 days prior to the date of trial. This was necessary because of a late deposition of the Plaintiff resulting from her counsel's health issues.**

STATEMENT OF FACTS

As a candidate for the position of Sheriff's Officer, Hyman was subject to all policies, procedures and rules of the Sheriff's Department. (Seigler Cert.; Exhibit C) This includes the written obligations set forth in writing in the documents Hyman submitted as part of the pre-employment application process. (Id.) The paramount obligation was the requirement that Hyman be **truthful** and **complete** when providing her responses in her pre-employment paperwork. (Id.)

1. Pre-Employment Application Process

On August 18, 2015, Hyman filled out and signed the Hudson County Sheriff's Office Law Enforcement Employment Application Form ("Employment Application") (Seigler Cert.; Exhibit B). The Certification attached to the Employment Application provided, in pertinent part,

I understand that my appointment or employment will be contingent upon the results of a complete background investigation. I am aware that any omission, falsification, misstatement or misrepresentation will be the basis for my disqualification as an applicant or my dismissal from the Sheriff's Office. I agree to the conditions and certify that all statements made by me on this application are true, correct and complete, to the best of my knowledge.

The Certification also provided, then inquired,

I agree to conform to the rules, regulations and orders of the Sheriff's Office and acknowledge that **these rules, regulations and orders may be changed, interpreted, withdrawn or added to by the Sheriff's Office, at its discretion, at any time and without prior notice to me.** I understand an investigation will be conducted on all of the information listed on this application. Because of this, are you aware of any information about yourself or any person with whom you are or had been closely associated (including relatives, roommates) which might tend to reflect unfavorably on your reputation, morals, character or ability?

Hyman understood that it was her obligation, pursuant to this Certification, to be “correct” and “complete” when providing her written answers. (Id.)

In the Employment History section of the Employment Application, Hyman stated that from **January 2006 through October 2013** she was **“Self-employed by ‘ST Productions.’”** (Id.) And in the Certification section, Hyman answered **“No”** to the inquiry, “Are you aware of any information about yourself which might tend to reflect unfavorably on your **reputation, morals, character** or ability?” (Id.)

Based, in part, on her above responses, Hyman moved on to the next stage of the hiring process and was given the Hudson County Law Enforcement Candidate’s Personal History Statement (“Personal History Statement”). (Seigler Cert.; Exhibit C)

Hyman understood that it was “extremely important” that she be complete and accurate when filling out the Personal History Statement. (Cross-Examination of Hyman, Hearing Day 4 at 0:17:10) In fact, the Personal History Statement specifically included a reference to N.J.S.A. 2c:28-3 (“Unsworn Falsification to Authorities”), which reminds the applicant that it is a disorderly persons’ offense to include any false or purposefully incomplete statement in response to any inquiry on the Personal History Statement. Hyman initialed the Certification in multiple locations, each time reiterating her obligation to be **“truthful” and “complete.”** (Seigler Cert.; Exhibit C, p. 2)

Hyman’s obligation to be **“truthful” and “complete”** was reiterated in the “Instructions” section of the Personal History Statement. (Id. at p. 4) Specifically, the instructions provided, in relevant part:

The position you have applied for is one of tremendous public trust. The purpose of this Candidate’s Personal History Statement is to provide data on which a pre-employment background investigation and review will be

based. It is very important that you carefully follow the directions and carefully complete the personal history statement.

5. An applicant or candidate who has made a false statement, omission, misrepresentation or concealment of a material fact, or who practices or attempts to practice, any deception or fraud in securing eligibility for appointment, or applicants who provide answers contrary to official records may be rejected from the position they seek and disqualified for eligibility. Discovery of the aforementioned any time after appointment to the position may result in dismissal from said position.

(Id. at p. 4) Hyman read the instructions and understood that she could be disqualified for employment, or terminated after she was hired, if she was caught misrepresenting or omitting any facts in the Personal History Statement.

Hyman also signed the **notarized** Certification in page 55 of the Personal History Statement. That Certification provided,

I, Kristin Hyman, being **duly sworn**, do hereby depose and say that I am the above named person and that I have completed the foregoing questionnaire, including additions thereto which appear in the details section and that I understand the contents. I further state that the answers contained herein are **complete and correct in every respect**. I understand also, that any **misrepresentation of fact**, falsification, **omission of material fact**, and/or **concealment's of material facts** may be cause for rejection before appointment or **disqualification or prosecution after appointment**.

(Seigler Cert.; Exhibit C at p. 55) (Emphasis added.)

In the Employment History section of the Personal History Statement, Hyman stated that from **2010 to 2013** she was "**Self-Photographer / Unemployed.**"¹ (Seigler Cert.; Exhibit C at p. 20) In the section describing the type of work performed Hyman stated, "started a small company, st. productions, a full service photography & graphic design." (Id.)

¹ Notably, this is materially inconsistent with the information Hyman provided in the Employment Application. There, she stated that she was self-employed by S.T. Productions from 2006 to 2013.

Lt. Sharon R. Whelpley ("Whelpley"), of the Sheriff's Department, was responsible for conducting Hyman's pre-employment background investigation. When she reviewed the section of the Personal History Statement that referenced Hyman's photography company, S.T. Productions, she presumed that Hyman was being truthful and that this company was merely a small photography and graphic design company involving work for individuals in need of an ordinary photographer or someone to design a web-page. (Seigler Cert.; Exhibit D at 73:4 to 76:16) Consequently, she did not perform an intensive search into the background of this company. (Id.)

In the section of the Personal History Statement where Hyman was required to list any "aliases" or "nicknames," Hyman represented that she had no known aliases. (Seigler Cert.; Exhibit C at p.13) And in the Social Network section, Hyman listed only a personal facebook page. (Id. at p. 24).

As a pre-requisite to being hired, Hyman was also required to undergo a Psychological evaluation. During that evaluation, Hyman filled out the Institute of Forensic Psychology – Standard Interviewer's Report Form. In the Biographical Section, Hyman certified that she never "failed to file income tax returns on time." Hyman understood that she was also required to be truthful and honest when filling out these forms.

Once Hyman submitted her certified completed Personal History Statement, the Sheriff's Department continued its pre-employment background investigation. Because the information supplied by Hyman raised no "red flags," Whelpley sent her information to the Sheriff and advised that there was nothing out of the ordinary with her file.

(Seigler Cert.; Exhibit D at 52:13 to 53:6) As a result of Hyman's seemingly clean record, the Sheriff's Department offered Hyman employment as a Sheriff's Officer. (Id.)

2. Discovery of Hyman's Pre-Employment Misrepresentations and Subsequent Termination

In the beginning of March 2017, shortly before Hyman was scheduled to be sworn in as a Sheriff's Officer, Sheriff's Department Detective Thomas Gillen ("Gillen") heard rumors that Hyman was engaged in conduct unbecoming a Sheriff's Officer. (Seigler Cert.; Exhibit D at 6:20 to 10:5) Specifically, he was told that there were purchasable videos of Hyman on the internet, wherein she was representing herself as the dominatrix, "Domina Nyx." (Id.) These videos allegedly showed Hyman engaging in violence against other individuals. (Id.) As a result, Gillen immediately presented this information to Hudson County Sheriff, Frank X. Schillari ("Schillari"). (Id.)

Upon receipt of this information, on March 7, 2017, Sheriff Schillari ordered Capt. Liane Markowitz, the Commander of the Internal Affairs Unit, to perform an investigation. (Seigler Cert.; Exhibit E) Capt. Markowitz performed that investigation and provided her results to Sheriff Schillari. (Id.) That investigation concluded that Hyman was engaged in the business of operating as a dominatrix for hire, and that S.T. Productions was not the simple photography/graphic design company as Hyman represented under oath. Rather, S.T. Productions was, at least in large part, a "fetish business" and a vehicle for Hyman to receive money for acting in, and producing, pornography, and for engaging in the services of a private dominatrix for-hire. (Id.)

When Sheriff Schillari was informed of the outcome of the investigation, he made the executive decision that Hyman should be terminated. (Seigler Cert.; Exhibit F at 20:21 to 21:11) He based his decision on the fact that the evidence showed that Hyman

lied repeatedly **under-oath** as to her prior employment, the nature of S.T. Productions, her social media history and her aliases. (Id. at 11:22 to 13:20) In addition to her false statements under-oath, had the Sheriff been aware of Hyman's history as a pornography actress and dominatrix for-hire, she would have been **automatically disqualified** for employment with the Sheriff's Department. (Id.)

On May 26, 2017, Hyman was served with a Preliminary Notice of Disciplinary Action advising that she was charged with violating N.J.A.C. 4:2-2.3(a)(6) ("Conduct Unbecoming a Public Employee), N.J.A.C. 4A:2-2.3(a)(7) ("Neglect of Duty") and N.J.A.C. 4A:2-2.3(a)(12) ("Other Sufficient Cause"), and immediately suspended pending resolution of the charges, wherein the Sheriff's Department was seeking her termination. She was advised that she had the right to a departmental hearing. Hyman exercised that right.

On February 1, 2018, Hearing Officer Richard N. Campisano, Esq. issued a written decision finding that Hyman should be terminated for conduct unbecoming a public employee and for lying under oath during her pre-employment screening. (Seigler Cert.; Exhibit G)

3. **Hyman's Sexual Harassment Complaint**

On March 9, 2018, **2 days after the Internal Affairs Department began its investigation into Hyman's conduct**, Hyman filed an Internal Affairs Complaint form, wherein she complained about alleged sexual harassment by a co-employee. (Seigler Cert.; Exhibit H) In that internal complaint, Hyman alleged that Sgt. Matthew Fedrow, a Sergeant with the Hudson County Sheriff's Department and friend of her ex-boyfriend, was attempting to get her fired by spreading rumors that she had used drugs, that she

had slept with multiple co-workers, and that she had sex for pay. (Id.) Hyman did not, and does not, allege that Sgt. Fedrow had harassed her to her face, only that he was spreading rumors about her. (Id.) Hyman does not allege that any sexual harassment occurred after she filed her May 9, 2017 internal affairs complaint.

Hudson County assigned the outside law firm, LeClair Ryan (Joseph P. Paranaac, Jr., Esq., Laura H. Corvo, Esq., and Andrée Laney, Esq.) to perform an investigation into Hyman's allegations. That firm performed the investigation and submitted a report on April 2, 2018 finding insufficient evidence to justify Hyman's claims that she was subjected to unlawful sexual harassment. At the time the report was submitted, Hyman was already terminated as set forth above.

PROCEDURAL HISTORY

On or about May 30, 2017, Plaintiff filed the instant Complaint alleging the following claims:

1. Violation of the Conscientious Employee Protection Act, N.J.S.A. 34:19-1, et seq. ("CEPA") based on the notice of disciplinary action suspending Plaintiff pending outcome of a formal hearing (Count One);
2. Violation of the Law Against Discrimination, N.J.S.A. 10:5-1, et seq. ("LAD") based on Plaintiff's sex and sexual orientation.

Defendants filed their Answer on August 31, 2017.

LEGAL STANDARD

R. 4:46-2 provides that a Court may enter summary judgment:

[I]f the pleadings, depositions, answers to interrogatories and admissions on file together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.

Summary judgment provides a prompt, businesslike, inexpensive method of disposing of any cause which a discriminating search of the merits in the pleadings, depositions and admissions on file, together with affidavits submitted, shows there are no genuine issues of material fact requiring trial. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67 (1954); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 530 (1995) (quoting Ledley v. William Penn Life Ins. Co., 138 N.J. 627, 641-42 (1995)).

Where the moving party has demonstrated a prima facie right to summary judgment, the opposing party must demonstrate by competent evidential materials that a genuine issue of material fact exists. Goldome Realty Credit Corp. v. Harwick, 236 N.J. Super. 118, 124 (Ch. Div. 1989), citing Robbins v. Jersey City, 23 N.J. 229, 241 (1957); Heljon Management Corp. v. DiLeon, 55 N.J. Super. 306 (App. Div. 1959). Under R. 4:46-5(a), the opponent “may not rest upon the mere allegations or denials of pleading, but must respond by affidavits . . . setting forth specific facts that there is a genuine issue for trial.” Borough of Franklin Lakes v. Mutzberg, 226 N.J. Super. 46, 58 (App. Div. 1988).

LEGAL ARGUMENT

POINT ONE

HYMAN'S SEXUAL HARASSMENT CLAIM SHOULD BE DISMISSED AS A MATTER OF LAW

Plaintiff alleges that she was subjected to sexual harassment from December 2016 to, at the latest, March 7, 2017, because Sergeant Matthew Fedrow ("Fedrow") of the Hudson County Sheriff's Department spread rumors about her to other members of the Sheriff's Department that she used drugs, that she slept with multiple co-workers, and that she had sex for pay. She alleges that Fedrow referred to her by derogatory terms such as "slut," and stated that she had been "sucking cock in the CJP garage." (Seigler Cert.; Exhibit H; Exhibit I at 82:18 to 86:8)

Hyman does not allege that Fedrow made these comments to her face. In fact, in her Internal Affairs complaint, Hyman states, "Please note that I have had no interaction with Sgt. Fedrow on a personal level since before my breakup with [my ex boyfriend]. The last interaction we had face-to-face was pleasant and there was no animosity between us." (Id.) She alleges that Sgt. Fedrow was spreading these rumors to retaliate against her for breaking up with her ex-boyfriend, who was a friend of his. (Id.) She alleges that the rumors were sent by way of group chat to other employees of the Sheriff's Department. (Seigler Cert.; Exhibit I at 87:10 to 87:25)

In her complaint, Hyman states, "After hearing from several individuals that this pattern of behavior was escalating instead of dying out, I became concerned." At her deposition, Hyman repeatedly stated that she could not identify the names of the co-workers who told her about the messages. (Id. at 87:1 to 89:11) In fact, Plaintiff stated

that she couldn't even remember if the people who told her about Sgt. Fedrow spreading rumors about her were male or female. (Id. at 89:1 to 89:15)

1. Count Two Should Be Dismissed Because Plaintiff's Sexual Harassment Allegations Do Not Rise to Actionable Conduct Under the LAD.

Plaintiff is alleging sexual harassment in violation of the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1, et seq. The LAD recognizes two types of sexual harassment: quid pro quo harassment² (not alleged here) and hostile work environment. See Lehman v. Toys R. Us, Inc., 132 N.J. 587, 601 (1993).

In order to establish a prima facie case for a hostile work environment claim, the plaintiff must establish:

- (1) Defendant's conduct would not have occurred but for the employee's sex;
- (2) The conduct was severe and pervasive to make a;
- (3) Reasonable woman believe that;
- (4) The conditions of the employment are altered and the working environment is hostile or abusive.

Taylor v. Metzger, 147 N.J. 578 (1997), citing Lehmann at 601.

To be ultimately successful on a claim of hostile work environment, the plaintiff must demonstrate that the harassment was severe or pervasive to such a degree that the harassment altered the terms and conditions of employment. Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 752 (1998). It should be noted that a hostile work environment cannot be established by epithets or comments which are "merely offensive." Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993). Further, an employment discrimination law, such as the LAD, is not intended to be a "general civility code" for

² Quid pro quo sexual harassment occurs when an employer attempts to make any employee's submission to sexual demands a condition of his or her employment. Lehmann at 601.

conduct in the workplace. Shephard v. Hunterdon Developmental Ctr., 174 N.J. 1, 26 (2002); See also Herman v. Coastal Corp., 348 N.J. Super. 1, 27 (App. Div. 2002) (finding that plaintiff did not meet her burden of demonstrating a hostile work environment by lumping together a string of allegations of misconduct, only some of which are arguably sexual in nature.).

In this case, Hyman's Complaint relates solely to a single, isolated series of group chat messages, none of which she actually saw. In fact, she stated repeatedly that she couldn't even remember who it was who told her about the messages or even whether they were male or female.

Because these group chat messages, out of her presence, do not rise to the level of severe or pervasive to make a reasonable woman believe that the material conditions of the employment are altered and the working environment is hostile or abusive, Plaintiff's Complaint should be dismissed with prejudice. Lehmann at 601.

2. Count Two Should Be Dismissed Because Defendants Had an Effective Anti-Harassment Policy in Place and Plaintiff Failed to Avail Herself of Her Options for Remediation Under that Policy.

In Aguas v. State of New Jersey, 220 N.J. 494, 499 (2015), the New Jersey Supreme Court officially adopted as the governing standard the test set forth by the United States Supreme Court in Burlington Industries v. Ellerth, 524 U.S. 742 (1998) and Faragher v. City of Boca Raton, 524 U.S. 775 (1998).

Under the *Ellerth/Faragher* analysis, the employer in a hostile work environment sexual harassment case may assert as an affirmative defense to vicarious liability that it "exercised reasonable care to prevent and correct promptly any sexually harassing behavior," and "the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise," provided that the employer has not taken an adverse tangible employment action against the plaintiff employee. Aguas at 499.

Defendants are entitled to the Ellerth/Faragher defense in this matter. The Sheriff's Department has an appropriate anti-sexual harassment policy. (Seigler Cert.; Exhibit J at 61 to 64) That policy provides that employees like Hyman may seek remediation for any unlawful harassment by complaining about it to a supervisor, a department head or to the Director of Personnel. (Id.)

Hyman was provided training in the County of Hudson's harassment policy upon her hiring. (Seigler Cert.; Exhibit K) Hyman also cannot dispute that she was unaware how to go about filing a complaint, **because she did file a complaint** on March 9, 2017. (Seigler Cert.; Exhibit H) Hyman does not, and cannot, contend that she was subjected to any other harassment after she filed her complaint. She was, in fact, suspended a short time later as a result of an investigation into claims of misconduct that had nothing to do with any alleged sexual harassment. (Seigler Cert.; Exhibit I at 98:9 to 98:21)

Specifically, Hyman testified at her deposition:

Q. That statement by Miss Markowitz indicates she started her investigation on 3/7/2017 which was two days prior to you filing this official Internal Complaint Form. **Are you aware of any information or do you have any evidence that would lead you to believe that that investigation into you had anything to do with any complaints that you made about your employment with the County of Hudson including the Sergeant Fedrow issue?**

A. **No.** I just knew that the behavior was escalating. Which would make sense because that's how the Sheriff heard about it, through locker room talk.

(Seigler Cert.; Exhibit I at 98:9 to 98:21)

Because the Sheriff's Department had an appropriate anti-harassment policy in which it trained Hyman, Defendants are entitled to the Ellerth/Faragher defense and

Count Two of Plaintiff's Complaint should be dismissed as a matter of law, with prejudice.

POINT TWO

HYMAN'S CEPA CLAIM AND LAD RETALIATION CLAIM SHOULD BE DISMISSED AS A MATTER OF LAW

Summary judgment should be granted as to Count One of Hyman's Complaint and the retaliation portion of Count Two of the Complaint because she cannot establish a prima facie case of unlawful retaliation under CEPA or the LAD. To do so under CEPA, Plaintiff must demonstrate: "(1) a reasonable belief that the employer's conduct was violating either a law, rule, regulation or public policy; (2) he or she performed a whistleblowing activity as described in N.J.S.A. 34:19-3; (3) an adverse employment action was taken against him or her; and (4) a causal connection existed between her whistleblowing activity and the adverse employment action." Klein v. Univ. of Med. And Dentistry of N.J., 377 N.J. Super. 28, 38 (App. Div. 2005).

To prove a claim of unlawful retaliation under the LAD, Plaintiff must show that: (1) the employee engaged in a protected activity; (2) the employer took an adverse employment action after or contemporaneous with the employee's protected activity; and (3) a causal link exists between the protected activity and the employer's adverse action. Abramson v. William Paterson College of New Jersey, 260 F.3d 265 (3rd Cir. 2001).

Hyman's retaliation claim must be dismissed because she cannot satisfy the element of "causation" for retaliation under CEPA or the LAD. To establish causation, Plaintiff must "present[] either direct evidence of retaliation or circumstantial evidence that justifies an inference of retaliation. This is not a burden that can be met by mere

speculation: a plaintiff must demonstrate a factual nexus between the protected activity and the retaliatory employment action.” Hancock v. Borough of Oaklyn, 347 N.J. Super. 350, 361 (App. Div. 2002). Temporal proximity alone is insufficient to establish causation. Id. at 361. There must be evidence that the person who made the adverse employment decision knew about the protected conduct and acted on it. See, Wheeler v. Township of Edison, No. 06-5207, 2008 WL 1767017, at *9 (D.N.J. Apr. 15, 2008) aff’d, 326 F.App’x 118 (3d Cir. 2009)(finding no causation where decisionmaker testified that he did not know of plaintiff’s protected conduct until after he was sued); Bergstrom v. Wurth USA, Inc., No. A-3103-12T3, 2014 WL 2765682, at *4 (N.J. Super. Ct. App. Div. Jun. 19, 2014) (finding no causation where decisionmakers in plaintiff’s termination did not appear to have any information regarding the alleged whistleblowing activities).

Hyman cannot link her suspension to her alleged complaints. At her deposition, she specifically **admitted she is aware of no knowledge or evidence showing that the IA investigation into her misconduct had anything to do with her complaint against Sergeant Fedrow.** (Seigler Cert.; Exhibit I at 98:9 to 98:21)

Additionally, in a shocking turn of events, at her disciplinary hearing, Plaintiff raised, **for the first time**, an allegation that Assistant County Counsel Robert Pompliano Esq. had sexually harassed her.³ She then elaborated that, because Mr. Pompliano was Sheriff Schillari’s “right hand man,” he may have been behind the decision to discipline her as a result of the fact that she rebuffed his advances. Specifically, Plaintiff testified:

Q. Do you believe that Mr. Pompliano is behind the decision to discipline you?

A. Yes, I do.

³ This allegation is not a part of the instant Complaint.

(Seigler Cert.; Exhibit L at 34:8 to 34:13.)

Plaintiff cannot sustain a prima facie case of retaliation under the LAD or CEPA because she cannot satisfy her burden to show causation. However, even if Hyman could support a prima facie case of retaliation, which she cannot, her claim still fails to survive summary judgment in the “pretext” phase of analysis. In this phase of the analysis, the familiar burden shifting applicable to the LAD applies. Massarano v. New Jersey Transit, 400 N.J. Super. 474, 492 (App. Div. 2008). Thus, the plaintiff’s prima facie case is extinguished once the Defendant articulates a legitimate, non-discriminatory reason for its actions. Id. the plaintiff must then meet the “difficult burden” of proving that defendant’s reasons are unworthy of credence. Fuentes v. Perski, 32 F.3d 759, 765 (3rd Cir. 1994); Kautz v. Met-Pro Corp., 412 F.3d 463, 467 (3rd Cir. 2005).

The record is clear that Hyman’s suspension – and later termination - was appropriate, as set forth by the Hearing Officer in his written decision, because Hyman lied under oath during the pre-employment screening process and because she committed conduct unbecoming a public employee, and more importantly, a law enforcement officer. (Seigler Cert.; Exhibit G) She operated a substantial business as a dominatrix for hire and pornographic actress without ever disclosing it as part of her pre-employment screening. She had aliases, she failed to file tax returns for her business, she had social media profiles, and she hired herself out to private individuals to perform dominatrix services. None of this was disclosed in her pre-employment screening documents, despite Plaintiff’s affirmation, under oath, that her paperwork was “complete and accurate.”

At this late stage, it is impossible for Plaintiff to show that Defendants' legitimate, non-discriminatory reasons for her suspension were unworthy of credence. Plaintiff has no evidence that the stated reasons were not, in fact, the true reasons for her suspension. Nor does she have evidence that similarly situated employees who did not engage in protected conduct were treated more favorably than she was. Plaintiff took no depositions and requested no discovery. To the extent Plaintiff's claims survive the prima facie phase, it is not sufficiently supported in the pretext phase to warrant a trial.

CONCLUSION

For the aforementioned reasons, Defendants' Motion for Summary Judgment should be GRANTED in its entirety.

CHASAN LEYNER & LAMPARELLO, PC
Attorneys for Defendants



By: _____
RAYMOND J. SEIGLER

Dated: May 10, 2019