

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

POLINA NIKOLOVA,

Plaintiff,

v.

ST. BARTHOLOMEW'S CHURCH IN THE CITY OF
NEW YORK *a/k/a* RECTOR CHURCH WARDENS
AND VESTRYMEN OF ST. BARTHOLOMEW'S
CHURCH IN THE CITY OF NEW YORK *a/k/a*
RECTOR WARDENS VESTRY MEN OF ST.
BARTHOLOMEW'S CHURCH, LYNN SANDERS, and
VERONICA SHEA,

Defendants.

20-CV-10096

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Polina Nikolova, by and through the undersigned counsel, alleges upon personal information as to some, and information and belief as to the rest, as follows:

NATURE OF THE ACTION

1. This case arises under the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, 42 U.S.C. § 12101 et seq. for causes of action sounding in employment discrimination, retaliation, and failure to accommodate.
2. This case also arises under the New York City Human Rights Law, as amended by the Local Civil Rights Restoration Act of 2005, N.Y.C. Admin. Code § 8-101 et seq. ("NYCHRL") for causes of action sounding in employment discrimination, retaliation, and failure to accommodate.

3. This case also arises under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1140 ("ERISA") for a cause of action sounding in unlawful interference with the attainment of a benefit under a defined benefit plan.
4. This case also arises under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq. (FLSA") for a cause of action sounding in retaliation.
5. This case also arises under the New York Labor Law, N.Y. Lab. Law § 215 ("NYLL") for a cause of action sounding in retaliation.
6. Plaintiff Nikolova seeks declaratory and injunctive relief, as well as monetary damages in the form of back pay, front pay, emotional distress damages, punitive damages, interest, costs and expenses, and reasonable attorneys' fees under the fee-shifting provisions of the foregoing statutes, in an amount no less than \$5,000,000.00.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction under 28 U.S.C. § 1331.
8. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.
9. The venue of this action is proper under 28 U.S.C. § 1391(b)(1) and (2).
10. Plaintiff Nikolova has satisfied all pre-conditions to the commencement of this action.

THE PARTIES

Plaintiff Polina Nikolova

11. Plaintiff Polina Nikolova (“Nikolova” or “Plaintiff”) is a natural adult person with residence and citizenship in New York.
12. Plaintiff Nikolova was employed by Defendants in New York City within the meaning of the ADAA, NYCHRL, ERISA, FLSA, and the NYLL for nearly seven (7) years, approximately June 2012 until February 2019.
13. Plaintiff Nikolova is a person with an impairment as that term is defined by the ADAA and the NYCHRL, and she was perceived as having an impairment by Defendants.
14. Plaintiff Nikolova’s foregoing impairment includes chronic nasal obstruction, chronic sinusitis, and permanent hypertrophy of her nasal and sinus lining (herein “impairment”).
15. When active, Plaintiff Nikolova’s impairment substantially impairs her ability to breath, see, eat, smell, and taste, as compared to the general public.
16. When active, Plaintiff Nikolova’s impairment substantially impairs her immune system (causing her to become more susceptible to illness); her olfactory and gustatory systems (causing her to lose her sense of smell and taste); her ocular system (causing her vision to become impaired); and her digestive and respiratory systems (causing her to overproduce mucus which causes her indigestion and symptoms of Irritable Bowel

Syndrome, and causes her throat to become inflamed, resulting in difficulty in her breathing and eating).

Defendant St. Bartholomew's Church in The City Of New York a/k/a Rector Church Wardens and Vestrymen of St. Bartholomew's Church in the City Of New York a/k/a Rector Wardens Vestry Men of St. Bartholomew's Church

17. Defendant St. Bartholomew's Church in The City Of New York a/k/a Rector Church Wardens and Vestrymen of St. Bartholomew's Church in the City Of New York a/k/a Rector Wardens Vestry Men of St. Bartholomew's Church (herein "St. Bart's" or "St. Bart's Church") is an organization operating in New York City that employed Plaintiff Nikolova within the meaning of the ADAA, NYCHRL, ERISA, FLSA, and the NYLL.

18. Defendant St. Bart's is an "Employer" within the meaning of the ADAA.

19. Defendant St. Bart's is an "Employer" within the meaning of the NYCHRL, N.Y.C. Admin. Code § 8-102.

20. Defendant St. Bart's is an "Employer" within the meaning of the ERISA, 29 U.S.C. § 1002(5).

21. Defendant St. Bart's is an "Employer" within the meaning of the FLSA, 29 U.S.C. § 203(d).

22. Defendant St. Bart's is an "Enterprise" within the meaning of the FLSA, 29 U.S.C. § 203(s).

23. Defendant St. Bart's is an "Employer" within the meaning of the NYLL, N.Y. Lab. Law § 190(3).

24. At all times during Plaintiff's employment with Defendant St. Bart's, Defendant has employed at least four employees and generated at least \$500,000 in gross annual revenue by, among other things, renting out the cathedral located at 325 Park Avenue (herein the "Church") as an event space; selling books and other items that have moved in interstate commerce at the bookstore within the Church; operating a preschool, "St. Bart's Community Preschool"; renting out a swimming pool, basketball court, tennis court, gym, and karate studio located within the basement of the "St. Bart's Community House"; operating a summer camp; and renting out event space for the operation of a restaurant, "Inside Park", that sells goods moved in interstate commerce to its customers, which is located next to the Church.

25. At all times relevant during Plaintiff's employment with Defendant St. Bart's, Defendant Veronica Shea was empowered by Defendant St. Bart's to supervise Plaintiff Nikolova.

26. Defendant St. Bart's permitted Defendant Shea to train and hire Plaintiff, set her rate of pay, set her work schedule, assign her job duties, reprimand her, demote her, and terminate her.

27. At all times relevant during Plaintiff's employment with Defendant St. Bart's, Defendant Lynn Sanders was empowered by Defendant St. Bart's to supervise Plaintiff Nikolova.

28. Defendant St. Bart's permitted Defendant Sanders to set Plaintiff's rate of pay, the ability to set her work schedule, the ability to assign her job duties, reprimand her, demote her, and terminate her.

Defendant Lynn Sanders

29. Defendant Lynn Sanders ("Sanders") is a natural adult person residing and having citizenship in South Carolina.

30. Defendant Sanders was Plaintiff Nikolova's "employer" within the meaning of the ADAA, NYCHRL, ERISA, FLSA, and the NYLL.

31. Defendant Sanders had the ability to and did set Plaintiff's rate of pay, set her work schedule, assign and control her job duties, reprimand her, and terminate her.

Defendant Veronica Shea

32. Defendant Veronica Shea ("Shea") is a natural adult person residing and having citizenship in New York.

33. Defendant Shea was Plaintiff Nikolova's "employer" within the meaning of the ADAA, NYCHRL, ERISA, FLSA, and the NYLL.

34. Defendant Shea had the ability to and did set Plaintiff's rate of pay, set her work schedule, assign and control her job duties, reprimand her, and terminate her.

FACTS

35. In June 2012, Plaintiff Nikolova was approached by the Director of St. Bart's Central and Bookstore, Defendant Veronica Shea, to work part-time at the front desk and bookstore located within St. Bart's Church in New York City.

36. Defendant Shea trained Plaintiff Nikolova on how to perform the job duties related to the front desk and bookstore, including answering inquiries from visitors to St. Bart's Church, routing telephone calls and emails to St. Bart's personnel, and assisting visitors with book purchases.

37. During the course of her nearly seven (7) years of employment, Plaintiff Nikolova came to know that Defendant Shea managed a team of individuals who worked at the front desk and bookstore whom Defendant Shea referred to as "SBCers" ("SBC" stands for St. Bart's Central).

38. During the course of her nearly seven (7) years of employment, Plaintiff Nikolova came to know that Defendant Shea coordinated the "SBCers" work schedule typically by sending out a group email asking for volunteers for particular shifts.

39. During the course of her nearly seven (7) years of employment, Plaintiff was only provided with one written performance appraisal which stated that she was performing satisfactorily in all regards.

40. During the course of her nearly seven (7) years of employment, Plaintiff Nikolova was not counseled or disciplined in any way in regard to the performance of her job duties.

41. During the course of her nearly seven (7) years of employment, Plaintiff Nikolova came to learn that Defendant Shea maintained an extremely liberal policy on attendance. Under Defendant Shea's extremely liberal attendance policy, it was not uncommon for an SBCer to call out from a scheduled shift, even at the very last minute, without any adverse consequence.

42. Defendant Shea's extremely liberal policy on attendance was in line with the leave policy outlined in Defendant St. Bart's employee handbook, which states, "employees are expected to inform their manager of their absence no later than one-half hour *after* their regularly scheduled starting time." (emphasis added).

43. From June 2012 to approximately June 2013, Plaintiff Nikolova worked at the Church front desk and bookstore without compensation.

44. Thereafter, Defendant Shea arranged for Defendant St. Bart's to pay Plaintiff Nikolova a regular rate of \$15 per hour.

45. In August 2018, Plaintiff Nikolova performed an accounting of the number of hours she had worked for Defendants and realized that Defendants had underpaid her.

46. Plaintiff Nikolva reported this underpayment to Defendants' then-human resources personnel, Novlette Stephenson, and several e-mails were exchanged between Ms. Stephenson, Plaintiff, and Defendant Shea regarding the underpayments.

47. Thereafter, during a shift at the front desk, the topic of the underpayments came up between Plaintiff Nikolova and Defendant Shea. Defendant Shea became visibly upset that the topic of underpayments had been brought up, and Defendant Shea

slapped Plaintiff twice on the wrist, in the presence of Plaintiff's sister, and exclaimed, in sum and substance, "How dare you ask for overtime pay!"

48. Thereafter, Plaintiff Nikolova was too afraid to discuss the issue of underpayments again for fear that Defendant Shea would slap her again.

49. In the winter months, the front desk and bookstore of the Church was especially chilly because the main doors to the Church were typically propped open to the outside.

50. For years, Defendant Shea accommodated Plaintiff Nikolova's impairment in the chilly winter months by permitting her to wear a heavy winter coat, hat, and gloves while stationed at the front desk and bookstore and by permitting Plaintiff to keep the main doors to the Church closed during her shifts.

51. However, when Defendant Lynn Sanders became Vicar, it became apparent to Plaintiff Nikolova that Defendant Sanders did not tolerate these foregoing disability-related accommodations.

52. For example, Defendant Sanders openly mocked Plaintiff Nikolova when she wore her heavy coat, gloves, and hat with sarcastic remarks such as, "Oh, I did not recognize you with all of that winter gear on, *Polina!*"

53. In another instance, Defendant Shea stated to Plaintiff Nikolova that Defendant Sanders thought Plaintiff's request to keep the doors to the Church closed during the winter months was "arrogant".

54. In the winter months of late 2018 and early 2019, Plaintiff's impairment became activated, and as a result, she began experiencing a loss of smell, taste, and sight, and her ability to breathe and eat became substantially impaired. As a result, her doctor prescribed medication, including a steroid and antibiotic.

55. On February 1, 2019, Plaintiff e-mailed Defendant Shea to notify her that her impairment had become activated, and that the doctor had prescribed her a steroid and antibiotic, and Plaintiff requested, as a reasonable accommodation, that she be permitted leave from work to recover.

56. However, on February 13, 2019, Defendant Shea and Defendant Sanders wrote Plaintiff an e-mail, informing her that due to her "ongoing illness", they were removing her from the work schedule *and Plaintiff was never scheduled again*. In effect, Defendant Shea and Defendant Sanders terminated Plaintiff's employment because of her disability, and without so much as even engaging in a dialogue with Plaintiff to determine if a reasonable accommodation was available.

57. On March 27, 2019, Defendants summoned Plaintiff Nikolova to the Church, wherein they asked that she sign a release that waived all legal claims against Defendants, but Plaintiff declined.

58. Having been unceremoniously terminated from the job she had dutifully performed for nearly seven (7) years, Plaintiff Nikolova was understandably devastated and the impact of Defendants' decision negatively affects her to this day. The strong

sense of community Plaintiff had enjoyed at the Church for years was suddenly fractured because of Defendants' unlawful and intentional disability-related bias.

59. Moreover, Plaintiff Nikolova, as a nearly seven (7) year St. Bart's employee, had an opportunity to attain rights through an ERISA-covered benefit plan. Defendant St. Bart's applicable Employee Handbook, which applied to Plaintiff, states:

Employees regularly scheduled to work 1,000 or more compensated hours annually are eligible to participate in the Defined Benefit Plan. Pension is based on the total annual salary.

(emphasis added).

60. However, as a cache of emails between Defendant Sanders and Defendant Shea disclosed by counsel for Defendants reveals, Defendants Sanders and Shea acted in concert to unlawfully interfere with Plaintiff's attainment of those benefits.

61. In one such e-mail from Defendant Shea to Defendant Sanders, sent on January 23, 2019, Defendant Shea cautioned Defendant Sanders:

[Nikolova's] 'steady' shift is Sundays, 12-6 PM, and she has been filling in on Monday and Tuesday afternoons 1-6 PM as a temporary solution to fill in the gap left by Barbara's move, in addition to my vacation days. If she were to continue to do these hours every week, in addition to my vacation time, she would be very close to going over 1,000 hours, which would mean we would have to provide her with benefits.

(emphasis added)

62. And, on January 27, 2019, Defendant Sanders responded as follows:

This is hugely helpful - thank you for taking the time to think through these issues and to document them so well, and to propose a number of possible solutions. Pondering

63. Had Defendants Sanders and Shea not acted in concert to terminate Plaintiff for the purpose of interfering with her eligibility for benefits and because of her disability and/or in retaliation for requesting reasonable accommodations related to her disability, she would have been eligible for a substantial amount of pension given her nearly seven (7) years of service under Defendant St. Bart's pension plan, in an amount to be determined through discovery.

FIRST CAUSE OF ACTION

Unlawful and Intentional Disability Discrimination

Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, 42 U.S.C. 12101 et seq.

As Against Defendant St. Bart's Church

64. Plaintiff realleges and incorporates the foregoing allegations stated above herein.

65. Plaintiff is a person with a disability within the meaning of the ADAA because Defendants perceived her as a person with a disability as those terms are defined by the law.

66. Plaintiff is also a person with a disability within the meaning of the ADAA because she has an impairment of her bodily systems as those terms are defined by the law.

67. Plaintiff was able to perform the essential functions of her job with Defendants with and without a reasonable accommodation.

68. By the foregoing conduct, Defendant unlawfully and intentionally discriminated against Plaintiff because of disability within the meaning of the ADAA.

69. As a result of the foregoing, Plaintiff seeks declaratory and injunctive relief, as well as all other relief available under the law.

SECOND CAUSE OF ACTION

Unlawful and Intentional Retaliation

Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, 42 U.S.C. 12101 et seq.

As Against Defendant St. Bart's Church

70. Plaintiff realleges and incorporates the foregoing allegations stated above herein.

71. By the foregoing conduct, Defendant retaliated against Plaintiff for engaging in activity protected by the ADAA known to Defendant.

72. As a result of the foregoing, Plaintiff seeks declaratory and injunctive relief, as well as all other relief available under the law.

THIRD CAUSE OF ACTION

Failure to Accommodate

Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008, 42 U.S.C. 12101 et seq.

As Against Defendant St. Bart's Church

73. Plaintiff realleges and incorporates the foregoing allegations stated above herein.

74. By the foregoing conduct, Defendant failed to accommodate Plaintiff's disability known to them in a reasonable and effective manner that would pose no undue hardship upon Defendant by permitting her to take leave related to such impairment.

75. As a result of the foregoing, Plaintiff seeks declaratory and injunctive relief, as well as all other relief available under the law.

FOURTH CAUSE OF ACTION

Unlawful and Intentional Disability Discrimination
New York City Human Rights Law, as amended by the Local Civil Rights Restoration
Act of 2005, N.Y.C. Admin. Code § 8-101 et seq.
As Against all Defendants

76. Plaintiff realleges and incorporates the foregoing allegations stated above herein.

77. Plaintiff is a person with a disability within the meaning of the NYCHRL because Defendants perceived her as a person with a disability as those terms are defined by the law.

78. Plaintiff is also a person with a disability within the meaning of the NYCHRL because she has an impairment of her bodily systems as those terms are defined by the law.

79. By the foregoing conduct, Defendants unlawfully and intentionally discriminated against Plaintiff because of disability, within the meaning of the NYCHRL.

80. As a result of the foregoing, Plaintiff seeks declaratory and injunctive relief, as well as all other relief available under the law.

FIFTH CAUSE OF ACTION

Unlawful and Intentional Retaliation
New York City Human Rights Law, as amended by the Local Civil Rights Restoration
Act of 2005, N.Y.C. Admin. Code § 8-101 et seq.
As Against all Defendants

81. Plaintiff realleges and incorporates the foregoing allegations stated above herein.

82. By the foregoing conduct, Defendants retaliated against Plaintiff for engaging in activity protected by the NYCHRL known to them.

83. As a result of the foregoing, Plaintiff seeks declaratory and injunctive relief, as well as all other relief available under the law.

SIXTH CAUSE OF ACTION

Failure to Engage in Cooperative Dialogue
New York City Human Rights Law, as amended by the Local Civil Rights Restoration
Act of 2005, N.Y.C. Admin. Code § 8-101 et seq.
As Against all Defendants

84. Plaintiff realleges and incorporates the foregoing allegations stated above herein.

85. N.Y.C. Admin. Code § 8-107(28) states as follows:

Reasonable accommodation; cooperative dialogue.

(a) Employment. It shall be an unlawful discriminatory practice for an employer, labor organization or employment agency or an employee or agent thereof to refuse or otherwise fail to engage in a cooperative dialogue within a reasonable time with a person who has requested an accommodation or who the covered entity has notice may require such an accommodation:... (2) Related to a disability as provided in subdivision 15 of this section;

....

(d) Upon reaching a final determination at the conclusion of a cooperative dialogue pursuant to paragraphs (a) and (c) of this subdivision, the covered entity shall provide any person requesting an accommodation who participated in the

cooperative dialogue with a written final determination identifying any accommodation granted or denied.

- (e) The determination that no reasonable accommodation would enable the person requesting an accommodation to satisfy the essential requisites of a job or enjoy the right or rights in question may only be made after the parties have engaged, or the covered entity has attempted to engage, in a cooperative dialogue.

86. In February 2019, Plaintiff asked Defendant Shea that she be excused from work because of the activation of her foregoing impairments, as a reasonable accommodation.

87. Rather than engage in *any* “cooperative dialogue” as required by N.Y.C. Admin. Code § 8-107(28), on February 13, 2019, Defendant Shea and Defendant Sanders permanently removed Plaintiff from the work schedule, effectively terminating her.

88. At no time did Defendants provide Plaintiff with a “written final determination identifying any accommodation granted or denied”, as required by N.Y.C. Admin. Code § 8-107(28)(d).

89. As a result of the foregoing, Plaintiff seeks declaratory and injunctive relief, as well as all other relief available under the law.

SEVENTH CAUSE OF ACTION

Unlawful and Intentional Retaliation

Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq.

As Against Defendant St. Bart’s and Defendant Veronica Shea

90. Plaintiff realleges and incorporates the foregoing allegations stated above herein.

91. In 2018, Defendant St. Bart's was an "employer" under the meaning of the FLSA.

92. Defendant Veronica Shea is an "employer" within the meaning of the FLSA.

93. By Defendant Shea's foregoing conduct, Defendants unlawfully and intentionally retaliated against Plaintiff for engaging in activity protected by the FLSA known to them.

94. As a result of the foregoing, Plaintiff seeks declaratory and injunctive relief, as well as all other relief available under the law.

EIGHTH CAUSE OF ACTION

Unlawful and Intentional Retaliation

New York Labor Law, N.Y. Lab. Law § 215

As Against Defendant St. Bart's and Defendant Veronica Shea

95. Plaintiff realleges and incorporates the foregoing allegations stated above herein.

96. In 2018, Defendant St. Bart's was an "employer" within the meaning of the NYLL.

97. In 2018, Defendant Shea was an "employer" within the meaning of the NYLL.

98. By Defendant Shea's foregoing conduct, Defendants unlawfully and intentionally retaliated against Plaintiff for engaging in activity protected by the NYLL known to them.

99. As a result of the foregoing, Plaintiff seeks declaratory and injunctive relief, as well as all other relief available under the law.

NINETH CAUSE OF ACTION

Unlawful and Intentional Interference

Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1140

As against all Defendants

100. Plaintiff realleges and incorporates the foregoing allegations stated above herein.

101. Plaintiff was an employee who had an opportunity to attain rights through an ERISA-covered benefit plan. Defendant St. Bart's Employee Handbook, which applied to Plaintiff, states:

Employees regularly scheduled to work 1,000 or more compensated hours annually are eligible to participate in the Defined Benefit Plan. Pension is based on the total annual salary.

(emphasis added).

102. Plaintiff was qualified for her position with Defendant St. Bart's.

103. Plaintiff was employed by Defendant St. Bart's for nearly seven years, from June 2012 until February 2019.

104. By the foregoing, Defendant Shea and Defendant Sanders unlawfully and intentionally removed Plaintiff from the work schedule permanently and terminated her in order to prevent her from attaining benefits under the defined benefit plan described in Defendant St. Bart's Employee Handbook, *supra*, including substantial pension benefits based upon her "total annual salary".

105. As a result of the foregoing, Plaintiff seeks declaratory and injunctive relief, as well as all other relief available under the law.

JURY DEMAND

Plaintiff respectfully requests a jury trial.

PRAYER FOR RELIEF

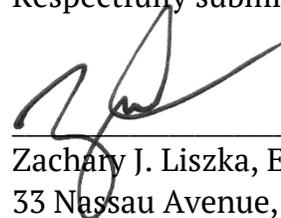
WHEREFORE, Plaintiff respectfully prays for the following relief:

- a. a declaration that Defendants violated the ADAA, NYCHRL, ERISA, FLSA, and the NYLL;
- b. an order enjoining Defendants from engaging in the foregoing practices that violate the ADAA, NYCHRL, ERISA, FLSA, and the NYLL;
- c. an order awarding front pay, back pay, emotional distress damages, punitive damages, interest, costs, expenses, and reasonable attorneys' fees;
- d. other relief the Court finds necessary and just.

Date: Brooklyn, New York
December 2, 2020

Respectfully submitted,

By:



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