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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KIRK A. SWANSON,

Plaintiff,

Civ. No.: 15-cv-06938

-against-

COMPLAINT

JURY TRIAL DEMANDED

BATTERY PARK CITY AUTHORITY, and
SHARI HYMAN,

Defendants.

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Plaintiff Kirk A. Swanson, by his attorneys Giskan Solotaroff Anderson & Stewart LLP, for his complaint against Defendants Battery Park City Authority (“BPCA”) and Shari Hyman, alleges as follows:

Nature of the Action and Preliminary Statement

1. This is an action for retaliation in violation of Title VII of the Civil Rights Act of 1964, the New York City Human Rights Law and the New York False Claims Act.

2. Mr. Swanson was employed at the BPCA from November 2012 to May 2014, serving in several senior positions. In these roles, Mr. Swanson served as the BPCA’s Chief Contracting Officer and Internal Controls Officer. Mr. Swanson’s performance was extremely

strong, as evidenced by the two promotions and the substantial raise he received during his time at the Authority.

3. In January 2014, upon learning that one of his subordinate employees had been sexually harassed by two senior officials at the BPCA and that a report concerning those incidents was pending with the Governor's Office of Employee Relations, Mr. Swanson requested that BPCA Chairman Dennis Mehiel be informed and take action concerning the harassment. Mr. Swanson subsequently complained to one of the harassers about her conduct.

4. In addition, in February 2014, Mr. Swanson discovered that BPCA employees, including the BPCA's Acting General Counsel, were misrepresenting details of two BPCA contract proposals in an effort to bypass the BPCA contract approval process. Mr. Swanson objected to the misrepresentation and attempted to ensure that the approval process was followed.

5. On April 11, 2014, three days after sending an email to the Acting General Counsel concerning her efforts to bypass the contract approval process, Ms. Hyman terminated Mr. Swanson's employment. One of the reasons Ms. Hyman gave for the termination was the email Mr. Swanson had sent concerning the questionable contract.

THE PARTIES

6. Plaintiff Kirk Swanson is a resident of New York, New York.

7. Defendant Battery Park City Authority is a public benefit corporation established under the laws of New York with its principal place of business in New York, New York.

8. Shari Hyman is the President of the BPCA and is a resident of New York, New York.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. This Court has personal jurisdiction over Defendants BPCA because Defendants have their principal place of business and/or reside in this district.

THE FACTS

Background

10. Mr. Swanson graduated from Columbia University's School of International and Public Affairs in 2001. Since graduation, he has held a number of high-level administrative positions including serving as Associate Director of Research and Special Projects and Interim Assistant Comptroller for External Relations at the New York City Comptroller's Office.

11. In November 2012, Mr. Swanson was hired by the BPCA as Deputy Chief Administrative Officer. He was also given the title of Internal Controls Officer, and subsequently was named Chief Contracting Officer. His responsibilities included general administration, compliance, and diversity. Mr. Swanson was promoted to Chief Administrative Officer in March 2013.

12. In December 2013, Mr. Swanson was promoted to Vice-President of Administration. He was given additional responsibilities over information technology, permitting, lease administration, compliance operations, and some functions of human resources, while still retaining his roles as Chief Contracting Officer and Internal Controls Officer.

Mr. Swanson Objects To Sexual Harassment of a BPCA Employee.

13. In January 2014, Mr. Swanson learned that Elizabeth Papanicolaou, who reported to him, had been treated in an offensive and harassing way based on her sex by both Brenda

McIntyre, BPCA's VP of Human Resources, and Robert Serpico, BPCA's acting President at the time. Mr. Swanson also learned that Ms. Papanicolaou had made a formal complaint to the Governor's Office of Employee Relations.

14. Mr. Swanson repeatedly communicated to Kevin McCabe, Special Assistant to BPCA Chairman Dennis Mehiel, regarding his concern about the harassment. He requested that Mr. Mehiel should take action. Mr. Swanson and Mr. McCabe also discussed Mr. Serpico's long history of sexually inappropriate behavior.

15. In February 2014, Mr. Swanson learned that there had been several closed-door meetings regarding revisions of the BPCA Employee Handbook between Shari Hyman—who had just been appointed BPCA President—Brenda McIntyre, Robert Serpico, and Acting General Counsel Seema Singh. Mr. Swanson advised Mr. McCabe that he believed these meetings were inappropriate given the ongoing investigation involving Mr. Serpico and Ms. McIntyre.

16. In February 2014, Mr. Swanson confronted Ms. McIntyre about her conduct and made clear his opposition to her behavior. Shortly thereafter, Ms. Hyman, at the direction of Mr. Mehiel, announced that Ms. McIntyre would no longer report to Mr. Swanson.

Mr. Swanson Discovers and Attempts To Stop Fraud in BPCA Contracting Practices

17. Beginning in February 2014, Mr. Swanson discovered that high-level BPCA employees were making false statements in an effort to bypass the BPCA's contract approval process.

18. In March 2014, Mr. McCabe advised Mr. Swanson that Ms. Hyman, who had recently been appointed President of the BPCA, wished to expedite a redesign of the websites for the BPCA and its affiliate the Battery Park Conservancy.

19. Mr. McCabe stated that Ms. Hyman was intent on selecting a particular vendor for the redesign, Revolver Studios. Mr. McCabe stated that Ms. Hyman wished to bypass the BPCA contracting procedure, which would have required a formal Request for Proposal and three competitive bids, by designating the contract as a “discretionary procurement.”

20. BPCA regulations only permit contracts involving expenditures of less than \$50,000 to be designated as “discretionary procurements.” In order to bring the Revolver contract expenditure under \$50,000, BPCA officials misleadingly broke the contract into two parts: one for the BPCA website and one for the Battery Park Conservancy website. Each of these contracts would then total less than \$50,000.

21. Mr. Swanson informed Mr. McCabe that even for “discretionary procurements,” BPCA guidelines required obtaining additional bids to ensure that the BPCA would pay a competitive price. Mr. McCabe only obtained one additional bid, which appeared not legitimate based on the absence of documentation.

22. Mr. Swanson protested to Mr. McCabe that the situation was “utterly bogus.” Additionally, in April 2014 Mr. Swanson discovered that the work on the website projects had begun prior to the contract being approved, again in violation of BPCA procedures. Mr. Swanson expressed his continued objections to Mr. McCabe.

23. The website project was not the only instance of BPCA senior staff fraudulently awarding a contract.

24. In March 2014, Seema Singh, who was then the BPCA Acting General Counsel, was attempting to gain approval for the amendment of a contract that the BPCA had entered into in February 2014 with a law firm, Liddle & Robinson LLP, to represent the BPCA in matters relating to “issuance of auction rate securities and related swap and financing transactions.”

25. Mr. Swanson discovered that the February Liddle & Robinson contract had not been presented for approval to the BPCA Contract Selection Committee, even though that approval was required by the BPCA contract approval process. Mr. Swanson also discovered that Ms. Singh had stated in the contract documents that Liddle & Robinson was “pre-qualified legal counsel” even though the law firm was not pre-qualified. Finally, Mr. Swanson learned that Ms. Singh had further bypassed the BPCA contracting process, which would have required Mr. Swanson as Chief Contracting Officer to personally approve the contract, by arranging to have the original contract approved by Mr. Swanson’s deputy while Mr. Swanson was out of the office on vacation.

26. On April 8, 2014, Mr. Swanson sent an email to Ms. Singh addressing these issues and requesting that they be remedied.

27. On April 11, 2014, less than three days after he sent the email questioning the Liddle contract, Mr. Swanson’s employment was terminated. Among the reasons given by Ms. Hyman for the termination was his email to Ms. Singh about the Liddle & Robinson contract.

Exhaustion of Administrative Remedies

28. On or about January 22, 2015, Mr. Swanson filed a complaint with the Equal Employment Opportunity Commission alleging that the BPCA terminated him in retaliation for his opposition to the sexual harassment of Elizabeth Papanicolaou.

29. Given that the complaint was against a state governmental entity, the complaint was transferred for processing to the United States Department of Justice, Civil Rights Division.

30. On or about July 23, 2015, the Civil Rights Division issued a right to sue letter.

FIRST CLAIM FOR RELIEF
(Retaliation in Violation of Title VII against Defendant BPCA)

31. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs above as if fully set forth herein.

32. Defendant BPCA discriminated and retaliated against Plaintiff in the terms and conditions of his employment based on his opposition to Defendant' BPCA's acts of sex discrimination in violation of Title VII.

SECOND CLAIM FOR RELIEF
(Retaliation in Violation of New York City Human Rights Law
against Defendant BPCA and Hyman)

33. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs above as if fully set forth herein.

34. Defendants discriminated and retaliated against Plaintiff in the terms and conditions of his employment based on his opposition to Defendant BPCA's acts of sex discrimination in violation of the New York City Human Rights Law.

THIRD CLAIM FOR RELIEF
(Whistleblower Retaliation on Violation of New York False Claims Law
Against Defendant BPCA)

35. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs above as if fully set forth herein.

36. Defendant BPCA discharged and discriminated against Plaintiff in the terms and conditions of his employment because of lawful acts done by Plaintiff in furtherance of efforts to stop one or more violations of the New York False Claims Act, New York State Finance Law §187 et seq., specifically violations of New York State Finance Law §189(b) and (c).

JURY DEMAND

Plaintiff demands trial by jury of all issues as of right by a jury.

WHEREFORE, Plaintiff demands judgment against Defendants:

1. Requiring Defendants to reinstate Plaintiff to the position he held prior to his termination, with all employee benefits incidental thereto; or in the alternative to award front pay;
2. Enjoining Defendants, upon Plaintiff's reinstatement, from retaliating against Plaintiff on the basis of his opposition to sex discrimination and/or his efforts to stop violations of the New York False Claims Act;
3. Awarding Plaintiff back pay;
4. For the False Claims Act violation, awarding Plaintiff two times back pay;
5. Awarding Plaintiff compensatory damages, including but not limited to damages for emotional distress;
6. For the Title VII and New York City Human Rights Law violations, awarding Plaintiff punitive damages;
7. Awarding reasonable attorneys' fees, costs, and expenses, and,

Granting such other legal and equitable relief to the Plaintiff as the Court may deem just and equitable.

Dated: New York, New York
September 2, 2015

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/s

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