

## Employment

### Discrimination - No Pretext - Denial Of Tenure

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Where a plaintiff professor, who was denied tenure, has brought suit charging the defendant university with discrimination on the basis of age and sex in violation of Chapter 151B, the university must be awarded summary judgment on the 151B claim on the ground that the plaintiff has failed to demonstrate that the university's stated reasons for the denial of tenure were pretextual.

The court goes on to rule: that the university's motion for summary judgment on a breach of contract count must be denied; and that the university and codefendant university officials are entitled to summary judgment on the remaining claims asserted by the plaintiff.

#### No Pretext

"The plaintiff has not cited a single item of evidence to support her claim that [defendant Northeastern] University's reasons for denying tenure were a pretext. The reasons articulated by the University are set forth in detail in the Report of the Tenure Committee of May 18, 1990, the decision of the arbitrator, the recommendation of the Ad Hoc Committee, and the affidavits of the individual defendants. The reasons all relate to specific aspects of the plaintiff's performance as a Northeastern faculty member. For example, the Ad Hoc Committee's decision was based on 'a lack of evidence of significant achievement in the areas of teaching and service expected at the level of Associate Professor.' Particular problems cited by the Ad Hoc Committee included inadequate evidence of quality presentation in the classroom, a failure to follow the curriculum when the plaintiff taught a course, and a lack of sufficient evidence of clinical teaching and following curriculum and course design. Another deficiency noted by the Ad Hoc Committee was minimal evidence of faculty peer review of classroom teaching.

"In her answers to interrogatories and her memorandum in opposition to summary judgment, the plaintiff relies exclusively on the defendants' procedural and evaluation errors as her evidence of discrimination and pretext. Contrary to the plaintiff's claim, there is no evidence in the arbitrator's decision or anywhere else in the summary judgment materials that the University's 'asserted reasons were not the real reasons for the action.' ... The plaintiff's claim of pretext is sheer speculation. ..."

#### Contract Claim

"The defendants contend that the breach of contract claims are the same claims that were decided in the arbitration proceeding under the contract between the plaintiff and the University. The defendants contend that under the contract the arbitration proceeding was the plaintiff's exclusive remedy for the alleged breaches of contract in the course of the tenure consideration process. ... [A] justice of this court has already ruled that the breach of contract issues 'were not litigated [and] were not necessary to the arbitrator's final decision.' ... [T]his justice will not consider the correctness of this ruling, solely for these reasons, the court must at present deny Northeastern's motion for summary judgment on the breach of contract count.

"The other defendants had no employment contract with the plaintiff, and they are entitled to summary judgment on the contract count."

#### Remaining Claims

"The affidavits of defendants Curry, Matthews, Baer and Zungolo establish that each of these defendants acted in good faith and that their actions in the plaintiff's tenure consideration process were based solely on their good faith evaluations of her dossier, qualifications and recommendations. The plaintiff has

presented no countervailing evidence that would raise a genuine issue of material fact on these points. In the face of these affidavits, there is no evidence that any of the defendants combined together for an unlawful purpose or to accomplish a lawful purpose by an unlawful means. ... The defendants' affidavits establish without any countervailing evidence that their conduct regarding the tenure process did not amount to concerted tortious conduct. There is no evidence of an unlawful conspiracy. ...

"Similarly, there is an absence of evidence in the summary judgment materials to support the plaintiff's claim that any defendant committed any act of fraud or tortious misrepresentation. There is an absence of evidence of any statement of fact to the plaintiff by any defendant that was false and relied upon by the plaintiff to her detriment. The summary judgment materials likewise contain no evidence that the defendants' actions in terminating her employment were the product of improper motive or means.' ...

"For these reasons the defendants are entitled to summary judgment on the claims for conspiracy, fraud, misrepresentation, and interference with advantageous business relationships. ...

"With respect to intentional infliction of emotional distress, the plaintiff has presented no evidence that the defendants' conduct `was "extreme and outrageous," "was beyond all possible bounds of decency" and was "utterly intolerable in a civilized community." ... Additionally, on the claims for intentional and negligent infliction of emotional distress, the defendants are entitled to summary judgment for the reasons stated in *Catalano v. First Essex Savings Bank*, 37 Mass. App. Ct. 377, 380-382 (1994)."

Hoff v. Northeastern University, et al. (Lawyers Weekly No. 12-331-96) (10 pages) (Hely, J.) (Suffolk)  
Frances Tucker for the plaintiff; Marc Redlich for the defendants (C.A. 94-3194A).

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