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## First Dept. Allows Nigerian Man to Proceed With National Origin Claim vs. State Disability Assistance Agency

The plaintiff in the Manhattan-based lawsuit, who is today in his early 50s and who immigrated to the U.S. when he was 25, alleges that several higher-ups in the state agency targeted him for unlawful discrimination because of his Nigerian origin.

By Jason Grant | October 14, 2021



**Appellate Division, First Department at 27 Madison Ave. (Photo: David Handschuh/ALM)**

In a partial reversal of the trial court, a state appeals court is allowing to go forward a Nigerian man's discrimination-over-national-origin claim leveled against the state Office of Temporary and Disability Assistance and a division deputy commissioner in the agency.

"Liberally construing the complaint, presuming its factual allegations to be true, and according it the benefit of every possible favorable inference ... the complaint asserts that [defendant Cheryl] Contento[, a deputy commissioner at the state agency] was aware of a long chain of discrimination against plaintiff and condoned it," wrote the Appellate Division, First Department court in a decision that turned back the agency's and Contento's motion to dismiss a particular national-origin discrimination claim lodged against them.

The unanimous five-justice First Department panel then wrote ([https://www.nycourts.gov/reporter/3dseries/2021/2021\\_05394.htm](https://www.nycourts.gov/reporter/3dseries/2021/2021_05394.htm)), while still presuming the complaint's factual allegations to be true, "It can also be inferred that Contento was aware of plaintiff's national origin, and condoned the continuing discrimination and concurrent retaliation against him, culminating in the ultimate adverse action of termination of employment."

The plaintiff in the Manhattan-based lawsuit, Chijioke Ajoku, who is today in his early 50s and who immigrated to the U.S. when he was 25, alleges in the action that several higher-ups in the agency targeted him for unlawful discrimination because of his Nigerian origin, that he suffered wrongful retaliation after he complained about his alleged treatment, and that he was subjected to a hostile work environment.

In a lengthy complaint filed by Ajoku in 2018 and then amended in 2019, he lays out a long tale of alleged wrongful conduct spanning from when he was hired in 2016 as a consultant inside the agency's Physical Standards and Safety or Physical Plants Unit, or PPU, which was part of the agency's Division of Shelter Oversight and Compliance, to when he was terminated in September 2018.

Many of his claims are brought under the New York State Human Rights Law, and they include claims against some of the five named individual defendants for aiding and abetting discrimination that other named defendants allegedly committed.

Among various allegations in the complaint, Ajoku contends he was wrongfully targeted and retaliated against for lodging internal complaints about colleagues who he said had falsified timesheets. He also says that early on one of his supervisors—who, like other named defendants, was not of Nigerian national origin—falsely said to other employees that Ajoku was “only ‘good’ in fire safety” in a job role in which he monitored development of homeless facilities and later inspected them.

Moreover, among other allegations, Ajoku also claims that when he objected to an “incorrect” performance evaluation, the same supervisor “jumped out of his chair and angrily told Plaintiff that they would sit and go through Plaintiff’s reports,” which the supervisor said were deficient, and that Ajoku “feared for his safety.”

Additionally, he contends the supervisor and another agency employee commented that “there were too many Nigerians on the civil service list and that too many Nigerians worked at OTDA,” the state Office of Temporary and Disability Assistance.

He also claims, according to complaint documents and to allegations recited in a 2020 motion to dismiss decision issued by Manhattan Supreme Court Justice Lynn Kotler, that certain agency employees eventually began framing him as incompetent, such as by filing false reports about re-inspections of property he’d inspected. Moreover, he alleges that in May 2018 he obtained a doctor’s note saying he had tension headaches and anxiety, but that he was not then properly accommodated in the workplace. And he says that in September 2018 he was directed to sign a job evaluation with false “poor performance” allegations in it, and that when he refused to sign it he was fired on the spot by defendant Contento, who was an agency deputy commissioner.

Kotler, in her 2020 trial-level decision, wrote that Ajoku alleged that two particular employees at the agency “made discriminatory comments” against Nigerians, “beyond those claims there is no nexus between OTDA and/or Contento and the discriminatory behavior plaintiff [Ajoku] claims that [the two other employees] exhibited.”

“There are simply no facts alleged that establish that OTDA or Contento encouraged, condoned or approved any discriminatory behavior based upon plaintiff’s Nigerian national origin,” Kotler wrote.

But the First Department panel, which affirmed Kotler’s dismissal of certain Ajoku’s claims and her denying of dismissal of others, disagreed with Kotler’s analysis regarding Contento and the defense’s attempt to dismiss the discrimination claim against her.

The panel wrote that “liberally construing the complaint, presuming its factual allegations to be true, and according it the benefit of every possible favorable inference ... the complaint asserts that Contento was aware of a long chain of discrimination against plaintiff and condoned it.”

William Cowles, an attorney with Maduegbuna Cooper in Manhattan, represented Ajoku before the First Department.

In an email, he said Ajoku's appeal raised issues that have "significant implications" for state employees, including "whether the New York City Human Rights Law applies against state employees sued in their personal capacities." He said that in his view that issue was left unresolved at this juncture.

He didn't comment on the national origin-discrimination ruling under the New York State Human Rights Law on the motion to dismiss, in relation to the agency and Contento.

The state Attorney General's Office, which represented the state, the agency and other defendants, referred a reporter to the Office of Temporary and Disability Assistance for comment. OTDA said in an email that "it does not comment on pending litigation."

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