State of Connecticut
Commission on Human Rights and Opportunities
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April 18, 2018

CHRO ex rel. Steven Warner v. NERAC Inc. and Kevin Bouley, CHRO No. 0840031 Fed No. 16a200701585

FINAL DECISION
Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Referee's Final Decision in the above captioned complaint.

The decision is being sent via email to the commission, complainants, complainant's attorney and respondent's attorney.

Very Truly yours,

Kimberly D. Morris
Secretary II

cc.

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STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities
Ex rel. Steven Warner,
Complainant

v.

NERAC, Inc. and Kevin Bouley,
Respondents

CHRO No. 0840031

April 18, 2018

FINAL DECISION

SUMMARY

November 6, 2007, Steve Warner ("Complainant' or "Warner") filed a complaint, as amended on April 2, 2009 and November 20, 2009, with the Commission on Human Rights and Opportunities ("Commission" or "CHRO") alleging that Nerac, Inc. and Kevin Bouley ("Bouley") (collectively "Nerac", "the company", or the "Respondents") violated CONN. GEN. STAT. § 46a-60(a) (1). Complainant claims that the Respondents terminated his employment on February 6, 2007 because of his age.

Five different Complainants filed their underlying charges of discrimination against the Respondent for age discrimination; (Wynkoop), July 31, 2007 (Warner, Brule), November 6, 2007 (Eitelman), and January 17, 2008 (Sloman), respectively. Warner also included a pregnancy discrimination charge based on the birth of his second child. Each case was certified to public hearing on or about May 18, 2009. On August 11, 2009, the Commission, on behalf of each Complainant, moved to add Kevin Bouley. Due to the temporary absence of all Human Rights Referees to hear cases, from June 30, 2011 to December 2012, the proceedings were stayed. The undersigned became the presiding referee in these five cases in March of 2012. These cases were in various stages of pre-hearing procedure. A number of them were prepared and ready for a public hearing. A status conference with the parties was held on April 5, 2012, when a new hearing schedule was ordered. It was agreed at this time that the main body

of pre-hearing preparation had been completed. These cases were consolidated by the undersigned for hearing economy and to avoid witnesses testifying several times over many months. The hearings were held over the course of over 25 days and 4,500 pages of transcripts.

FACTS

NERAC GENERAL FACTS

All statutory and procedural prerequisites to the holding of the public hearing have been met and the case is properly before the Presiding Referee for hearing and decision. The complainant's exhibits are denoted as "C" followed by the exhibit number and the respondent's exhibits are denoted as "R" followed by the exhibit number. Those exhibits that were proffered by both the complainant and the respondent may be referred to by either designation. References to the transcript are designated as "Tr." followed by the page number. Exhibits were also designated by each individual complainant Wynkoop, Brule, Sloman, Eitleman and Warner.

History of Bouley's Ownership of NERAC

1. Dr. Wilde sold Nerac to Bouley in January of 1999. (Tr. 1315, 2071).
2. There were approximately 130 employees at that time. (Tr. 1316).
3. When Bouley bought Nerac, he, his wife Lorraine, and Russ Evans were on the Board of Directors. (Tr. 1371-72).
4. Bouley paid 5 ½ million dollars for Nerac and there were approximately 130 employees at the time. (Tr. 2072).
5. The numbers of employees fluctuated at Nerac. They had approximately 70 employees in 1993 and grew to about 250. It had about 50 employees in 2016. (Tr. 1840-41).
6. Bouley was involved in all the decisions including hiring and firing decisions. (Tr. 3291-92).

7. NERAC offered its client's bibliographic literature searches, delivering search content but not analysis. Nerac had access to databases not then available to the public at large, which it used to search for and provide information requested by its clients. (Tr. 4625-4628)

8. In October 2004, Bouley put in the Nerac Times the rollout of Skunkworks. Skunkworks was a leadership committee comprised of senior employees who met with an eye toward brainstorming ideas for improving Nerac. (Tr. 2945-46, 2865-66, 3789-91).

9. The Executive Committee (EC) in 2007 was comprised of Kevin Bouley, Bestie Petrie, John Ruest, Kevin Blackwell, and Gerri Potash. (Tr. 681, 691, 1338.).

New Business Model

10. In 2005-2006 NERAC endeavored to change its business model from just providing content to offering analysis of the content they provided. This was necessary, as many databases were available to the public through sites like Google. The transition lasted roughly three years from 2006-2009. (Tr. 503, 2111, 2113, 2126-27)

11. In 2006 and 2007, Nerac was in the midst of changing to a new business model—a model that emphasized Nerac' s ability to be a "trusted advisor" to its clients, to provide "value added analysis and advisory opinion" beyond the content-only type searches it had previously provided its customers. (Tr. 25-26, 2110-11, 2119, 2305, 2481)

12. The new business model was called "the New Nerac." During the transition to the New Nerac, the company continued to sell renewal contracts of the old model search product while trying to transition to the new model of putting an analysis component with the research. (Tr. 478-79, 499-500).

13. The change in Nerac's business model was, at least in part, the result of strategic planning sessions with an outside consultant, Barbara Colton, combined with the efforts of a large network of Nerac employees from various sectors of the company. (Tr. 1361-62, 2110-11).

14. Clients were asked to pay for larger research/analysis costs, rather than smaller search-only costs. (See Tr. 2163).
15. Nerac understood that it would lose some clients during this transition. (See Tr. 3275-82, 3295).
16. The old NERAC had a call center, which involved cold calling clients and getting small search only sales. The call center was phased out in 2007 and 20 to 30 people were terminated (Tr.1369, 2129-35, 3328-29).
17. Selling research as opposed to search required deeper learning about Nerac's clients, and a deeper understanding of their businesses. (Tr. 3484 86, 3484, 86)

Adapting to New Business Model

18. When the shift to the New NERAC occurred, sales decreased. Before the shift, $500,000 a month would be a solid monthly average, whereas after the change to the new Nerac average monthly sales would hover around $200,000. (Tr. 3275-82, 3295).
19. During the transition to the new Nerac, the company "struggled as a company to figure out what was the problem, why things weren't occurring." (Tr. 1717-18).
20. Written marketing materials were not sent to current or prospective clients explaining the "new Nerac," however, there were changes to the web site. (Tr.479-481).
21. Bouley would repeatedly state that people tied to the old Nerac were not going to survive in the new Nerac unless they could handle radical change. (Tr. 3292-93).
22. Nerac employees openly expressed a belief that the new model would fail. Doug Eitelman, for example, coined the phrase "From search, to research, to bankruptcy." (Tr. 4636)
23. Nerac had an open door policy where employees were encouraged to speak freely, both positively and negatively, about the company. (Tr. 760-61, 2029-30, 2942-43).

ESOP

24. Nerac had an Employee Stock Ownership Plan (ESOP). This was an employee benefit, funded by Nerac, where the company is part owned by the employees and part owned by the president (Bouley). An employee became fully vested in the ESOP after six years of employment. (Tr. 753-56).

25. Bouley told employees that as ESOP owners of the company they were encouraged to speak out freely about their views of the company. (Tr. 2946-47).

26. The New Nerac allowed for losing clients if they refused to buy into the research model. (Tr. 1018-18).

27. Nerac had an ESOP Speak out Board on the company intranet where employees could post anonymously positive and negative comments about the company. (Tr. 76, 162, 2030, 2944, 3133-3139).

28. Employees could raise concerns about the company, including the new Nerac model, at company meetings. Nerac claims that raising such concerns would not be the basis of terminating or otherwise disciplining an employee. (Tr. 86-87).

29. As an ESOP company, employees as beneficial shareholders would have an interest in discussing issues that they felt would adversely affect the company. (Tr. 1785, 1842-43).

Employee Movement

30. Bouley promoted Gerri Potash (Potash) to be V.P. of the analysts despite being younger and less qualified than other analysts are. (Tr. 2315, 3051-52, 3355, DOB Stip).

31. Nerac had a RIF in January 2008. Nerac provided affected employees the job titles and ages of those terminated. (Tr. 609, 618, 626-27, 673).

Health Insurance

32. Nerac since its early days was a self-insured company for medical insurance for its employees. Nerac was a self-funded plan with Connecticare as broker. Betsy Petrie ("Petrie"), then the human resources manager, met annually with Connecticare's representatives and a representative of the ESOP committee to discuss and review the costs of the insurance. Nerac offered domestic partner coverage, which was before 2006. Health insurance premiums increased every year. (Tr. 1683-94, 1830-31; Ex. C-Sloman-21).

33. In the period 2005-2009, medical insurance ranked as the fifth or sixth most expensive budget line item for the Respondent. Ranking above that would be computer equipment, maintenance and hardware, database expenditures, and royalties. Ranking below that were building maintenance, property maintenance, travel, and document expenditures. (Tr. 2259-60).

34. The Executive Committee in 2007 was comprised of Bouley, Petrie, John Ruest, ("Ruest"), the Chief Financial Officer, ("CFO"), Kevin Blackwell ("Blackwell"), and Gerri Potash ("Potash"). The EC was involved in the January 2008 RIF. The EC conducted the interviews of the 82 employees. (Tr. 680- 681, 691, 1338).

35. Wayne Simpson ("Simpson") was a Nerac sales manager until approximately 2006 and was responsible for hiring some staff. (Tr. 2531).

36. At the time he was employed he reported to Bouey and Petrie.

37. Simpson testified regarding an affidavit he executed in July 2007. In that affidavit, he averred that when he wanted to hire a younger female he interviewed, Betsy Petrie told him not hire young females because they tend to get pregnant and their insurance costs were higher. Petrie did not have decision-making authority and the woman was hired. (Tr. 2536)

38. Simpson also testified that Petrie said the same thing about insurance with regard to older men's insurance cost when he wanted to hire a man in his fifties. Petrie also interviewed that candidate, and ultimately the man was hired. (Tr. 2548-2550).

39. In Simpson's testimony, he admitted that Petrie never used the words older people in contradiction to his earlier testimony and did not recall writing the affidavit, but did recall signing it. (Tr. -2535- 2537).

40. Nancy Paul, testified that she has six children, all of whom had been on Nerac's insurance, and never once felt that the company viewed her insurance participation in a negative light. (Tr. 4545-4546).

Corporate Culture

41. Scott Rogers (DOB 2/7/69) worked at Nerac from 1996-2008. He started as a technical researcher, then went to sales, and then, one to two years into his employment (1997 or 1998), became manager of a small group of engineers and scientists. The latter part of his employment he managed a group of about 30 engineers and scientists, part of the Intellectual Property group. This group was located in the Tolland and was an open office complex with cubicles. There were several other groups located in the office. Most of the group Rogers supervised were in their 50's and 60's. (Tr. 2436-2438, 2240, 2442 -2444, DOB Stip.)

42. In late 2005, early 2006, a sales group of employees, primarily in their 20's, was transferred to Rogers' office. The sales group engaged in a party-like manner, floating balloons like a Jimmy Buffett concert, and shooting missiles across the room. (Tr. 2445-2448, 2452-2453)

43. Bouley was an avid bicyclist and often rode with employees who tended to be younger. (Tr. 3287).

44. Bouley testified that Nerac sponsored a professional bicycling team as a moving advertisement for the company. (Tr. 2191-2192)

45. Bouley also played in Nerac softball games. (Tr. 2192)

46. The culture and practice at Nerac was that there was an open door policy for employees to have communication access to management personnel. (Tr. 69).

WARNER FACTS

47. Complainant began working at Nerac in 1996, and held a variety of positions at Nerac during his tenure. (Tr.2933).

48. In February 2007, when Complainant was 38, he was terminated he was a Business Unit Director, specifically for Strategic Accounts. In this capacity, Complainant managed project managers who were in turn responsible for high-level clients. (Tr. 2933-2937, 3034-3035).

49. During his tenure at Nerac Complainant received positive performance evaluations, promotions, raises and bonuses. (Tr. 1695-1708-1712).

50. Complaint was part of the Strategic Planning Committee that created the New Nerac. (Tr. 158-159, 2953-2954, 2026-3033).

51. Complainant reported directly to Betsy Petrie, Chief Operating Officer. (Tr. 2939-2940).

52. Complainant also had several direct reports, including Paul Mueller, Jeff Casavant, Sharon Srodin, and Ron Sills. (Tr.3475).

53. Complainant's wife gave birth for the first time in 2003, and the second time in 2007. (Tr. 3469).

54. Complainant also had several direct reports, including Paul Mueller, Jeff Casavant, Sharon Srodin, and Ron Sills. (Tr. 3469).

55. Complaint was also good friends with James Brule. (See Tr. 3494-3496).

56. Bouley became aware of concerns about Brule's negative comments in the workplace, prompting him to ask Petrie to monitor e-mails between Complainant and Brule. (Tr. 2295).

57. In August of 2006, Brule, criticizing Potash and belittling her work and abilities, sent emails to Warner. (R-Warner-6).

58. In September 2006, Bouley and Petrie met with Complainant at a restaurant, the Oriental Cafe. (Tr. 3482).

59. Bouley expressed concern about Complainant's working relationship with another employee, Gerri Potash, who reported directly to Bouley and was a member of the company's leadership group. (Tr. 3488-3489).

60. Following this lunch meeting with Bouley and Petrie, Complainant invited Ms. Potash to a local restaurant to discuss their working relationship. (Tr. 3492).

61. In his invitation to Ms. Potash, Complainant noted that he wanted to put aside "any angst" between them, start with a "clean slate," and remove "any existing tension" between them. (Tr. 3085). Id.

62. Complainant was aware of Mr. Bouley's belief that managers should not be friends with the people they manage, but openly disagreed with that instruction. (Ex. R-Warner-8, Tr. 3501-3503).

63. Complainant sent off color e-mails to Dr. Brule, Mr. Mueller and other employees during work hours. In one example, after Mr. Mueller made a comment to Complainant about his "manhood," Complainant responded with an obvious reference to erectile dysfunction, referring to Mr. Mueller as "Mr. Soft-Serve" and then calling him a jerk. (See Exs. R-Brule-1, R-Warner-8, R-Brule-19).

64. During the time when Petrie was monitoring their e-mails, Petrie found many troubling communications. (See Exs.R-Warner-6, CHRO-Warner-8, R-Brule-7).

65. Complainant e-mailed his subordinate, Paul Mueller ("Mueller") relayed that he understood the Oriental Café lunch to be a clear indication that Bouley and Petrie were upset with him. In this e-mail to Mueller, Complainant commented that he was on an "unspoken 90-Day trial stemming from the lunch back in late September," and that "the end is near." (Ex. R-Warner-5).

66. In November 2006, Kevin Blackwell (Blackwell), Vice President of Sales, met with Complainant at a local diner. Mr. Blackwell had observed that Complainant was talking "out of school" with subordinate level employees, in a non-constructive way, and wanted to address that concern with Complainant. (Ex. R-Warner-11, Tr. 3520-3523)

67. On January 312007, Jim Brule sent an e-mail to Complainant and Mueller. The email made reference to the fact that Nerac monitored his e-mails — and then proceeded to label Nerac' s management as "incompetents," to criticize management's decision to place another employee, Steve Bauks, on probation, and to accuse Nerac management of not valuing its employees. (Ex. CHRO-Warner-8).

68. Warner responded to Brule's e-mail calling the Bauks decision "ridiculous," criticizing Nerac's management style as "management by mandate" and complained of a lack of understanding for workers' personal attributes. He stated that people in "superior positions [at Nerac]" could not "successfully manage employees towards the strategic direction of the company." . (Ex. R-Brule-7, Tr. 3117-31119).

69. On Feb. 2, 2007, Petrie who was monitoring Brule's email forwarded the chain of aforementioned emails to Blackwell and Bouley. (Ex. R-Brule-7).

70. After reading the email the chain, Bouley sent an e-mail to Complainant, Mueller and Brule and asked each of them to bring a resignation letter to work on Monday with a resignation letter in hand. He attached the email string between Complainant, Mueller and Brule and said he felt betrayed and had failed Nerac. (Ex. R-Brule-7).

71. Bouley met individually with Complainant, Mueller and Brule on the morning of Monday, February 5, 2007. (Ex. R-Brule-7).

72. Bouley stated to the Complainant that he had "betrayed [Boule's] trust and confidence in him as a director at Nerac and engaged in behaviors that undermined the authority of the Nerac

management team," and made it incredibly difficult for to manage a transition during a very difficult time.

73. Complainant was not apologetic, but rather belligerent. His attitude left Mr. Bouley feeling he had "no wiggle room," with regard to Complainant's termination. (Tr. 2282-2283, 3551).

74. Bouley described Mueller as "shaken and apologetic, during their meeting. Mueller expressed understanding that the e-mail communications discovered by Petrie were divisive and disruptive, expressed his apologies, and asked if he could keep his job. Bouley found him sincere, and retained him as a Nerac employee. (Tr.2383-2385).

75. Later that same day or early the next day, Bouley met with the Executive Committee to discuss the termination decisions for Complainant, Brule and Mueller. The decision was made to terminate both Complainant and Brule, but to retain Mueller, Ms. Petrie perceived this as the decision of the Executive Committee, but Bouley took ultimate responsibility for the decision. (Tr. 1754-1755, 2284-2285).

76. There was little discussion regarding the Complainant as Bouley made the decision to terminate him almost immediately after meeting with him, because of his unapologetic attitude. (Tr. 2286).

77. Corso sent to Nerac employees a letter drafted by Bouley notifying them of the terminations of Dr. Brule and Warner and that it was because of a difference in "management philosophy." (Ex. CHRO-Brule-2.; Tr. 765-66)

78. In his e-mail to Nerac employees, Bouley added that employees should feel free to come forward with any questions or concerns, and encouraged employees to engage in the constructive expression of ideas. He cautioned, however, that he wanted these discussions to take place through appropriate channels, and to not become destructive. (Ex. CHRO-Brule-2.; Tr. 765-66).

79. Bouley was 48 years old at the time of Complainant's ten years older than Complainant and he also had two daughters like Complainant. Ms. Petrie was age 46 at the time of Complainant's termination, 7 years older than Complainant. (DOB Stip.).

80. Corso informed Complainant that he would not be getting a severance. (Ex. R-Warner-2, Tr. 770).

II

LAW AND ANALYSIS

Complainant claims that Respondent violated General Statutes §§ 46a-58(a) and 46a-60(a)(1) of the Connecticut Fair Employment Act (CFPA). Our State's legislature intended the pertinent provisions of the Connecticut statute to mirror those of the federal antidiscrimination laws, Connecticut courts—along with this administrative tribunal—generally follow the analogous federal law when analyzing CFEPA claims. *Board of Education of the City of Norwalk v. Commission on Human Rights & Opportunities*, 266 Conn. 492, 505 n.18 (2003); *Craine v. Trinity College*, 259 Conn. 625, 636-37 (2002). Connecticut courts look to federal courts in interpreting the proof required under CFEPA, see Levy v. Comm'n on Human Rights & Opportunities, 236 Conn. 96 (1996), "Claims under CFEPA are analyzed in the same manner as those under Title VII." *Kearney v. City of Bridgeport Police Dep't,* 573 F. Supp. 2d 562, 573 (D. Conn. 2008). "It is also noted the Connecticut Fair Employment Practices Act (CFEPA) became effective in 1947; General Statutes (Rev. to 1947) §§ 1360i to 1366i; and was amended in 1959 to add a prohibition against age discrimination in employment. Thus, our statutes predate, by many years, Title VII, which was enacted in 1964, and the ADEA, which was enacted in 1967. Moreover, Connecticut courts have observed, "CFEPA defines important rights designed to rid the workplace of discrimination ... As such, the act is composed of remedial statutes, which are to be construed liberally to effectuate their beneficent purposes." (Citations omitted; internal quotation marks omitted.). Our Supreme Court has also stated, "we have ... recognized that, under certain circumstances, federal law defines the beginning and not the end of our approach to the subject. (Citations omitted; internal quotation marks omitted.) *State v. Commission on*

Human Rights & Opportunities, 211 Conn. 464, 470, 559 A.2d 1120 (1989)." *Wagner v. Bd. of Trustees for Connecticut State Univ.,* No. HHDCV085023775S, 2012 WL 669544, at 11 (Conn. Super. Ct. Jan. 30, 2012)

The goals of the federal Age Discrimination in Employment Act (ADEA) are "to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; [and] to help employers and workers find ways of meeting problems arising from the impact of age on employment." 29 U.S.C. § 621 (b). The ADEA makes it unlawful; inter alia, for an employer to discharge any individual because of such individual's age. 29 U.S.C. § 623 (a) (1). *Commission on Human Rights and Opportunities ex rel. Adam Szydlo, Complainant v. EDAC Technologies Corporation, Respondent*, 2007 WL 4258347, at 7.

> "Although considering federal employment discrimination precedent persuasive, Connecticut courts have "recognized ... that under certain circumstances, federal law defines 'the beginning and not the end of our approach to the subject." State v. CHRO, 211 Conn. 464, 470 (1989), quoting Evening Sentinel v. National Organization for Women. 168 Conn. 26, 34-35 n. 5, (1975). See also, Levy v. CHRO, 236 Conn. 96, 103 (1996) (In deciding whether section 46a-60 had been violated, the court stated, "[a]lthough this case is based solely on Connecticut law, we review federal precedent concerning employment discrimination for guidance in enforcing our own anti-discrimination statutes.") *See also Vollemans v. Town of Wallingford.* 103 Conn. App. 188, 199-200 (2007) aff'd, 289 Conn. 57 (2008) (In clarifying the nature of the filing period of section 46a-82(e), the court stated, "[w]hile often a source of great assistance and persuasive force,... it is axiomatic that decisions of the United States Supreme Court are not binding on Connecticut courts tasked with interpreting our General Statutes. Rather, Connecticut is the final arbiter of its own laws.")(citations and internal quotations omitted). There is no sound argument that the "but for" causation standard announced in either *Nassar or Gross* controls this tribunal's consideration of complaints alleging violations of section 46a- 60. See *Dwyer v. Waterfront Enterprises, Inc.,* 2013 WL 2947907, 7 (Conn. Super. Ct. May 24, 2013) and *Hasemann v. United Parcel Serv. of America*, 2013 WL 696424, *12-13 (D. Conn. Feb 26, 2013). See *Wagner.* 2012 WL 669544 at 11-12.

Commission on Human Rights and Opportunities ex rel. Barbara Dubois, Complainant v. Maharam Fabric Corp., Respondent, 2014 WL 5791594, at 9.

The fact that Complainant was thirty-nine (39) does not preclude his claim under General Statute §46a-60, as there is no age floor requirement like in its federal counterpart. However, the onus would still be on the Complainant to prove that his age was the reason for his termination.

"In a Title VII discrimination case "where there is no direct or overt evidence of discriminatory conduct," courts apply the "three-part burden shifting framework of McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 . . . ." *Weinstock v. Columbia University*, 224 F.3d 33, 42 (2d Cir. 2000). According to the burden-shifting test from McDonnell Douglas, the plaintiff "first bears the minimal burden of setting out a prima facie discrimination case. McPherson v. N.Y. City Dep't of Educ., 457 F.3d 211, 215 (2d Cir. 2006). See e.g., *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination.); *Craine v. Trinity College,* 259 Conn. 625, 637 (2002) (Under this analysis, the employee must first make a prima facie case of discrimination.). In order to establish a prima facie case of discrimination, the complainant must show that he: (1) is a member of a protected class, (2) is qualified for the employment position, (3) suffered an adverse employment action, and (4) that the circumstances surrounding the adverse employment action give rise to an inference of discrimination." (Internal quotation marks omitted) *Weinstock v. Columbia University*, 224 F.3d 33, 42 (2d Cir. 2000); *Board of Education of the City of Norwalk v. CHRO*, 266 Conn. 492 (2003).). "Unlike its federal counterpart, however, the Connecticut employment discrimination provisions contain no specific age limitation." Commission on Human Rights and Opportunities ex rel. *Adam Szydlo, Complainant v. EDAC Technologies Corporation,* Respondent, 2007 WL 4258347, at 7.

Claims of disparate treatment brought under CFEPA, like those under federal anti-discrimination statutes, can be analyzed as either "pretext" cases or "mixed motive" cases. Levy v. Commission on Human Rights & Opportunities, 236 Conn. 96, 105-06 (1996). The pretext model relies upon the burden shifting analysis first established in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) and modified thereafter in cases such as *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248 (1981), *St. Mary's Honor Center v. Hicks,* 509 U.S. 502 (1993), and *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000). In a mixed motive case, the tribunal applies the use of the mixed motive analysis established in

Price Waterhouse v. Hopkins, 490 U.S. 228 (1989). The evidence presented by the Complainant does not give rise to a mixed motive analysis in the current case. The complainant relies primarily on inferential evidence more suited to the burden shifting analysis of *McDonnell Douglas Corp. v. Green*, supra.

A

PRIMA FACIA CASE

In order to establish a prima facie case of discrimination, the complainant must show that he: (1) is a member of a protected class, (2) is qualified for the employment position, (3) suffered an adverse employment action, and (4) that the circumstances surrounding the adverse employment action give rise to an inference of discrimination." (Internal citations and quotation marks omitted) Board of Education of the City of Norwalk v. CHRO, 266 Conn. 492 (2003).

Complainant alleges two protected classes, age and pregnancy. The first prong of the prima facie case, that Complainant is a member of a protected class is analyzed for each class alleged. Under the first protected class, age, Complainant meets its de minims burden. He was 38 and alleged age discrimination based on being older. Connecticut does not put a floor on its age requirements. Nevertheless, the Complainant must show his age of 38 was the reason he was terminated.

Complainant also alleges that he was fired because of his wife's second pregnancy. He argues that because there were other women who were fired when they were pregnant is analogous to his wife having a second child. His second child's birth was 7 months prior to his termination. This tribunal gave the Complainant the opportunity to prove his allegations and did not dismiss his claim on a motion to dismiss. There was no evidence presented that would allow any reasonable person to conclude he was in protected class under pregnancy discrimination. The complainant had two daughters, one born in 2003 and one 7 months prior to his termination. Respondent produced evidence of many employees who had children older and younger than Warner's children and were not terminated. While this tribunal can

imagine situations were a wife's pregnancy can be used as a protected class[1], this was not one of them. Therefore, the clam of pregnancy discrimination does not meet the first prong of complainant's prima facie case and will not be considered further.

Complainant meets the second prong that he is qualified for the employment position as he was given several positions with a great amount of responsibility by the Respondent. He was given raises and promotions during his ten years of employment and was tasked with helping the company to transition to the new Nerac. The third prong, that Complainant suffered an adverse employment action is met based on his termination.

The forth prong, that the circumstances surrounding the adverse employment action gives rise to an inference of discrimination must be analyzed in relation to the different types of evidence presented. The primary evidence presented by the Complainant , which is tenuously circumstantial, relates to his disagreement over his value to the company and his style of management the general culture of the company, statistics relating to a reduction in workforce (RIF) (which occurred almost a year after complainant was terminated) and on an alleged hostile remarks made by the respondent to another employee, which referenced hiring. However, while there are multiple categories of evidence, there is no direct evidence presented, therefore we will look at the circumstances surrounding the termination.

1. Stray Remarks

"Remarks may serve as sufficient evidence of age discrimination if they are: 1) age related, 2) proximate in time to the employment decision, 3) made by an individual with authority over the employment decision at issue, and 4) related to the employment decision at issue." (Internal quotations omitted) *Powell v. Dallas Morning News* L.P., 776 F. Supp. 2d 240, 269 (N.D. Tex. 2011), aff'd sub nom.

[1] This situation may confer protected class status when a male employee is fired when his wife first gets pregnant, at the birth of a child, or when there is direct evidence of discrimination. Mr. Warner's allegations are too remote in time from the birth of his child to be in a protected class. To hold otherwise would confer protected status to any man with children.

Powell v. Dallas Morning News, LP, 486 F. App'x 469 (5th Cir. 2012). "[T]he stray remarks of a decision maker, without more, cannot prove a claim of employment discrimination ...." *Weichman v. Chubb &Son, 552* F.Supp.2d 271, 284 (D.Conn.2008) (quoting *Abdu-Brisson v. Delta Air Lines, Inc.,* 239 F.3d 456, 468 (2d Cir.2001). Nevertheless, "the evidence is not to be viewed in a vacuum. There must be at least a logical connection between the complainant's prima facie case and the illegal discrimination, which it purports to establish. If this isolated remark had been combined with other evidence of discriminatory animus, it might assume a more ominous significance. However, complainant offered no evidence establishing that the remark was infected by the alleged discriminatory animus. It simply was a 'stray remark' within the doctrine first articulated by U.S. Supreme Court Justice O'Connor in a concurring opinion in Price-Waterhouse, where she said: 'Stray remarks in the workplace ... cannot justify requiring the employer to prove that its hiring and promotion decisions were based on legitimate criteria.' Price Waterhouse v. Hopkins, supra, 490 U.S. 277 (O'Connor, J., concurring in judgment). [T]he stray remarks of a decision-maker, without more, cannot prove a claim of employment discrimination ...Unlike direct evidence of discriminatory animus, stray remarks standing alone do not suffice to shift the burden of persuasion to the employer to prove that its employment decision was based on a legitimate factor." (Internal citations and quotation marks omitted). *Commission on Human Rights and Opportunities ex rel. Barry Weinz, Complainant v. Bill Selig Jewelers, Inc., Respondent,* 2016 WL 9446632, at 9.

However, "the court should not categorize a remark as 'stray' or 'not stray' and then disregard that remark if it falls under the 'stray' category." Weichman, 552 F.Supp.2d at 284 (citing Tomassi v. Insignia Fin. Group, Inc., 478 F.3d 111, 115-16 (2d Cir.2007). "Instead, the court must consider all the evidence in its proper context .... [T]he more a remark evinces a discriminatory state of mind, and the closer the remark's relation to the allegedly discriminatory behavior, the more probative the remark will be." Id. Stray remarks combined with additional evidence of discrimination "give more of an ominous significance to remarks of ... decision maker." *Haves v. Compass Group USA, Inc.,* 343 F.Supp.2d 112, 120

(D.Conn. 2004)(Supervisor and regional vice president often described older managers to be old school). The "more remote and oblique the remarks are in relation to the employer's adverse action, the less they prove that the action was motivated by discrimination. *Wagner v. Bd. of Trustees for Connecticut State Univ.*, No. HHDCV085023775S, 2012 WL 669544, at 10 (Conn. Super. Ct. Jan. 30, 2012).

Stray remarks by an employer do not prove discriminatory animus unless there is a causal connection to plaintiff's alleged adverse employment action. *Trojanowski v. Blakeslee Prestress, Inc.,* No. 3:08CV548WWE, 2009 WL 3340426, at 4 (D. Conn. Oct. 15, 2009). Petrie's statement as direct, inculpatory evidence that the complainant's age was a significant factor behind the determination to lay off the complainant is not probative of discriminatory animus nor is there a demonstrated causal connection.

The Complaint argues that remarks made regarding older men and young women tend to get pregnant increase insurance costs are evidence of a pretext. Moreover, the Complainant cannot point to any employee who was not hired or terminated because of the remark. The evidence lacked a demonstrated temporal nexus to the employment decision and is too weak to raise a reasonable inference of discrimination. See *Butcher v. Gerber Prod. Co.,* 88 F. Supp. 2d 788, 795 (W.D. Mich. 2000), which is similar in many respects to the instant case, except that the dismissal was predicated on summary judgment. Finally, Ms. Petrie allegedly made the comment three or four years before Complainant's termination in 2007, the alleged remarks are too far removed from the employment decision and are too weak to raise a reasonable inference of discrimination.

2. Statistical Evidence

A RIF occurred in January 2008, well after any of the five complainants were terminated. The complainant would like the tribunal find that each of the Complainants terminated contributed to the balance of the over to under forty employees that were let go in the RIF. The only evidence the complainant presented was bare statistics of the RIF which they were not part. Even if Complainants were part of the RIF, "statistical evidence in a disparate treatment case, in and of itself, rarely suffices to rebut

an employer's legitimate, nondiscriminatory rationale for its [adverse employment] decision.... This is because a[n] [employer's] overall employment statistics will, in at least many cases, have little direct bearing on the specific intentions of the employer.... Without an indication of a connection between the statistics, the practices of the employer, and the employee's case, statistics alone are likely to be inadequate to show that the employer's decision ... was impermissibly based on [a protected trait]." (Citations omitted; internal quotation marks omitted.) *Bd. of Educ. of City of Norwalk v. Comm'n on Human Rights & Opportunities,* 266 Conn. 492, 516, 832 A.2d 660, 674 (2003).

Standing alone, statistical evidence is only sufficient to establish discriminatory intent in individual disparate treatment actions only when it shows a "stark pattern of discrimination...." 2 (Internal quotation marks omitted) Perez-Dickson v. City of Bridgeport, 304 Conn. 483, 517–19, 43 A.3d 69, 94–96 (2012). "The statistics," were merely the names, ages, and positions of the employees who were considered for lay off and those that were actually terminated. There can be no provable conclusions drawn from these numbers. Looking at the bare facts of the statistics tend to show that there were roughly an equal number of employees over and under forty. Complainant's argument that his termination prior to the RIF was done to manipulate the results, is illogical as he was under forty (40). This tribunal has no information as to the total number of employees, how many employees were in each position and their respective ages, standard deviations, the ratio of over 40 employees to those under 40. Lastly, and most importantly, Complainant was not over forty or a part of the RIF. The statistics aren't relevant to him, as he was under forty and terminated almost a year before the RIF occurred.

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[2] See also Ottaviani v. State University of New York, 875 F.2d 365, 371 (2d Cir.1989) (in individual disparate treatment actions, [w]here gross statistical disparities can be shown, they alone may in a proper case constitute prima facie proof of a pattern or practice of discrimination" [emphasis added; internal quotation marks omitted]), cert. denied, 493 U.S. 1021, 110 S.Ct. 721, 107 L.Ed.2d 740 (1990); Chesna v. United States Dept. of Defense, 850 F.Supp. 110, 117–18 (D.Conn.1994) (to prove intentional discrimination in violation of equal protection clause through circumstantial evidence of disparate treatment, plaintiff must show stark pattern of discrimination); Statistical evidence may ... be utilized in a disparate treatment case. However, because discriminatory intent must be shown in such a case, statistical evidence must meet a more exacting standard.); Smith College v. Massachusetts Commission Against Discrimination, 376 Mass. 221, 228 n. 9, 380 N.E.2d 121 (1978) (in individual disparate treatment action, "gross statistical disparities alone may constitute prima facie proof of a practice of discrimination"

3. Performance

"An employee's personal disagreement with his employer's evaluation of him is not enough to create an inference of discrimination. Dismissals are often preceded by adverse performance reviews. Were we to view this pattern as suspect, without more, many employees would be able to appeal their personnel evaluations to a jury. See also *Shapolia v. Los Alamos Nat'l Lab.*, 992 F.2d 1033, 1039 (10th Cir.1993) (employee's own assessment of his job performance is inadequate to raise issue of fact for trial); *Billet v. CIGNA Corp.*, 940 F.2d 812, 825 (3d Cir.1991) ("The fact that an employee disagrees with an employer's evaluation of him does not prove pretext"); *Jimoh v. Ernst & Young*, 908 F.Supp. 220, 226 (S.D.N.Y.1995) (to prove discrimination claim plaintiff must do more than simply disagree with his employer's business decisions)." (Internal citation and quotations marks omitted. *Wado v. Xerox Corp.*, 991 F. Supp. 174, 188 (W.D.N.Y. 1998), aff'd sub nom. *Smith v. Xerox Corp.*, 196 F.3d 358 (2d Cir. 1999). *Oubre v. Entergy Operations, Inc.*, 522 U.S. 422, 430, 118 S. Ct. 838, 843, 139 L. Ed. 2d 849 (1998).

"An employer does not violate Title VII when it takes adverse employment action against an employee to preserve a workplace environment that is governed by rules, subject to a chain of command, free of commotion, and conducive to the work of the enterprise." Matima v. Celli, 228 F.3d 68, 79 (2d Cir. 2000). Employee insubordination and other conduct that is disruptive to the workplace are legitimate, nondiscriminatory reasons for terminating an employee. *Tebbenhoff v. Elec. Data Sys. Corp.*, 244 Fed.Appx. 382, 384 (2d Cir. 2007).

Complainant had been with the company for at least ten years. Further, Complainant argued that Respondent changed its reasons for termination, giving insubordination, inability to be happy at work after his friend was fired, and difference in "management philosophy." Complainant argued no one ever discussed management philosophy with him and that reason was included in his formal letter of termination so it is a pretext for the real reason behind the termination. According Reference.com,[3] which

[3] www.reference.com/business-finance/management-philosophy-98e48df1c9df1850

this tribunal takes judicial notice, in business a "management philosophy is the philosophy adopted by a company's executives outlining how they believe a business should be directed, particularly with regard to the treatment of fellow workers and employees." Any of the reasons discussed by Bouley with complainant could fall under that broad definition. Complainant admittedly had issues with Potash's management as well the change over to the new New Nerac. There can be no inference of discrimination based on giving a broad reason for termination over the specific.

4. Corporate Climate and Business Decisions

Changes to a company's product line, whether sound or not, are business decisions. "Often business decisions may force the company to eliminate jobs held by members in a protected category. The ADEA was not intended to protect older workers from the often harsh economic realities of common business decisions and the hardships associated with corporate reorganizations, downsizing, plant closings and relocations. The record reveals that [Respondent] made a strategic and fundamental change in the way it does business in order to attain financial goals of reduced expenses and increased sales". (Internal citations and quotation marks omitted). *Butcher v. Gerber Prod. Co.*, 88 F. Supp. 2d 788, 798 (W.D. Mich. 2000)

The Complainant argued that the corporate culture is youth orientated because the company sponsored a professional bicycling team and Bouley would practice with them occasionally and go on bike trips with younger employees. Corporations have been sponsoring everything from NASCAR teams to Volleyball teams, and promoting company teams such as softball and basketball since before the discrimination laws were written. Bouley testified that he felt the team was a moving billboard to advertise the company, which is rasion d'etre of corporate sponsorship. The evidence presented lacked any nexus between the biking activities and age discrimination. The testimony consisted of conclusory allegations without any supporting evidence.

Further, the Complainant argued that the marketing group consisted generally of younger employees who were housed with the scientific researchers, who generally tended to be older. The Complainant argued that marketing group was, inter ali, loud, rowdy, played with "nerf guns" that shoot Styrofoam missiles and played loud music. The researches objected, as they needed a quieter more sedate area to focus on research and writing. "Circumstantial evidence establishing the existence of a discriminatory atmosphere at the defendant's workplace in turn may serve as circumstantial evidence of individualized discrimination directed at the plaintiff.... While evidence of a discriminatory atmosphere may not be conclusive proof of discrimination against an individual plaintiff, such evidence does tend to add 'color' to the employer's decision-making processes and to the influences behind the actions taken with respect to the individual [complaint]. However, without evidence that illegal animus affected the contested employment decision itself, such 'atmospheric' evidence is not enough to withstand summary judgment." *Dobbs–Weinstein v. Vanderbilt University*, 1 F.Supp.2d 783, 798 (M.D.Tenn.1998), cert. denied, 529 U.S. 1019, 120 S.Ct. 1421, 146 L.Ed.2d 313 (2000)." (Internal citations and quotations omitted*), Butcher v. Gerber Prod. Co.*, 88 F. Supp. 2d 788, 795 (W.D. Mich. 2000). This tribunal cannot infer any discriminatory animus for the Respondent taking too long to relocate a group. The Complainant cited no law to support these allegations and this tribunal was unable to locate any relevant law in the country that said a rowdy atmosphere implied age discrimination.

Lastly, both Complainant and Brule argued that the corporate policy of allowing venting, speaking up and having open doors as showing the Respondent's legitimate reason is pretext. Open door policies are capable of having several different meanings. Logically, an employer would be within its rights to want to prevent communication of unconstructive criticize and that were openly hostile to the management and the direction of the company.

5. Decision Maker In Protected class

Bouley was ten years older than Complainant when he terminated him. An older decision maker is a "well-recognized inference against discrimination ... where the person who participated in the allegedly adverse decision is also a member of the same protected class. (internal citiation omitted), Consequently if a decision maker is in same protected class as plaintiff, claims of discrimination become less plausible." (Internal quotation marks and citation omitted). *Hasemann v. United Parcel Serv. of Am., Inc.*, No. 3:11-CV-554 VLB, 2013 WL 696424, at *8 (D. Conn. Feb. 26, 2013); *Browne v. CNN Am., Inc., No.* 98 Civ. 1768, 1999 WL 1084236, at *4 (S.D.N.Y. Dec. 1, 1999) ("The fact that ... the ultimate decision maker[ ] was a member of the [same] protected class [as Plaintiff] enhances the inference that age discrimination was not the motive behind ... [the] termination of [Plaintiff]"); (S . D.N.Y.1985)); *Williams v. Brooklyn Union Gas Co.,* 819 F.Supp. 214, 225 (E.D.N.Y.1993) (dismissing age discrimination claims where the employees responsible for the plaintiff's termination were older than plaintiff or approximately the same age); *Pisana v. Merril Lynch & Co., Inc.*, No.93Civ.4541(LMM), 1995 WL 438715, at *5 (S.D.N.Y. July 24, 1995) (finding that fact that decision makers were close to plaintiffs age or older "weakens any suggestion of age discrimination.").

6. Insubordination

"An employer does not violate Title VII when it takes adverse employment action against an employee to preserve a workplace environment that is governed by rules, subject to a chain of command, free of commotion, and conducive to the work of the enterprise." Matima v. Celli, 228 F.3d 68, 79 (2d Cir. 2000). Employee insubordination and other conduct that is disruptive to the workplace are legitimate, nondiscriminatory reasons for terminating an employee. Tebbenhoff v. Elec. Data Sys. Corp., 244 Fed.Appx. 382, 384 (2d Cir. 2007). While complainant insists, he never made any disparaging or inappropriate remarks at the lunch meeting, even if true that would not change the fact that Blackwell said he based his termination decision on such remarks, which is not probative of discriminatory animus.

7. Comparator Evidence

"[A] litigant may present circumstantial evidence from which an inference may be drawn that similarly situated individuals were treated more favorably than she was. Id., at 639, 791 A.2d 518; see also Paylan v. St. Mary's Hospital Corp., 118 Conn.App. 258, 266, 983 A.2d 56 (2009). To be probative, this evidence must establish that the plaintiff and the individuals to whom she seeks to compare herself were "similarly situated in all material respects...." (Emphasis added; internal quotation marks omitted.) *Paylan v. St. Mary's Hospital Corp.,* supra, at 269, 983 A.2d 56; see also Shumway v. United Parcel Service, Inc., 118 F.3d 60, 64 (2d Cir.1997). "[A]n employee offered for comparison will be deemed to be similarly situated in all material respects if (1) ... the plaintiff and those he maintains were similarly situated were subject to the same workplace standards and (2) ... the conduct for which the employer imposed discipline was of comparable seriousness. *Graham v. Long Island Rail Road,* [230 F.3d 34, 40 (2d Cir.2000)]." (Internal quotation marks omitted.) (Internal citation omitted). *Perez-Dickson v. City of Bridgeport,* 304 Conn. 483, 514, 43 A.3d 69, 93 (2012). All the comparisons used by the Complainant were employees that were not part of Complainant's group, nor did they have the same manager.

The U.S. Supreme Court defined "me too" evidence as "testimony by nonparties alleging discrimination at the hands of persons who played no role in the adverse employment decision challenged by the plaintiff." See also Houston v. Easton Area Sch. Dist., No. 03–3494, 2010 WL 4236924, at *8, n. 6 (E.D.Pa. Oct. 25, 2010), aff'd on other grounds, 444 F. App'x 523 (3d Cir.2011), cert. denied, 132 S.Ct. 1807 (2012). "[T]he Supreme Court considered the admissibility of "me too" evidence in an employment discrimination case, holding that the evidence was neither per se admissible nor per se inadmissible, but rather, [t]he question whether evidence of discrimination [against other employees] by other supervisors is relevant in an individual [discrimination] case is fact based and depends on many factors, including how closely related the evidence is to the plaintiff's circumstances and theory of the case. ... [A] number of factors are relevant to this determination: (1) whether the evidence is logically or reasonably tied to the decision made with respect to the plaintiff; (2) whether the same "bad actors" were involved in the

"other" conduct and in the challenged conduct; (3) whether the other acts and the challenged conduct were in close temporal and geographic proximity; (4) whether decision makers within the organization knew of the decisions of others; (5) whether the other affected employees and the plaintiff were similarly situated; and (6) the nature of the employees' allegations. (Internal citations and quotation marks omitted." *Murray v. Miron,* No. 3:11 CV 629 JGM, 2015 WL 4041340, at 8 (D. Conn. July 1, 2015).

Complainant alleged that other terminated employees such as such as Curt Betters, Jennifer Santry and Kathryn Bulloch were also terminated because of discrimination. Ms. Bulloch, Ms. Santry and Mr. Betters held different positions from Complainant, reported to managers and, were terminated for different reasons. Employees like Ms. Bulloch and Ms. Santry, although they did not testify themselves, were both well under 40 years old. Curt Betters, who filed a claim of age discrimination claim, which was dismissed by the CHRO finding there was no reasonable cause to believe that discrimination had occurred. (Ex. R-Sloman-17). The Complainant mentions several others, noting their age, their replacement's age, his disagreement regarding their performance and why they were fired as indication that the company preferred younger employees. However, several of those who testified such as Piers and Rogers could credibly substantiate that supposition. They do not meet the qualifications to be a comparator nor do they show a discriminatory basis, as they are mainly conclusory allegations with no proof. Further, there were many of examples and testimony given by employees who were over 40 stating that were happy and successful with Nerac and had been there for many years.

Mueller, the other person on the chain email with Brule and Warner, was older than Complainant was the only one of the three not terminated. Bouley felt that Mueller was sincerely sorry for his participation, which was of a lesser extent, and Bouley felt he could return to the company without issue. Complainant was 13 years younger than Brule and the youngest person terminated. Complainant could not produce any satisfactory comparator evidence for the other above referenced employees that satisfied any of the factors to establish discrimination.

B.

CIRCUMSTANTIAL EVIDENCE AND BURDEN OF PROOF

"The level of proof required to establish a prima facie case is minimal and need not reach the level required to support a jury verdict in the plaintiff's favor." *Craine v. Trinity College*, supra, 259 Conn. at 638, 791 A.2d 518. The Respondent argued that it terminated Complainant due to his insubordination. The employer must state a nondiscriminatory or non-retaliatory reason. "To rebut the plaintiff's prima facie case, the defendant does not have the burden of establishing that the basis was sound ... Simply stating a basis for the decision other than the plaintiff's [membership in the protected class is] enough." *Wagner v. v. Bd. of Trustees for Conn. State Univ.,* 2012 WL 669544, at 13 (Conn. Super. Ct. Jan. 30, 2012.) (quoting Craine v. Trinity College. 259 Conn. 625, 643 (2002)). The Respondent's burden is only one of production not of persuasion. Complainant must show that her performance did not motivate the Respondent, but instead was merely a pretext for intentional age discrimination.

"The credibility of witnesses is a matter within the province of the administrative agency. *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 347 n. 16 (2000); *Elf v. Department of Public Health*, 66 Conn. App. 410, 422 (2001). The hearing officer has the prerogative to assess the credibility of witnesses and believe or disbelieve any evidence presented. *Levy v. Commission on Human Rights & Opportunities*, 35 Conn. App. 474, 489, aff'd, 236 Conn. 96 (1996)." *Commission on Human Rights and Opportunities ex rel. Adam Szydlo, Complainant v. EDAC Technologies Corporation, Respondent*, 2007 WL 4258347, at 10.

There are many cases where conclusory allegations could not rise to the level of meeting a prima facie case at the summary judgment level. "Summary judgment against a plaintiff in an employment discrimination case is appropriate if the plaintiff offers only 'unsupported assertions,' 'conjecture or surmise,' or 'conclusory statements' to support an essential element of his case. [B]are allegations, however scandalous, cannot withstand summary judgment where they are unsupported by evidence in

admissible form." (Internal citations and quotation marks omitted), *Deebs v. Alstom Transp., Inc.*, 550 F. Supp. 2d 385, 392 (W.D.N.Y. 2008), aff'd, 346 F. App'x 654 (2d Cir. 2009; See also, *Trojanowski v. Blakeslee Prestress, Inc.,* No. 3:08CV548WWE, 2009 WL 3340426, at *3 (D. Conn. Oct. 15, 2009).

The evidence presented in this case, taken in its entirety, cannot meet the de minimus burden of proving causation with regard to the 4th element of the prima facie case. This tribunal finds that Complainant's evidence, while diverse did not give rise to an inference of discrimination under any category, despite being a de minimus standard. The sum of the parts was not greater than whole. The allegations were conclusory and while circumstantial evidence can establish causation, there must be a nexus between the Complainant and the evidence.

Assuming, arguendo, that the Complainant sufficiently demonstrated a prima facie case, therefore, created a presumption of unlawful discrimination by the Respondent, the burden of production shifts to Respondent to articulate a legitimate, nondiscriminatory reason for its actions. The Respondent articulated a legitimate business reason that was not rebutted successfully. Respondent argued that Complainant was terminated based on his insubordination and management philosophy. Complainant could not, overcome by the preponderance of the evidence, based on any testimony or documentary evidence presented, to show the Respondent's reason was a pretext.

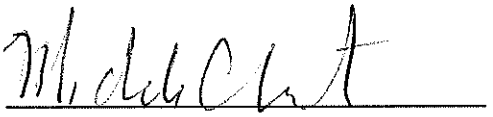
Complainant was permitted to amend his complaint and add Bouley as an individual defendant, on an "aiding and abetting" theory under Conn. Gen. Stat. § 46a-60(a)(5). If the claim against Nerac fails, then the aiding and abetting claim against Bouley necessarily fails, as there is no discrimination to aid or abet. See *Miller v. Edward Jones & co.*, 355 F. supp. 2d 629, 2005 U.S. Dist. LEXIS 1705 (D.Conn. 2005).

III

CONCLUSION

The age discrimination claim fails because the plaintiff did not meet his burden of presenting evidence that was sufficient to rebut the legitimate, nondiscriminatory reason that the Respondent gave for its decision to terminate the Complainant.

It is so Ordered this 18th day of April 2018.



Michele C. Mount,
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