

**STATE OF CONNECTICUT  
OFFICE OF PUBLIC HEARINGS**

Commission on Human Rights and  
Opportunities, ex rel.  
Arline Stephenson  
Complainant

CHRO No. 1110235

08-22-13 P01:53 CFJD



v.

Webster Bank,  
Respondent

August 22, 2013

ORDER DISMISSING CLAIMS BROUGHT PURSUANT TO  
THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

On January 6, 2011, Arline Stephenson ("complainant") filed charges of discrimination and retaliation with the Commission on Human Rights and Opportunities ("the commission" or "CHRO") against Webster Bank, N.A. ("respondent") claiming violations of multiple statutes including the Age Discrimination in Employment Act of 1967 (ADEA) as enforced through Connecticut General Statute § 46a-58(a).

On May 15, 2013, respondent filed a motion for summary judgment, accompanied by a supporting memorandum of law in which it claimed, among other things, that complainant cannot prevail in her ADEA claim because she cannot show that age was the "but-for" cause on an adverse employment action, and that she cannot make out a prima facie case of retaliation under the ADEA.

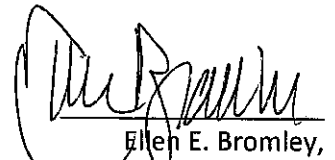
While I forgo deciding whether complainant can establish "but-for" causation on the basis of age, I do determine that this forum has no jurisdiction over complainant's ADEA claim.

In *Trimachi v. Conn. Workers Comp. Comm.*, 2000 WL872451 (Conn. Supr. Ct, June 14, 2000), the Connecticut Superior Court construed Conn. Gen. Stat. § 46a-58(a) as transforming provisions of federal employment discrimination law into Connecticut law for the protected classes listed in that subsection - religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness or physical disability - to the extent that federal law protects these specified classes. But age is not an enumerated class for which § 46a-58(a) offers protection. Because age is not one of the protected classes listed in § 46a-58(a), the provisions of the ADEA are not transmuted into that section. See *CHRO ex rel. Patricia Robinson v. State of Conn. Dept. of Mental Health & Addiction Servs.*, CHRO No. 0630292 (Ruling on Motion to Dismiss, dated March 26, 2008) (citing *Poeta-Tisi v. Griffin Hosp.*, 2006 WL1494078, \*8 (Conn. Super.); *CHRO ex rel. Ramseur v. Colonial Chimney & Masonry, Inc.*, 2005 WL 4828677 (CHRO No. 0440130, November 28, 2005); and *CHRO ex rel. Crebase v. Procter & Gamble Pharms, Inc.*, 2006 WL 4844064 (CHRO No. 0330171, July 12, 2006). Thus, this forum has no jurisdiction over ADEA claims.

However, complainant may still pursue an age discrimination claim pursuant to Conn. Gen. Stat. §§ 46a-60(a)(1) and 46a-60(a)(4). While age discrimination claims brought pursuant to the ADEA require

proving that the complainant's age is the "but-for" cause of discrimination, *Gross v. FBL Fin. Serv.'s, Inc.*, 55 U.S. 167, 180 (2009), CFEPA refers to no such proof. And while our appellate courts have been silent on whether a complainant bringing an age discrimination claim pursuant to 46a-60 must prove that age is the "but-for" cause of an employer's adverse employment action, I agree with the Superior Court's Hon. Judge A. Susan Peck's assessment in *Wagner v. Bd. of Trs. for Conn. State Univ.*, 2012 WL 669544 (Conn. Super. Ct. Jan. 30, 2012), where she stated in relevant part, "The legislature's decision to include the protection against age discrimination in the same statute that includes protections against other forms of discrimination, without otherwise distinguishing such claims (as under federal law), indicates that it intended that all these claims would be subject to the same standard." Therefore, complainant need not meet a higher standard for her age discrimination claim than her other claims brought pursuant to 46a-60. Complainant is not required to prove age is the but-for cause for respondent's adverse employment action in order to make a prima facie showing for age discrimination pursuant to 46a-60.

It is so ordered this 22<sup>nd</sup> day of August 2013.



Ellen E. Bromley,  
Presiding Human Rights Referee

cc.

Arline Stephenson  
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Sarah S. Healey, Esq.  
Domenico Zaino, Jr., Esq.