

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

KIMBERLY A. HIVELY,)
)
 Plaintiff,)
)
 vs.) CASE NO.: 3:14-cv-01791-RL-CAN
)
 IVY TECH COMMUNITY COLLEGE,)
)
 Defendant.)

**DEFENDANT’S ANSWER TO PLAINTIFF’S
COMPLAINT AND AFFIRMATIVE DEFENSES**

Defendant Ivy Tech Community College of Indiana (“Ivy Tech” or “Defendant”) now answers Plaintiff Kimberly A. Hively’s Complaint. Plaintiff’s allegations are set forth *verbatim* below, with Defendant’s responses immediately following each allegation.

I. PARTIES

1. The Plaintiff is Kimberly A. [REDACTED]

ANSWER: Defendant admits that the Plaintiff is Kimberly A. Hively. Defendant is without information or knowledge sufficient to form a belief as to the remaining allegations contained in the foregoing paragraph and therefore denies same.

2. The Defendant is Ivy Tech Community College, 220 Dean Johnson Blvd., South Bend, IN 46601.

ANSWER: Defendant admits it is the defendant in this case and conducts business at 220 Dean Johnson Blvd., South Bend, IN 46601.

II. BASIS OF CLAIM AND JURISDICTION

3. This Complaint is brought pursuant to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000e-5), and jurisdiction is based on 28 U.S.C. §§1331 and 1343(a).

ANSWER: Defendant admits that Plaintiff's Complaint alleges violations of Title VII and seeks to attain jurisdiction through 28 U.S.C. §1331. Defendant denies any remaining allegations contained in the foregoing paragraph and further denies violating any of Plaintiff's legal rights.

4. Equal rights under law (42 U.S.C. §1981), and jurisdiction is based on 28 U.S.C. §§1331 and 1343(a).

ANSWER: Defendant admits that Plaintiff is alleging violations of 42 U.S.C. §1981 by way of 28 U.S.C. §1331 and 28 U.S.C. §1343(a) in her Complaint. Defendant denies any remaining allegations contained in the foregoing paragraph and further denies violating any of Plaintiff's legal rights.

III. STATEMENT OF LEGAL CLAIM

5. Plaintiff is entitled to relief in this action because she was denied full time employment and promotions based on sexual orientation.

ANSWER: Defendant denies the allegations contained in the foregoing paragraph.

IV. FACTS IN SUPPORT OF COMPLAINT

6. I have been at Ivy Tech Community College working for 14 years.

ANSWER: Defendant denies it currently employs Hively. Defendant denies the remaining allegations contained in the foregoing paragraph.

7. I have applied for 6 full time positions, having the required Masters Degree and grades, and have either not been interviewed or not been granted full time employment.

ANSWER: Defendant admits that Hively was never a full time employee. Defendant denies the remaining allegations, as written, contained in the foregoing paragraph.

8. I have never had a negative evaluation.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to what Hively deems “negative” and therefore denies the allegations in the foregoing paragraph. Answering further, Hively received varying feedback on her performance from several superiors during the course of her employment.

V. PRAYER FOR RELIEF

9. I am seeking damages to cover the full time pay lost, benefits such as insurance etc. lost and pension amounts that would have been provided by the state plus accrued interest. I am asking for monetary damages in the approximate of \$1.7 million dollars. This amount may change based on any new evidence not known at this time.

ANSWER: Defendant denies Plaintiff is entitled to judgment in her favor or any relief whatsoever, including the relief enumerated in this paragraph. Defendant denies any remaining allegations in this paragraph.

JURY DEMAND

Plaintiff requests a jury trial.

ANSWER: Defendant admits Plaintiff has requested a jury trial in this action. Answering further, Defendant specifically object to Plaintiff's jury request to the extent Plaintiff's claims are equitable or otherwise not properly heard by a jury.

AFFIRMATIVE AND OTHER DEFENSES

1. Subject to a reasonable opportunity for investigation and discovery, Plaintiff has failed to mitigate her alleged damages, if any.
2. Subject to a reasonable opportunity for investigation and discovery, Plaintiff's claims are barred in whole or in part due to her failure to exhaust administrative remedies, including, but not limited to, those internal to Ivy Tech.
3. Subject to a reasonable opportunity for investigation and discovery, some of Plaintiff's claims may be barred to the extent that they are beyond the scope of her administrative charge.
4. Subject to a reasonable opportunity for investigation and discovery, Plaintiff's claims are barred in whole or in part as a result of the applicable statute of limitations.
5. Plaintiff's claims are barred in whole or in part due to Ivy Tech's sovereign immunity pursuant to the Eleventh Amendment of the United States Constitution which Ivy Tech does not waive and instead specifically reserves to the fullest extent possible.
6. Plaintiff's claims for certain damages, including punitive damages, are barred or limited by the United States and Indiana Constitutions, Title VII, and other federal and state laws.

7. Plaintiff's claims for certain damages, including punitive damages, are barred by Defendant's good faith efforts to comply with the law.

8. Plaintiff has no right to damages because Defendant would have made the same decisions and taken the same actions absent any allegedly unlawful motivation.

9. Defendant had legitimate, non-discriminatory reasons for its actions regarding Plaintiff.

10. Subject to a reasonable opportunity for investigation and discovery, Plaintiff's claims are barred in whole or in part by the doctrine of waiver, laches, estoppel, and/or unclean hands.

11. Plaintiff fails to state a claim upon which relief may be granted.

12. Defendant denies any allegations contained in Plaintiff's Complaint that are not expressly admitted herein.

13. Defendant reserves the right to raise additional defenses that may later arise due to an intervening change in controlling law.

WHEREFORE, Defendant respectfully requests that Plaintiff take nothing by way of her Complaint, that judgment be entered in Defendant's favor and against Plaintiff, that Defendant be awarded its costs and expenses in defending this action, and that Defendant be awarded all other just and proper relief.

Respectfully submitted,

BARNES & THORNBURG LLP

s/ Adam L. Bartrom

Jason T. Clagg (#24123-02)

jason.clagg@btlaw.com

Adam L. Bartrom (#27019-02)

adam.bartrom@btlaw.com

888 South Harrison Street, Suite 600

Fort Wayne, Indiana 46802

Telephone: (260) 423-9440

Facsimile: (260) 424-8316

ATTORNEYS FOR DEFENDANT
IVY TECH COMMUNITY COLLEGE
OF INDIANA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing document has been served this 10th day of May, 2017, by depositing a copy of the same in the United States mail, first-class postage prepaid and properly addressed to Plaintiff and her counsel at the following addresses:

Ms. Kimberly Hively
1112 S. 25th Street
South Bend, IN 46615

Gregory R. Nevins
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
730 Peach Street NE, Suite 640
Atlanta, Georgia 30308

s/ Adam L. Bartrom

Adam L. Bartrom