

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

JEFFREY PHILPOTT,  
  
Plaintiff,

**16 Civ. 6778 (AKH)**

v.

STATE UNIVERSITY OF NEW YORK

Defendant.

-----X

**AMENDED COMPLAINT**

Plaintiffs, JEFFREY PHILPOTT, (hereinafter refers as to ‘Plaintiff’) by and through his undersigned counsel, sues the defendant, STATE UNIVERSITY OF NEW YORK , (hereinafter referred to as "Defendant") and in support thereof, alleges as follows:

**A. Introduction**

1. This is an action for employment discrimination (gender (sexual orientation) and retaliation) pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et. seq.*. (“Title VII”)

**B. Parties**

- 2. At all times material hereto, plaintiff is a resident of New York County, New York.
- 3. Defendant is a public entity existing due to the laws of the State of New York and plaintiff was employed by defendant at all times relevant in the complaint.
- 4. Defendant is an employer as defined by Title VII. Plaintiff was an employee as defined by Title VII.

**C. Jurisdiction**

5. At all relevant times, Defendant was an “employer” as defined in Section 701(b) of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e(b)) and Defendant is charged by law with responsibility for the operation, management and control of the New York State University system and is within the jurisdiction of this Court. As such, Defendant is subject to the requirements of Title VII (42 U.S.C. § 2000e et seq.) and Plaintiff duly filed EEOC charges and a notice of right to sue letter was received within ninety days of the filing of this lawsuit conferring jurisdiction upon this Court. Venue is proper in this court because the acts of which Plaintiff complains were committed in this District.

**D. Factual Statement**

6. Plaintiff Jeffrey Philpott was hired by the State University of New York, College of Optometry on March 11, 2010 as the Vice President of Student Affairs. Following his hiring, in late March 2010, Plaintiff disclosed to Dr. David Heath, President of the College of Optometry, his family status which was that he was in a domestic partnership with Daniel Molnar. Plaintiff commenced his employment on June 28, 2010.
7. In September or October 2010, Dr. Philpott invited his friend and mentee Gui Albieri to visit the College of Optometry and Albieri would apply for and accept employment with SUNY as the Director of Admissions and Marketing, beginning in December 2010. The two would form a strong partnership and work well together in furthering the mission of the College of Optometry, as they had previously at Hawaii Pacific University.
8. In Spring 2011, Dr. Heath and Jan Rose (OCNY Board Member) interviewed Plaintiff’s domestic partner, Daniel Molnar, under the guise of “career counseling,” but instead were

merely using this meeting to pry into the relationship of Plaintiff and Molnar. Heath coerced a set of meetings between Molnar and himself, and between Molnar and OCNYS Board Member, Jan Rose to pry into Philpott's personal life. From this point forward, Heath considered Molnar to be a distraction, telling Philpott that his partner Molnar lacked focus and might not be able to get a job in New York City.

9. On August 31, 2011, a meeting was held to discuss the student policies at the College of Optometry, specifically the student handbook. Plaintiff carefully explained to Dr. Heath that the college needed to revise policies to protect students and staff in alleged cases of sexual assault, sexual discrimination and sexual orientation discrimination. In this meeting and several that followed on the issue, Plaintiff explained to Dr. Heath that the Student Conduct Code had to be revised because it did not comply with developing law under Title IX. For example, some of the procedures for adjudicating student conduct were unlawful.
10. Beginning on December 21, 2011, Dr. Heath engaged in a pattern of belittling Plaintiff in a public setting after he spoke, including making discriminatory comments about Plaintiff based on his sexual orientation, including calling him, "sensitive," "flamboyant" and "frenetic." These comments were directed at Plaintiff's sexual orientation and were ongoing and continuous throughout his employment. As time progressed Heath would ask Philpott to speak in meetings, with specific wording to be used, only to publicly humiliate Plaintiff for doing so.
11. Beginning in September 2012, Plaintiff became aware of Dr. Heath and Ann Warwick's discrimination of another homosexual employee, Francisco Lomparte. Dr. Heath subjected Lomparte to increased scrutiny, repeatedly changed his evaluation criteria, was critical of his

dress and speech and ultimately terminated him. Lomparte, sadly, had no reference point to understand the discrimination he was suffering at the time. Plaintiff was ridiculed by Heath for expressing his opinion that Lomparte had not been properly supervised and was a sad waste of talent for the SUNY.

12. On July 1, 2013, Plaintiff was promoted to Vice President for Student Affairs & International Programs. Philpott pleaded to take over the failing department of International Programs but was scolded by Heath to create revenue sources of money to maintain staffing. Philpott received no compensation for taking on the additional responsibilities yet Heath gave Gui Albieri a pay increase of \$15,000 per year. While, Plaintiff traveled to China for training from July 15, 2013 to August 1, 2013, Albieri remained in New York and attempted to take credit for Plaintiff's work and ideas, even giving a presentation on them (relating to Confucius, for the following semester). Specifically, Albieri remained in New York and Philpott spoke to him on the phone about a presentation that he might like to do when he returned to NYC, but Albieri took credit for the idea and delivered a speech at the Global Center without Philpott's approval. Heath supported this move. Albieri would also later steal and present as his own Plaintiff's creation of table to measure civic engagement. Additionally, Albieri began having private conversations with Dr. Heath about Plaintiff's personal life, (gay lifestyle), and would complain to Dr. Heath about the same issues that he was using to his benefit.
13. The relationship between Plaintiff and Albieri deteriorated, and in the Spring of 2014, Albieri stated to him, "We are only work associates, not friends...you know [Albieri's wife] and I do not want our children to be around homosexuality...at least not in their formative

year. You know [Albieri's wife] is very conservative." These statements were shocking as Plaintiff had allowed Albieri and his wife to stay with him for two weeks when Albieri first accepted the position at SUNY.

14. In September 2014, Dr. Heath debated the fairness of lawfully recognizing gay marriage with Plaintiff and suggested that a "separate but equal treatment of gay people might be best." Additionally, Dr. Heath, upon learning that Plaintiff and Molnar would end their 17-year domestic partnership, said to Plaintiff, "this marriage, or whatever you want to call it, is a distraction to the College."
15. On January 17, 2015, Plaintiff spoke privately with Dr. Heath, disclosing to him that he had an issue of chemical dependency which was caused (at least in part) as a result of the hostile work environment from which he was being subjected to based on his sexual orientation. Dr. Heath told him that most optometrists, "hardly take aspirin," and that Plaintiff should not talk to anyone about this." Dr. Heath instructed him to, "keep a low profile and just take Paxil," adding that, "we healthcare workers see this as the second epidemic– AIDS had to be managed, well manage this yourself." Dr. Heath's comments referred to Plaintiff's concern that he had responded to a hostile work situation by using a substance that is "common" in the gay community. Plaintiff found these comments discriminatory and offensive.
16. As a result of the on-going hostile work environment, on January 16, 2015, Plaintiff began to have cardiac-related health symptoms and was referred to a specialist at NYU. However, Philpott was never able to be seen by the NYU doctor. Throughout the Spring 2015 semester, due to Plaintiff's sexual orientation, Dr. Heath began to exclude Plaintiff from

meetings, failed to address his proposals, dismissed Plaintiff's contributions and began to hold private meetings with students, which diminished Plaintiff's authority; with other Vice Presidents, with alumni and board members; and with Plaintiff's own staff.

17. During a conversation on April 17, 2015, between Dr. Heath and Plaintiff, Dr. Heath compared homosexuality to his own eye condition (amblyopia with a strabismus), both of which he claimed were "genetic misfires," and said, "the question becomes, and certainly the answer is yes, they are being treated with rigorous therapy.
18. On April 27 and 28, 2015 Plaintiff visited the emergency room for treatment for infection in his legs. Dr. Richard Soden, who served as Philpott's personal health care proxy and power of attorney, accompanied Philpott to the emergency room. He was aware of Philpott's condition, but later said he did not know why Philpott needed to be treated.
19. Throughout 2015, it was revealed that Dr. Heath and Albieri had conversations about Plaintiff's personal life. Additionally, on one occasion, Albieri stated to Plaintiff that, "you make a good salary, Dr. Philpott. But your team [gays] doesn't have kids. You have more than you need. We should switch salaries." Again these comments were discriminatory in nature due to his sexual orientation. This, like many other meetings, was a charade set up by Heath to mock and humiliate Philpott. These meetings began to stigmatize Philpott, a process that continues to the present day.
20. The pattern of being left out of meetings, accused of being late for meetings (when actually arriving early) and being removed from projects, became Plaintiff's routine working conditions. When Plaintiff spoke to Richard Soden about the issue he was discouraged from filing a complaint against Heath, "because David had no history of mistreating staff." Soden

said the issue would pass. In particular, on August 19, 2015 it was openly questioned at a dinner whether Plaintiff should be sent to South Africa on a business trip, even though it was a project that Plaintiff was primarily responsible for completing, due to his sexual orientation.

21. On August 31, 2015 Plaintiff received a positive annual performance review.
22. Thereafter on September 2, 2015, Plaintiff complained to Dr. Heath that he found his overall comments and behaviors to be discriminatory due to his sexual orientation. Plaintiff referenced the treatment of other gay men by Dr. Heath, including Lomparte and his assistant, Brady Galan. Plaintiff stated that he felt Dr. Heath was stigmatizing his reputation and creating a hostile work environment, which was preventing Plaintiff from being able to do his job.
23. Plaintiff complained that discriminatory comments made by Dr. Heath, Dr. Heath's disclosure of Plaintiff's sexual orientation to other homophobic colleagues, Plaintiff being marginalized and prevented from engaging in work that Plaintiff has created a hostile work environment that has greatly psychologically impacted him. Plaintiff then went to Doug Schading of the College of Optometry and he dismissed the same complaints and simply said, "OK, keep me posted but this is between you and David [Heath]." Heath also remarked that he was not comfortable giving Philpott an employment contract, as he has done with Soden and David Troilo, because he was nervous that Plaintiff might complain about sexual orientation discrimination afterwards.
24. On October 14, 2015, Jan Rose appeared in Philpott's office, pronouncing that she would be Philpott's career coach and that the two would have several meetings. Richard Soden

confessed to Philpott that Heath had lied to him and was secretly trying to conduct a “360 Evaluation,” a process of simultaneously disseminating and collecting negative information about an employee. The process was discriminatory, involving the same board member who interviewed Molnar years before, and stigmatized Philpott before several segments of the College population.

25. On October 15, 2015, due to increasingly discriminatory and hostile acts being perpetuated by Heath and Albieri, Plaintiff sought to take a leave of absence from the college in order to get medical treatment for his chemical dependency which the discriminatory practices were continually exploiting. Plaintiff was not granted a leave of absence. Plaintiff made his leave request to Doug Schading, but soon Richard Soden began to pester Philpott to “name his leave type.” Philpott told Schading he needed to get away and was telling him in his role and Title IX Coordinator. Philpott also emailed a discrimination complaint to Schading and sent one by text to Dr. Heath. Heath approved his leave but retaliated by willfully disavowing his oath to uphold the Public Officers’ Law, violating SUNY policy and Title VII. Heath, Schading and Wendy Ravitz harassed Philpott for days while he was on an approved leave, squelching Philpott’s complaint of sexual orientation discrimination and finally sending him his termination letter via e-mail.
26. Thereafter, on October 22, 2015, Doug Schading, reached out to Plaintiff to arrive at a mutually agreeable transition from his employment. Most importantly the College sought indemnification for Dr. Heath for his violations of the Public Officers Law. Plaintiff responded on the same day and was informed by SUNY that they were open to negotiating the proposal.

27. During this negotiation period Plaintiff was repeatedly misled by Wendy Ravitz, counsel for SUNY, with her giving him the incorrect procedures for filing a discrimination claim. Ultimately, no separation agreement was reached and Plaintiff's employment was terminated by letter, effective November 20, 2015.
28. By reason of the foregoing, Plaintiff has been damaged as set forth below. Defendant terminated Plaintiff's employment due to his sexual orientation and in retaliation for his complaints of discrimination.
29. Plaintiff met all the qualifications for said position.
30. As a result of the willful activities of defendant, plaintiff has been deprived of equal employment opportunities based upon his gender (sexual orientation) and in retaliation for his complaints of discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et. seq.*.

**FIRST CLAIM FOR RELIEF- TITLE VII**

- 31 . Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 30 inclusive as if fully set forth at length herein.
32. As a result of the willful activities of defendant, plaintiff has been deprived of equal employment opportunities (hostile work environment and disparate treatment) based upon his sexual orientation-gender and retaliation in violation of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. 2000e *et. seq* in connection with his employment including his termination.

**WHEREFORE**, Plaintiff prays for the following:

- a. Defendant be permanently enjoined along with its officers, agents, successors, employees, attorneys and any other person acting on behalf of or in concert with Defendant from discriminating against Plaintiff ;
- b. that the Court find and declare that he has suffered for acts of discrimination and retaliation at the hands of the defendants, its agents, servants and employees;
- c. that plaintiff be awarded back wages, together with related monetary benefits had he not otherwise been discriminated against;
- d. that the Court order such further equitable and injunctive relief as it deems appropriate and necessary to correct the conditions of discrimination and retaliation including retroactive reinstatement;
- e. that defendant pay plaintiff's costs of this suit, together with a reasonable attorney's fee;
- f. that defendant pay plaintiff for compensatory damages for pain and suffering and humiliation incurred as a result of defendant's conduct;
- g. any other relief that is just and equitable;

**PLAINTIFF HEREIN DEMANDS A TRIAL BY JURY**

Dated: New York, New York  
May 18, 2017

STEWART LEE KARLIN  
LAW GROUP, PC

s/ Daniel E. Dugan  
DANIEL E. DUGAN, ESQ.  
*Attorney for Plaintiff*  
111 John Street, 22<sup>nd</sup> Floor  
New York, NY 10038  
(212) 792-9670