

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

ALLEN C. DAWSON,

Plaintiff,

-against-

NEW YORK UNIVERSITY,

Defendant.

INDEX NO. 162361/2015
MOTION DATE 11/30/2016
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

The following papers, numbered 1 to 14 were read on this motion to dismiss, and cross-motion to amend.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1 - 4; 5 - 8</u>
Answering Affidavits — Exhibits _____	<u>9 - 11; 12 - 14</u>
Replying Affidavits _____	

Cross-Motion: Yes No

Upon a reading of the foregoing cited papers, it is Ordered that Defendant's motion to dismiss the Complaint as time-barred is granted.

Plaintiff commenced this action on December 2, 2015, alleging that the Defendant violated Title VI of the Civil Rights Act of 1964 by discriminating against the Plaintiff based on his race. (Mot. Exh. A).

The Complaint asserts that while Plaintiff was a student of Defendant's School of Professional Studies (herein "SPS"), he was the subject of a racially charged assault by a fellow student in early 2013. That after this assault, Plaintiff received notification on May 7, 2013, that it had come to SPS' attention that Plaintiff made a misrepresentation on his admissions application when he answered "no" to a question of whether he had ever been convicted of a crime. (Id. at par. 15). That at the time of SPS' inquiry Plaintiff had no clear recollection of how he answered the question, that he initially thought he was mistaken in not remembering a thirteen year old conviction, and was also under the impression that a misdemeanor did not have to be disclosed. (Id. at par. 16). That upon further review of a copy of his application, Plaintiff discovered that the application had been tampered with, and that he had not checked the "no" box. (Id. at par. 17).

The Complaint further asserts that Plaintiff was dismissed from SPS on May 30, 2013, for this alleged misrepresentation on his application. (Id. at par. 18). That Defendant dismissed Plaintiff due to his race, and that it was improper for Defendant to use a thirteen year old misdemeanor conviction as a basis to dismiss Plaintiff from the program he was attending. (Id. at 23).

Defendant now moves to dismiss the Complaint pursuant to CPLR 3211(a)(5) and (7), arguing that the claims are time barred and fail to state a cause of action.

Defendant contends that the core of this lawsuit is challenging SPS' decision to rescind Plaintiff's admission to SPS, that such a decision was an administrative and academic one, and that in New York the challenge of such a decision must be brought in an Article 78 proceeding. That Plaintiff was dismissed from SPS on May 30, 2013, and that the Complaint was not filed until December of 2015. Therefore, Defendant argues that the Complaint must be dismissed as time barred, since the action should have been commenced as an Article 78 proceeding, and since Plaintiff failed to file such a proceeding within the applicable four-month statute of limitations.

Plaintiff opposes the motion arguing that the Complaint sets forth a federal claim, not a State claim, and is therefore subject to Title VI's three year statute of limitations. Plaintiff also cross-moves for leave to amend the Complaint to further refine the facts and circumstances set forth in the original Complaint.

Plaintiff's Complaint must be dismissed as time-barred. "[T]he judgment of professional educators is subject to judicial scrutiny to the extent that appropriate inquiry may be made to determine whether they abided by their own rules, and whether they have acted in good faith or their action was arbitrary or irrational...The courts have a rather restricted role to play in reviewing the judgments of educational institutions, the host of internal administrative and academic determinations which he challenges are redressable, if at all, in an article 78 proceeding, not a plenary action. While conversion of a plenary action to an article 78 proceeding is permitted...it is not warranted where the claims are barred by the four-month Statute of Limitations which governs article 78 proceedings." (Gertler v. Goodgold, 107 A.D.2d 481, 487 N.Y.S.2d 565 [1st Dept. 1985]).

"Although 'couched in terms of unlawful discrimination,' the complaint is "a challenge to a university's academic and administrative decision and thus is barred by the four-month statute of limitations for a CPLR article 78 proceeding, the appropriate vehicle for such a challenge.'" (Alrqiq v. New York Univ., 127 A.D.3d 674, 6 N.Y.S.3d 917 [1st Dept. 2015], citing Padiyar v. Albert Einstein Coll. of Medicine of Yeshiva Univ., 73 A.D.3d 634, 900 N.Y.S.2d 866 [1st Dept. 2010]).

Even in allowing Plaintiff to amend his Complaint, the causes of action for discrimination remain the same. Plaintiff is arguing that it was improper for the Defendant to dismiss him from SPS for a misrepresentation on his admissions application that he had never been convicted of a crime, and that this dismissal was really based on discrimination against his race and retaliation for Plaintiff making complaints against a professor. In essence, the Plaintiff is challenging the Defendant's academic and administrative decision, and therefore, this action should have been commenced as an Article 78 proceeding within the four month statute of limitation period.

Accordingly, it is ORDERED, that Defendant's motion to dismiss the Complaint is granted, the Complaint is dismissed, and it is further,

ORDERED, that the Clerk of the Court enter judgment accordingly.

ENTER:

Dated: January 20, 2017



MANUEL J. MENDEZ

J.S.C. MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE