

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

ELLY ROSENTHAL,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	FIRST AMENDED VERIFIED COMPLAINT
)	
PROSKAUER ROSE LLP,)	JURY TRIAL DEMANDED
)	
<i>Defendant.</i>)	Index No. 111343/2011
)	
)	
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)	

Plaintiff Elly Rosenthal (“Ms. Rosenthal” or “Plaintiff”), by her attorneys, Sanford Heisler, LLP, brings this action against Defendant Proskauer Rose LLP (“Defendant,” “Proskauer,” or “the Firm”) and alleges as follows with knowledge as to her own actions and upon information and belief as to all other matters:

I. NATURE OF THE ACTION

1. As the website of law firm Proskauer Rose proudly proclaims, for more than seventy years the Firm has been “synonymous with labor law” — on the side of the country’s “largest employers.” Unfortunately for Elly Rosenthal, Proskauer’s CFO and one of its longest-serving employees, this management-side experience has served the Firm all too well. Despite a nearly two-decade track record of success, during which Ms. Rosenthal never received a single negative review, she was marginalized by superiors and co-workers and then terminated after she took medical leave due to her treatment for breast cancer.

2. Ms. Rosenthal served as Proskauer's Chief Financial Officer (CFO) for 16 years. During those years, the Firm experienced unprecedented growth and profit.

3. Upon her return from medical leave in the fall of 2008, Ms. Rosenthal was removed from the position of CFO. She was effectively demoted to a position that had never existed before: Chief Administrative Financial Officer ("CAFO").

4. From 2008 through 2010, Ms. Rosenthal was denied any merit increases or bonuses, although Proskauer never asserted that her performance was unsatisfactory.

5. From the time she returned from cancer leave in 2008, Ms. Rosenthal's coworkers and her direct supervisor marginalized her and excluded her from important Firm communications and decisions.

6. After 18 ½ years at Proskauer, during which Ms. Rosenthal never received a single negative performance review orally or in writing, she was abruptly terminated and told to vacate her office in three days.

7. Ms. Rosenthal brings this action to recover compensatory and punitive damages because defendant Proskauer has discriminated against her on the basis of actual or perceived disability in the terms, conditions, and privileges of her employment. Proskauer has hereby violated the New York State Human Rights Law, Executive Law § 296 *et seq.* ("NYSHRL") and the Administrative Code of the City of New York City § 8-101 *et seq.* ("NYCHRL").

8. Ms. Rosenthal seeks compensatory and punitive damages; attorneys' fees, costs and expenses; pre- and post-judgment interest; and other appropriate legal relief pursuant to the NYSHRL and NYCHRL.

II. JURISDICTION AND VENUE

9. This Court has personal jurisdiction over the Defendant under CPLR §§ 301 and 302. Defendant is situated in New York State, and committed in this state the acts of which Plaintiff complains.

10. Venue belongs in New York County. The wrongful conduct producing this lawsuit happened in Manhattan and Defendant transacts substantial business in this County.

III. PARTIES

A. The Plaintiff

11. Plaintiff Elly Rosenthal is a 59-year-old female resident of Colts Neck, New Jersey. Ms. Rosenthal is a survivor of breast cancer since her diagnosis in 2007.

12. At all relevant times Ms. Rosenthal was employed by Proskauer in the City and State of New York.

13. In 1992, Defendant Proskauer Rose LLP hired Ms. Rosenthal as Chief Financial Officer (“CFO”). Ms. Rosenthal held the position of CFO for approximately 16 years, until 2008, when she was effectively demoted to Chief Administrative Financial Officer (“CAFO”) and replaced by Jim Barbaria, a former colleague of her supervisor, Proskauer Chief Operating Officer Art Gurwitz (“COO Gurwitz”).

14. At all times during her employment with Defendant, Ms. Rosenthal worked in Proskauer’s offices in Manhattan.

15. On March 11, 2011, Defendant wrongfully terminated Ms. Rosenthal’s employment with the Firm.

B. The Defendant

16. Defendant Proskauer Rose LLP is an international law firm with locations in multiple cities around the world.

17. According to its website, the firm has “wide experience in all areas of practice important to businesses, including corporate finance, mergers and acquisitions, private equity, real estate transactions, bankruptcy and reorganizations, taxation, litigation, trusts and estates, intellectual property, and labor and employment law.”

18. Proskauer’s clients include participants in many industries, ranging from chemicals, entertainment, financial services, health care and hospitality to information technology, insurance, the internet, manufacturing, media and communications, pharmaceuticals, real estate investment, sports, and transportation.

19. Defendant is an employer within the meaning of the NYSHRL and NYCHRL.

IV. FACTUAL ALLEGATIONS

A. Background

20. Ms. Rosenthal is a Certified Public Accountant with three decades of professional experience who received her B.S. in Accounting from Brooklyn College in 1975.

21. Prior to joining Proskauer, Ms. Rosenthal was Director of Finance at Stroock & Stroock & Lavan from 1987 to 1992, Director of Finance and Administration at Morrison Cohen LLP from 1985 to 1987, and Controller at Finley Kumble Wagner from 1982 to 1985.

22. From 1975 to 1982, Ms. Rosenthal worked in public accounting at KPMG, a Big 8 accounting firm.

23. Impressed by her experience, Proskauer hired Ms. Rosenthal as the Firm's Director of Finance in 1992. In approximately 2005, Ms. Rosenthal's title was changed to Chief Financial Officer ("CFO").

24. Over the course of her 18½-year tenure at Proskauer, Ms. Rosenthal managed global financial functions and a staff of more than 70 employees.

25. As CFO, Ms. Rosenthal oversaw all aspects of the Firm's financial operations, including strategic planning, reporting and analysis, budgets, expense control, treasury, billing and collections, tax, and pensions.

26. Under Ms. Rosenthal's leadership as CFO, Proskauer experienced unprecedented growth to more than 700 attorneys in ten offices and generated \$675 million in revenue annually.

27. In Ms. Rosenthal's last five years at Proskauer, profits per partner increased by 40 percent.

28. While CFO, Ms. Rosenthal reported to the Chief Operating Officer of the Firm, Art Gurwitz ("COO Gurwitz"). COO Gurwitz has held his position since approximately 2005.

29. Throughout Ms. Rosenthal's almost two decades at Proskauer, she received numerous commendations from her Department, Firm Partners, Firm Chairmen, various administrative staff at Firm offices worldwide, and from COO Gurwitz himself.

30. Ms. Rosenthal was frequently lauded for her outstanding performance and strong relationships. In her only written performance review, from April 2009, COO Gurwitz gave Ms. Rosenthal an overall rating of “fully meeting expectations.”

31. In November 2007, Ms. Rosenthal was diagnosed with breast cancer, for which she underwent treatment in January and February of 2008, including two rounds of surgery.

32. During this time, Ms. Rosenthal took several weeks of sick leave to recover from each of her surgeries. Ms. Rosenthal initially returned to work just a few weeks after her last surgery, in March 2008, but subsequently decided to take a further three-month medical leave to complete her recovery.

33. When Ms. Rosenthal expressed concern over her professional future prior to taking medical leave in 2008, COO Gurwitz told her “there will always be a place for you” at Proskauer. In light of her many years of service and her excellent record, Ms. Rosenthal felt she had no reason to doubt him.

B. Demotion of Plaintiff Rosenthal

34. Ms. Rosenthal continued to meet with COO Gurwitz occasionally during her three months of medical leave.

35. At the first of these meetings on June 16, 2008, COO Gurwitz asked Ms. Rosenthal what her plans were. Ms. Rosenthal told COO Gurwitz that she would be returning to work, as planned, on July 21, 2008 at the conclusion of her three-month leave, and asked his advice about how best to reintegrate herself at the Firm after her absence.

36. It was at this point that COO Gurwitz first conveyed to Ms. Rosenthal his plan to reorganize the Firm’s Administrative staff.

37. As part of this reorganization, COO Gurwitz told Ms. Rosenthal that he wanted to find a way to take advantage of her strengths, though he immediately qualified this statement by noting that Ms. Rosenthal was strong in all areas.

38. Interested in challenging herself after many years in the same position, Ms. Rosenthal told COO Gurwitz that she would be willing to consider an altered or new role at Proskauer.

39. It never occurred to Ms. Rosenthal during these initial discussions that the proposed new position might involve decreased responsibilities or a cut in pay. Instead, Ms. Rosenthal assumed that Proskauer was interested in finding new ways to take full advantage of her talents, and particularly to leverage the strong relationships she had built throughout the Firm during her sixteen years as Director of Finance and CFO.

40. Instead, almost immediately upon Ms. Rosenthal's return in August 2008, COO Gurwitz and other Proskauer Administrators began a concerted effort to force her out of the Firm.

41. Ms. Rosenthal assumed the newly created CAFO position in September 2008.

42. Until her abrupt termination in March 2011, as CAFO Ms. Rosenthal oversaw all eleven Proskauer offices worldwide, managed over 100 secretarial staff, and served as the operational liaison for major service vendors, among other duties.

43. During her first two years in the CAFO position, Ms. Rosenthal re-negotiated all of Proskauer's major service contracts, generating a permanent annual savings of over \$2,000,000 for the Firm.

44. Plaintiff Rosenthal proposed a candidate on her staff for the CFO position to COO Gurwitz. However, COO Gurwitz chose instead to appoint Proskauer's Manager of Financial Analytics, Jim Barbaria, to the position. COO Gurwitz and Mr. Barbaria had also been colleagues at a previous firm. COO Gurwitz appointed Mr. Barbaria to CFO despite the fact that Mr. Barbaria's qualifications for the job were significantly inferior to Ms. Rosenthal's qualifications. Whereas Ms. Rosenthal is a Certified Public Accountant who has occupied the top financial position at law firms since 1982, including 16 years as the CFO of Proskauer, Mr. Barbaria is not a Certified Public Accountant and had never served as head of any finance department before his promotion to CFO at Proskauer. Moreover, Ms. Rosenthal's proposed candidate for Proskauer's new CFO also had qualifications and interpersonal skills that were objectively superior to those of Mr. Barbaria, including a CPA license and experience serving as the CFO of another major New York law firm.

45. Mr. Barbaria originally had been hired by Proskauer in 2007 in a position reporting to Plaintiff Rosenthal; from the start, however, he had defied her authority. Ms. Rosenthal had mentioned these difficulties to COO Gurwitz on various occasions, only to have them dismissed.

46. In his new position, CFO Barbaria continued to exhibit unprofessional and counterproductive behavior toward colleagues and vendors.

47. For example, Ms. Rosenthal received reports both from vendors and other Proskauer staff complaining about CFO Barbaria's lack of involvement as a manager in the day-to-day operations of the Firm. Vendors also reported that they found it difficult to get CFO Barbaria's attention, and noted that he often would not return their calls and emails.

48. Mr. Barbaria also took actions that undermined Ms. Rosenthal's authority.

In one instance, CFO Barbaria refused to pay a contingency fee based on a contract that Ms. Rosenthal had negotiated, placing her in a very difficult position with a vendor.

49. In another instance, Mr. Barbaria overruled Ms. Rosenthal's assignment of a back-up receptionist without communicating with Ms. Rosenthal, putting Ms. Rosenthal in yet another embarrassing position as she continued to discuss the assignment with the staffer she had chosen.

50. Most notably, CFO Barbaria removed Ms. Rosenthal from a daily voice mail message regarding significant collections for the Firm, and instructed his staff to no longer share financial information with her.

51. When Proskauer moved to a new facility in 2011, Ms. Rosenthal's marginalization by Proskauer continued as she was displaced to a secondary office space, a change she discovered only after several failed attempts to communicate with COO Gurwitz and others. Although Proskauer's new main facility was located at 11 Times Square and housed the offices of several key members of the Finance team — including COO Gurwitz, CFO Barbaria and the Director of Finance — Ms. Rosenthal's new office was located eight blocks away, at 2 Penn Plaza.

52. COO Gurwitz also ignored emails from Ms. Rosenthal regarding bonuses for her staff related to the Firm's move to a new facility.

53. Furthermore, when it came time to coordinate 2010 year-end compensation for office staff, COO Gurwitz assigned another Chief to speak to the Office Heads, even though Ms. Rosenthal had been responsible for reviewing the office staff and had worked closely with the Office Heads on these and other matters.

54. In another instance, when one of Ms. Rosenthal's direct reports in Proskauer's Florida office came into conflict with the managing partner there, Ms. Rosenthal herself was excluded from meetings that led to her report's termination, as well as from the subsequent hiring process for his replacement.

55. Less than a year after Ms. Rosenthal had started in her new position as CAFO, and just over a year after her second surgery for breast cancer, Ms. Rosenthal received her first and only written Management Performance Review from COO Gurwitz (the "Review") in April 2009.

56. The April 2009 Review clearly and objectively recognized Ms. Rosenthal's many contributions to Proskauer, as well as her ability to step into a new role with expanded and varying responsibilities.

57. For example, the Review noted Ms. Rosenthal's myriad strengths, many of which were acknowledged to be the unique products of her long history at Proskauer. COO Gurwitz noted Ms. Rosenthal's "deep knowledge of the firm and extensive, good relationships with many partners and staff," and opined that her "huge [h]istory" with the Firm gave her a "terrific advantage" in her new position. Along with Ms. Rosenthal's "excellent relationships with many partners, lawyers and staff," the Review identified her strengths across the board, from her "skillsets" and "personal relationships" to her "dignity" and "warmth of character."

58. The Review also candidly acknowledged the challenges Ms. Rosenthal faced in her new role, a position that was new not only to Ms. Rosenthal but to the Firm itself. COO Gurwitz wrote, "I suspect it is difficult to now be in a new management role at a time when the industry is changing – rapidly – and as a firm we are

modifying/integrating/enhancing/eliminating many procedures and processes that were implemented either by [Ms. Rosenthal] in her previous capacity as CFO or during her time as CFO.”

59. While recognizing that Ms. Rosenthal was doing “a very good job” in a position that “requires a different set of skills,” COO Gurwitz noted the many challenges her department faced, including “a number of staff...who frankly do not have the skill set the firm now needs and who are in her area of supervision. We need to deal with that ASAP.”

60. In conclusion, COO Gurwitz wrote, “I’d like to see her ‘step’ up her game, so to speak, and intensely focus on radically changing the way we do things.”

61. Instead of supporting Ms. Rosenthal’s efforts to innovate in her department, however, COO Gurwitz and other Proskauer Administrators, including newly appointed CFO Jim Barbaria, orchestrated a concerted campaign to undermine Ms. Rosenthal’s authority and erode her position at Proskauer.

62. When Ms. Rosenthal presented an idea for e-billing to COO Gurwitz, he approved the idea. However, because CFO Barbaria refused to fund the project it never came to fruition. The e-billing initiative would have further automated the Firm’s procedure for sending out almost 10,000 bills a month — just the sort of radical change in Proskauer’s billing practices that the Review had invited.

63. In addition, Ms. Rosenthal contracted for a new billing template system to use in the Department. CFO Barbaria was also slow to adopt this change, and in fact had still failed to do so by the time Ms. Rosenthal left the Firm in March 2011.

64. In September 2010, in yet another effort to innovate and upgrade Proskauer's processes, Ms. Rosenthal sent COO Gurwitz a proposal for an automated package tracking system. While failing to respond to Ms. Rosenthal, COO Gurwitz forwarded her proposal to another Administrator, Chief Real Estate and Facilities Officer Hal Plott, for his review and approval, and subsequently gave Ms. Rosenthal's colleague credit for Ms. Rosenthal's idea.

C. Proskauer's Discrimination against Plaintiff Rosenthal in Compensation

65. Plaintiff Rosenthal experienced a significant cut in pay during her last three years at the Firm. After her return from medical leave in mid-2008, Ms. Rosenthal initially reported to her office three days per week. She assumed her new position in September 2008 and in December 2008 began reporting to her office four days per week. Throughout this period, Ms. Rosenthal continued to come in early and work late, putting in long hours over the course of the week, as was her longtime habit. On a typical day when she reported to her office, she arrived before 8 a.m. and left after 6:00 p.m. On days when she did not report to the office, she often worked from home. Regardless of the day of the week, Ms. Rosenthal read and responded to her emails, held telephone conversations, and attended all critical meetings, including through conferencing technology. Her colleagues were told she was reachable on the days when she did not come in, and on numerous occasions contacted her at home. During an initial conversation about her new schedule with COO Gurwitz in the fall of 2008, he suggested that she keep her new schedule "quiet" vis-à-vis her co-workers, and told her that she did not have to be in the office to be working. It was Ms. Rosenthal, perceiving that her co-workers would undoubtedly be aware of her absences,

who suggested that they take a more transparent approach and officially communicate the details of her new schedule.

66. During a December 2008 meeting, COO Gurwitz informed Ms. Rosenthal that she would receive neither a bonus nor a merit increase. He explained that it was Proskauer's way of offsetting the three months of paid medical leave it had allowed her.

67. During that meeting, COO Gurwitz advised Ms. Rosenthal that despite her excellent performance, he was "getting heat from people" about the fact that she continued to receive full-time pay for working a compressed work-week. Accordingly, Ms. Rosenthal agreed to a 10 percent decrease in salary to \$423,000. In fact, however, Ms. Rosenthal's pay was reduced to \$420,000, a further diminution that was never explained.

68. At COO Gurwitz's express request, Ms. Rosenthal returned to working in her office five days per week in April 2010, and also took on additional responsibilities. However, Proskauer continued to pay her at the reduced rate throughout the year.

69. Moreover, as in 2008, Ms. Rosenthal received no bonus or merit increase for 2009 and 2010; this time, however, COO Gurwitz provided no explanation.

D. Wrongful Termination of Plaintiff Rosenthal

70. Effective February 2011, Joseph Leccese assumed the role of Firm Chair at Proskauer Rose. At the same time, COO Gurwitz announced that he wanted to meet with the various Chiefs to talk about goals going forward.

71. Ms. Rosenthal began to think creatively about a new set of responsibilities to add to her role as CAFO in the area of Client Relations. These responsibilities would have capitalized on the myriad strengths specifically recognized by COO Gurwitz in his April 2009 Review and given the Firm opportunity for significant revenue growth.

72. Ms. Rosenthal discussed her proposal with COO Gurwitz at the beginning of February 2011, and he expressed enthusiasm, stating, "I thought this might be what you're interested in." COO Gurwitz asked to see a written proposal, which she emailed to him that day.

73. Ms. Rosenthal then heard nothing for six weeks, until an email invitation with a subject of "Hi" appeared in her inbox on Monday, March 10, asking her to meet with COO Gurwitz at 9:30 a.m. on Tuesday, March 11, in his office.

74. Ms. Rosenthal arrived at the meeting to find both COO Gurwitz and New York Managing Partner Bruce Lieb. COO Gurwitz and Managing Partner Lieb told Ms. Rosenthal that there was "no role" for her at Proskauer and that she was terminated.

75. COO Gurwitz and Managing Partner Lieb told Ms. Rosenthal that she needed to vacate her office in three days.

76. Proskauer's abrupt dismissal of Ms. Rosenthal, without warning of any kind, despite her nearly two decades of loyal service to the Firm, constitutes malicious or recklessly indifferent treatment.

77. Proskauer's decision to provide Ms. Rosenthal only three days' notice of her termination, despite her nearly two decades of loyal service to the Firm, constitutes malicious or recklessly indifferent treatment.

COUNT I
VIOLATIONS OF NEW YORK STATE HUMAN RIGHTS LAW
NEW YORK EXECUTIVE LAW § 296 *ET SEQ.*

1. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the aforementioned paragraphs as though fully set forth herein.

2. Defendant subjected Plaintiff to discrimination on the basis of actual or perceived disability as alleged herein, including demoting her after 16 years from her position as CFO and wrongfully discharging her after 18 ½ years of employment.

3. Defendant's conduct in violation of New York Executive Law § 296 *et seq.* has injured and damaged Ms. Rosenthal.

4. By reason of Defendant's conduct as alleged herein, Ms. Rosenthal is entitled to all legal remedies available for violations of New York Executive Law § 296 *et seq.*

COUNT II
VIOLATIONS OF NEW YORK CITY HUMAN RIGHTS LAW
NYC ADMINISTRATIVE CODE §§ 8-101 *ET SEQ.*

1. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the aforementioned paragraphs as though fully set forth herein.

2. Defendant subjected Plaintiff to discrimination on the basis of actual or perceived disability as alleged herein, including demoting her after 16 years from her position as CFO and wrongfully discharging her after 18 ½ years of employment.

3. Defendant's conduct in violation of New York City Administrative Code §§ 8-101 *et seq.* has injured and damaged Ms. Rosenthal.

4. By reason of Defendant's conduct as alleged herein, Ms. Rosenthal is entitled to all legal remedies available for violations of New York City Administrative Code §§ 8-101 *et seq.*

XII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Elly Rosenthal requests the following relief:


- a. An award of compensatory and punitive damages, in the amount of \$10,000,000;
- b. Attorneys' fees, costs, and expenses;
- c. Prejudgment and post-judgment interest;

XIII. JURY DEMAND

Plaintiff demands a trial by jury of all issues.

Dated: March 28, 2013

SANFORD HEISLER, LLP



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VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ELLY ROSENTHAL, being duly sworn, states that she is the plaintiff in this action and that the foregoing First Amended Verified Complaint is true to her own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters she believes it to be true.

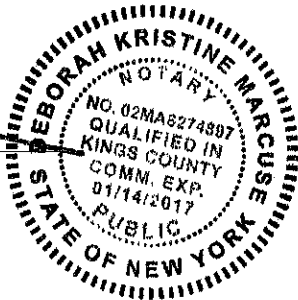


ELLY ROSENTHAL

Sworn to before me this
28 day of March, 2013



NOTARY PUBLIC





[VIA U.S. MAIL] I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail in New York, New York. I am "readily familiar" with the firm's practice for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

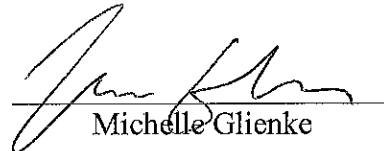


[VIA PERSONAL DELIVERY] The person whose name is noted below caused to be delivered by hand such envelope to the addressee(s) noted above.



[VIA FACSIMILE] I caused to be transmitted the above-named documents at approximately _____ a.m./p.m. via facsimile number (415) 434-0513. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. The transmission report was properly issued by the transmitting facsimile machine, a copy of which is attached pursuant to Rule 2009(I)(4).

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct. Executed 3/29/13 at New York, New York.


Michelle Glienke