

CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

In the Matter of the Complaint of:

NICOLE COLUMBUS (a/k/a NIKKI
COLUMBUS),

Complainant,

-against-

MOMA PS1, PETER ELEEY, KLAUS
BIESENBACH, and JOSE ORTIZ

Respondents.

Case No: _____

COMPLAINT

Complainant Nicole Columbus (a/k/a Nikki Columbus), by and through her attorneys Emery Celli Brinckerhoff & Abady LLP, and A Better Balance: The Work and Family Legal Center, files this Complaint against Respondents MoMA PS1, Peter Eeley, Klaus Biesenbach, and Jose Ortiz and alleges the following:

PRELIMINARY STATEMENT

1. Ms. Columbus was subjected to blatant caregiver and gender discrimination. Over a period of several months, Peter Eeley and Klaus Biesenbach, Chief Curator and Director, respectively, of MoMA PS1 (“PS1”), recruited Ms. Columbus to join PS1 as associate curator of performance. After several discussions about the job, Eeley, Biesenbach, and Chief Operating Officer Jose Ortiz officially offered her the position. But when Ms. Columbus mentioned that she had recently had a baby, Eeley immediately demanded to know why she hadn’t said earlier that she was pregnant. Shortly thereafter, PS1 rescinded the job offer.

2. Nothing about the position changed. Nothing about Ms. Columbus’s qualifications for the job changed. The only thing that changed was Respondents’ awareness of

Ms. Columbus's new baby. The realization that Ms. Columbus was a new mother who would have caretaking responsibilities caused Respondents to turn on a dime. Their conduct is the hallmark of discrimination.

THE PARTIES

3. Complainant Nikki Columbus graduated from Harvard University and has spent years working in the New York art world, including as associate editor of Artforum and executive editor of Parkett magazine. She resides in New York City.

4. Respondent MoMA PS1 is a nonprofit contemporary art space located at 22-25 Jackson Avenue, Long Island City, New York. It was founded in 1971, and became affiliated with the Museum of Modern Art in 2000. It is a member of New York City's Cultural Institutions Group, located in city property. As a publicly owned institution, PS1 receives "significant capital and operating support" from the City (as stated in the Cultural Affairs section of the website for the City of New York, NYC.gov).

5. Respondent Peter Eleey is the Chief Curator at MoMA PS1, a position he has held since 2010. Upon information and belief, he resides in New York City.

6. Respondent Klaus Biesenbach is the Director of MoMA PS1 and Chief Curator at Large at MoMA. Upon information and belief, he resides in New York City.

7. Respondent Jose Ortiz is the Chief Operating Officer of MoMA PS1. Upon information and belief, he resides in New York City.

8. Respondents Eleey, Biesenbach, and Ortiz are referred to collectively as "the Individual Respondents."

FACTUAL STATEMENT

Ms. Columbus's Background in Art

9. Nikki Columbus has worked in the art field since she graduated college.

10. She served as associate editor of Artforum, a contemporary art magazine with international circulation. She also worked at Townhouse, a contemporary art space in Cairo. Throughout her career, she has worked as a freelance editor and project manager.

11. Starting in 2012, Ms. Columbus served as senior and then executive editor of Parkett, a contemporary art magazine based in New York and Zurich. As editor, Ms. Columbus helped select the artists to be featured in each issue and the writers who would cover each artist's work. In 2016, the publishers decided to close the magazine after producing a final issue in 2017.

12. Ms. Columbus is well known in the art world in New York City. She frequently saw and spoke with Eeley and Biesenbach at exhibition openings and performances in New York and internationally. She attended numerous events at PS1, often at the invitation of Eeley or Biesenbach, and even participated in a performance at the institution's September 2016 gala.

PS1 Recruits Ms. Columbus

13. Ms. Columbus ran into Eeley at a PS1 performance in April 2017. They discussed PS1's open position of performance curator. Eeley told Ms. Columbus he had been thinking of her for the role and suggested that they meet the following week to discuss it.

14. After multiple text messages and emails to coordinate the meeting, Eeley and Ms. Columbus met on April 12 in Manhattan to discuss the job. Ms. Columbus asked about the work schedule, as most PS1 performances are on Sundays. Eeley said that if Ms. Columbus had to work on the weekend, she would get time off during the week to make up for it.

15. At this meeting, Eeley mentioned the previous performance curator, and complained that she was “much less present” after she had a baby.

16. Given this comment, Ms. Columbus decided not to mention to Eeley that she was pregnant, due to give birth the first week of August.

17. Eeley said that he would discuss Ms. Columbus with Biesenbach, and if Biesenbach was interested, he would arrange a meeting for all three of them. In the meantime, Eeley asked Ms. Columbus to prepare a critique of the previous curator’s performance program and to compile a list of artists with whom she would want to work at PS1.

18. In the days after this meeting, Ms. Columbus and Eeley exchanged multiple emails. At Eeley’s request, Ms. Columbus sent him her resume. He told her that he planned to speak with Biesenbach the following week.

19. On May 1, 2017, Ms. Columbus met with Eeley and Biesenbach to discuss the position. She presented her critique of their performance program and discussed the list of artists she had compiled.

20. In early June, Eeley reached out to Ms. Columbus to schedule another meeting to discuss the list of artists she had put together and to arrange for a meeting with Biesenbach.

21. On July 12, 2017, Ms. Columbus met Eeley at a café to discuss the PS1 position. He primarily sought to prepare her for her upcoming meeting with Biesenbach. Eeley told her that PS1 did not yet have funding for the performance program for the next year. Regardless, PS1’s discussions with Ms. Columbus continued.

22. On July 20, 2017, Ms. Columbus met Biesenbach at a restaurant to discuss the performance curator role. He stated that he had secured funding for the performance program.

23. On July 28, 2017, Ms. Columbus gave birth to a baby boy.

Ms. Columbus Is Offered the Job of Performance Curator

24. On August 1, Eeley and Ms. Columbus had a lengthy phone call following up on her meeting with Biesenbach. When she expressed concern that Biesenbach and Eeley seemed to have two different visions for the performance program at PS1, Eeley told her to disregard most of Biesenbach's statements.

25. During this call, Eeley discussed PS1's employment benefits in detail and at great length. For example, he explained MoMA's 401k policy. Two days later, Eeley emailed her a copy of MoMA's benefits plan and told her he could discuss any questions she had. He asked her to reaffirm that she wanted the job, and what her salary requirements would be.

26. Ms. Columbus responded by e-mail that she would love the job and asked for a \$100,000 salary.

27. On August 7, Eeley asked for a phone call with Ms. Columbus. During the call, Ms. Columbus reiterated that she had lots of ideas for the position and that she was excited about it.

28. Eeley told her again that she could start part-time while she finished her job at Parkett. He said that while a start date in October might work, September was preferable. He also said that funding for the performance program had been secured only through June 2018, so the position was only assured until then, but that they hoped to find funding to continue the program. Ms. Columbus responded that she would try to figure out the best timing to start at PS1.

29. Three days later, Eeley emailed Ms. Columbus, telling her to expect an offer letter the following day and that the salary was a little lower than she had requested.

30. On Saturday, August 12, PS1 Respondent Jose Ortiz, Chief Operating Officer at PS1, emailed Ms. Columbus to offer her the position of associate curator, with a salary of \$90,000 and a start date of September 11.

31. After Eleey emailed her to ask about her thoughts on the offer, Ms. Columbus responded that she needed some time to consider it, as the salary was lower than she wanted and she needed to figure out when she could start.

32. On August 17, Eleey emailed Ms. Columbus about the fall programming, saying that he wanted her to get involved with discussions about it as soon as possible. He assured her, “we can be flexible on the transition into the role here,” suggesting that she participate in discussions right away and then ease into the job while starting part-time. He suggested that she could “begin working a few days per week as you conclude Parkett responsibilities. I feel confident we can find a solution for that interim period.”

33. Ms. Columbus and Eleey continued to email about the programming and about Ms. Columbus’s consideration of the role. Ms. Columbus disclosed that she had applied to other jobs since they had begun discussing this job in April and that she was weighing her options. She mentioned that one of the jobs would have a significantly higher salary, in hopes that this might push them to raise their offer. Eleey responded that she should let him know if she needed any more information while she made her decision.

34. On August 22, Biesenbach texted Ms. Columbus to encourage her to accept the job, saying that he hoped they would be “teaming up” soon.

35. On Friday, August 25, Ms. Columbus set up a phone call with Eleey. She said, in sum and substance, “As you might know, I recently had a baby.” Eleey was taken aback, and

said that he had not noticed that she was pregnant at their recent meetings. She expressed surprise that he had not noticed her pregnancy.

36. Discussing the job offer, Ms. Columbus said that she wanted to confirm that, as they had previously discussed, she would have time off during the week if she worked during the weekend. She also said that, although the day-to-day hours had never been discussed, she could work late nights with advance warning so that she could arrange for child care. As for a start date, she suggested that she start full-time in October but could work part-time starting in September, along the lines of the schedule Eleey had proposed earlier. She said that she was still recovering from her C-section, so it would be best for her to work from home and via Skype at the start.

37. Eleey immediately asked, “Why didn’t you tell me this two months ago?” Ms. Columbus understood Eleey to be asking why she did not tell him she was pregnant before. He said that he would not have “cut loose” other applicants if he had known about this “situation.” He said that he would have to discuss this with the rest of the PS1 staff to see if they were okay with it.

38. Because Eleey had previously agreed that Ms. Columbus could start on a part-time basis and take time off during the week if she worked on the weekend, she did not know what “situation” he was referring to or what aspect of her employment he would need to seek approval for. She feared that he regretted offering her the position because she had recently had a baby and thus, in his view, would be “much less present,” as he had complained about the prior curator after she gave birth.

39. About fifteen minutes after they ended the call, Eeley texted Ms. Columbus, saying that he forgot to congratulate her—“just was a lot of information to register!” He promised to get back to her next week.

40. When Ms. Columbus did not hear back from Eeley by the middle of the following week, she grew uneasy. She followed up with an email to Eeley, “to recap what we discussed as the cell phone reception was so patchy.” She said that she assumed the questions she had raised about the schedule would not present any problem: “After all, in our conversations, we never discussed a start date, and while you had mentioned that September was preferable, I had gotten the sense that October was doable. Also, when we talked about the weekly schedule, you had said that the time worked on the weekend would be matched by time off during the week, so I was just confirming that, adding that I can’t work too many late nights and would need to know my schedule in advance in order to arrange child care.”

41. Eeley replied that he was out of the office on vacation and had “limited connectivity.” He said that either he or Ortiz would get back to her the following week. Ms. Columbus assumed that they would then negotiate her part-time schedule in September as well as when exactly she would start working full-time in the office.

42. On September 6, 2017, Mr. Ortiz emailed Ms. Columbus rescinding the job offer. He said that Eeley had shared her prior email with him. He stated that “it is imperative that the person filling this position start as soon as possible, if even part-time for a few weeks.” He said that PS1 is “unable to tailor the position on the terms you have proposed,” and that they interpreted her email “to be a rejection of our offer.”

43. Ms. Columbus responded the next day to Mr. Ortiz, saying that there “has been some miscommunication,” that she was not rejecting the job offer, “and indeed I’m looking

forward to joining PS1!" She reiterated that she could start part-time in September and then begin working full-time in October. "This was Peter [Eeley]'s suggestion as he knows that I'm winding down my position with Parkett, the magazine that I currently edit. This lines up with what you mention below." She also agreed to accept the \$90,000 salary.

44. At the end of the following day, Mr. Ortiz emailed her again, copying Eeley: "I'm sorry that my email wasn't clear. Your correspondence and conversations with Peter Eeley indicated that you would not be able to perform the job as it was structured. As your email rejected the terms of our offer, it is no longer active, and we are already pursuing alternatives."

45. Eeley replied-all to the email. He told Ms. Columbus, "given your evident lack of enthusiasm for our offer, we were compelled to reconsider the position in general." He said they had decided "it no longer makes sense to proceed with the job as we had discussed it with you," and that they would "restart" their search at a later date.

46. Ms. Columbus did not hear from anyone at PS1 again.

FIRST CLAIM FOR RELIEF
N.Y.C. Admin. Code §§ 8-107(1) – Caregiver Discrimination in Violation of the New York City Human Rights Law

47. Complainant repeats and realleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

48. Respondents discriminated against Complainant on the basis of her caregiver status in violation of the New York City Human Rights Law ("NYCHRL") because, after Respondents discovered she had recently had a baby, they rescinded their prior offer of employment. When she explained that she would need advance notice before working late in the office in order to arrange childcare, Respondents declared that she was unable to "perform the job as it was structured."

49. Respondents rescinded the job even though they had previously stated that she could start part-time and take time off during the week if she worked weekends. And despite multiple discussions of the job responsibilities, and Complainant's own mention of attending evening performances, Respondents had never said that she would need to be available to work nights without prior notice. Complainant was able to perform the job as structured. Respondents rescinded the job offer because they thought she would be "much less present" because she was a new mother. In short, Respondents refused to hire Complainant because of stereotypes about the availability of caregivers.

50. Respondents discriminated against Ms. Columbus by deciding to rescind their offer of employment and refusing to hire her only after learning of her recent pregnancy and childbirth, and her current caregiving responsibilities. MoMA PS1 is liable for the Individual Respondents' discriminatory conduct because all three men "exercised managerial or supervisory responsibility." N.Y.C. Admin. Code § 8-107(13)(b).

51. As a result of Respondents' discrimination on the basis of her caregiver status, Complainant was denied employment opportunities providing substantial compensation and benefits, entitling her to equitable and monetary relief. She has suffered anxiety, humiliation, distress, inconvenience, and loss of wages due to Respondents' actions, entitling her to compensatory damages.

52. In their discriminatory actions alleged in violation of the New York City Human Rights Law, Respondents have acted with malice or deliberate indifference to the rights of Complainant, thereby entitling her to an award of punitive damages.

53. Under the New York City Human Rights Law, N.Y.C. Admin. Code § 8-120, Complainant is entitled to recover reasonable attorneys' fees and costs of this action.

SECOND CLAIM FOR RELIEF

N.Y.C. Admin. Code §§ 8-107(1) – Gender Discrimination in Violation of the New York City Human Rights Law

54. Complainant repeats and realleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

55. Respondents discriminated against Complainant on the basis of her gender, in violation of NYCHRL, by rescinding their offer of employment based on gender-based stereotypes about what type of employee Complainant, as a new mother, would be. Eley expressed his view that mothers are less desirable employees when he complained to Ms. Columbus that the former performance curator had become “much less present” after she had a child.

56. Respondents discriminated against Ms. Columbus by deciding to rescind their offer of employment and refusing to hire her only after learning of her recent pregnancy and childbirth and current caregiving responsibilities. MoMA PS1 is liable for the Individual Respondents’ discriminatory conduct because all three men “exercised managerial or supervisory responsibility.” N.Y.C. Admin. Code § 8-107(13)(b).

57. As a result of Respondents’ discrimination, Complainant was denied employment opportunities providing substantial compensation and benefits, entitling her to equitable and monetary relief. She has suffered anxiety, humiliation, distress, inconvenience, and loss of wages due to Respondents’ actions, entitling her to compensatory damages.

58. In their discriminatory actions alleged in violation of the New York City Human Rights Law, Respondents have acted with malice or deliberate indifference to the rights of Complainant, thereby entitling her to an award of punitive damages.

59. Under the New York City Human Rights Law, N.Y.C. Admin. Code § 8-120, Complainant is entitled to recover reasonable attorneys’ fees and costs of this action.

THIRD CLAIM FOR RELIEF

N.Y.C. Admin. Code §§ 8-107(22) – Pregnancy Discrimination in Violation of the New York City Human Rights Law

60. Complainant repeats and realleges the allegations set forth in the preceding paragraphs as if fully set forth herein.

61. Respondents discriminated against Complainant on the basis of her pregnancy in violation of NYCHRL by refusing to reasonably accommodate her recovery from childbirth. Specifically, they refused to allow Complainant to work from home while she recovered from childbirth, even though they were willing to allow the same work schedule when they believed it was to accommodate other employment obligations.

62. Respondents discriminated against Ms. Columbus by deciding to rescind their offer of employment and refusing to hire her only after learning of her recent pregnancy and childbirth and current caregiving responsibilities. MoMA PS1 is liable for the Individual Respondents' discriminatory conduct because all three men "exercised managerial or supervisory responsibility." N.Y.C. Admin. Code § 8-107(13)(b).

63. As a result of Respondents' discrimination, Complainant was denied employment opportunities providing substantial compensation and benefits, entitling her to equitable and monetary relief. She has suffered anxiety, humiliation, distress, inconvenience, and loss of wages due to Respondents' actions, entitling her to compensatory damages.

64. In their discriminatory actions alleged in violation of the New York City Human Rights Law, Respondents have acted with malice or deliberate indifference to the rights of Complainant, thereby entitling her to an award of punitive damages.

65. Under the New York City Human Rights Law, N.Y.C. Admin. Code § 8-120, Complainant is entitled to recover reasonable attorneys' fees and costs of this action.

CONCLUSION

66. PS1 was eager to hire Ms. Columbus—until the moment it discovered that she had recently had a baby. Immediately, Respondents made an about-face and rescinded their job offer. They made their reasoning clear: Because Ms. Columbus was a new mother, they did not believe she would be able to do the job. That is discrimination. Respondents are liable.

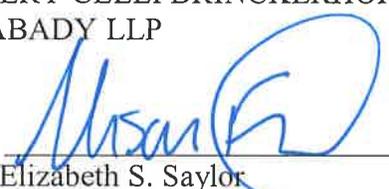
67. No more than 300 days have passed since Respondents discriminated against Complainant by rescinding of their offer of employment on September 8, 2017.

68. Complainant has not filed any other civil or administrative action alleging an unlawful discriminatory practice with respect to the allegations of discrimination which are the subject of this complaint.

Dated: July 3, 2018
New York, New York

Respectfully submitted,

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