UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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BARRY REITER,

Plaintiffs,

-against-

MAXI-AIDS, INC. and ELLIOT ZARETSKY, in his individual and professional capacities,

Defendants.
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MEMORANDUM AND ORDER

14 CV 3712
(Wexler, J.)

APPEARANCES:

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WEXLER, District Judge:

In this employment discrimination case, Plaintiff Barry Reiter ("Plaintiff" or "Reiter") sought damages for injuries sustained when he was terminated from his employment with defendant Maxi-Aids, Inc. ("Maxi-Aids") by Maxi-Aids' principal, defendant Elliot Zaretsky ("Zaretsky"). A jury trial was held, and the following claims were submitted to the jury—discrimination under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, discrimination under New York State Human Rights Law ("NYSHRL"), N.Y. EXEC. L. § 290 *et seq.*, associational discrimination under the ADA, and retaliation under the ADA, NYSHRL, and the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 *et seq.* The jury entered a verdict in Plaintiff's favor as to the ADA associational disability and NYSHRL discrimination

claims, and in Defendants' favor on the remaining claims. The jury awarded compensatory damages in the amount of $0, and punitive damages in the amount of $400,000.

Currently before the Court is Defendants' post-trial motion under pursuant to Federal Rule of Civil Procedure 50(b) for judgment as a matter of law or, alternatively, for a new trial pursuant to Rule 59 of the Federal Rules of Civil Procedure. Defendants argue that relief is warranted for the following reasons: (1) there was insufficient evidence to prove the claim of associational discrimination; (2) punitive damages are not available for an ADA associational discrimination claim; (3) there was insufficient evidence to support a punitive damages award; (4) punitive damages are subject to a statutory cap of $50,000; and (5) the punitive damages award was excessive and should be remitted.[1] *See* Motion, Docket Entry ("DE") [103]. In addition to opposing Defendants' motion, Plaintiff has submitted his motion for economic damages. *See* DE [100].

I. BACKGROUND

In brief, the testimony at trial revealed that Reiter was hired by Zaretsky and began working for Maxi-Aids in March 2012 with the job title Director of Business Development. His salary was $75,000 per year, plus commission of 1% of sales over $15 million. The issue of Plaintiff's participation in the company health plan arose at his interview, but Plaintiff did not request coverage as he was covered by his wife's health insurance plan.

Reiter had several medical conditions before and during his employment with Maxi-Aids. Prior to starting work with the company, he had been treated for lymphoma but was in remission at the time he began work. Plaintiff also suffered from colitis and mixed connective tissue disorder. He did not mention these conditions at the time of his hiring.

[1] Punitive damages are not available under the NYSHRL claim and thus may only be awarded if the ADA associational discrimination claim stands.

In May 2013, Plaintiff told Zaretsky about the colitis, and subsequently suffered an acute outbreak that required treatment and doctor's appointments. Once informed, Zaretsky started to ridicule Reiter "both publically and privately about my health conditions." Trial Transcript ("Tr.") at 102. Zaretsky referred to him as a "very sick person" who was lucky to have a job. *Id.* Zaretsky told Plaintiff on several occasions that if he had known Reiter was sick at the interview, he never would have hired him.

In December 2013, Plaintiff told Zaretsky that he needed to have himself and his family added to Maxi-Aids' health plan. Zaretsky refused this request, claiming that it was a condition of Reiter's employment that he would not get the company health insurance. Plaintiff asked again in January 2014, and testified that Zaretsky replied that Reiter was "too sick to be on the health plan, you make too much money to be on the health plan, it was a condition of your employment that you were never to have medical, you're basically unemployable." Tr. at 113. Reiter responded by telling Zaretsky that he could not discriminate against him because of his health conditions. Zaretsky maintained his position at the January meeting, but several weeks later, Reiter received an e-mail from an Human Resources representative and he was put on the Maxi-Aids' health plan effective March 1, 2014. His wife and three children, including his 16 year old daughter Bailey Reiter ("Bailey") were also put on the plan at Plaintiff's cost. Tr. at 116.

The previous year, in the fall of 2013, Reiter's daughter Bailey began experiencing panic attacks that rendered her inconsolable and resulted in Reiter having to pick her up from school many times. She began seeing a therapist, started medication, and began entertaining thoughts of suicide. On March 19, 2014, Bailey suffered a panic attack and revealed to Plaintiff that she had been out on the roof earlier and had been on the internet looking for ways to kill herself. After

consultation with a psychiatrist, Bailey was taken to the emergency room and diagnosed as "actively suicidal, chronic depression and acute anxiety disorder." Tr. at 124. She stayed in the hospital overnight, and the next day was admitted to the adolescent suicidal ward at South Oaks Hospital. She was discharged on March 25, 2014.

Plaintiff advised his supervisor, Larry DiBlasi, and Zaretsky of Bailey's situation within a day or so of its onset. On Friday, March 28, 2014, Plaintiff went to Zaretsky's office to discuss the situation and to request FMLA leave to care for Bailey. According to Plaintiff, Zaretsky responded that he had had an adolescent grandchild in a similar condition, and that it would require a lot of love, energy, and caring. Plaintiff claims that while Zaretsky acknowledged that Reiter needed to care for his family, he also told Plaintiff "if you're not here, you're useless to me." Tr. at 127.

At the end of the next business day, Monday, March 31, 2014, Zaretsky terminated Plaintiff's employment, stating that the company was underperforming financially. Reiter offered to assume the duties of a newly hired warehouse manager, but Zaretsky said his mind was made up. Zaretsky testified that the sole reason Reiter was terminated was failure to make sales. There was testimony from both Zaretsky and DiBlasi regarding Reiter's failure to perform at expected levels. DiBlasi testified that Reiter wasn't performing to expectations, and that he was aware Reiter's "job was in jeopardy for probably six months or so." Tr. at 216. DiBlasi did not know that Zaretsky was going to terminate Reiter on March 31, 2014. Tr. 237. Reiter testified that he never received any performance warnings. It was undisputed that there were no written warnings given to Reiter regarding his failure to meet sales expectations.

II. RULE 59 MOTION

A. Legal Standards

As provided by Rule 50(b), defendants have renewed their motions for judgment as a matter of law made prior to verdict. "In ruling on a motion for judgment as a matter of law, a district court must consider the evidence in the light most favorable to the non-movant and draw all reasonable inferences the jury could have drawn." *Cweklinsky v. Mobil Chem. Co.*, 364 F.3d 68, 75 (2d Cir. 2004); *see also Stevens v. Rite Aid Corp.*, 851 F.3d 224, 228 (2d Cir. 2017) ("Judgment as a matter of law may not properly be granted under Rule 50 unless the evidence, viewed in the light most favorable to the opposing party, is insufficient to permit a reasonable juror to find in h[is] favor" (internal quotation omitted)), *cert. denied,* No. 17-227, 2017 WL 3456814 (U.S. Oct. 16, 2017). The standard for granting a Rule 50 motion is high, and "[a] jury verdict should be set aside only where there is 'such a complete absence of evidence supporting the verdict that the jury's findings could only have been the result of sheer surmise and conjecture, or . . . such an overwhelming amount of evidence in favor of the movant that reasonable and fair minded men could not arrive at a verdict against him.'" *Kosmynka v. Polaris Indus., Inc.*, 462 F.3d 74, 79 (2d Cir. 2006) (quoting *Song v. Ives Labs., Inc.*, 957 F.2d 1041, 1046 (2d Cir. 1992) (ellipsis in original) (internal quotations and citation omitted)). In evaluating the motion, the court "cannot assess the weight of conflicting evidence, pass on the credibility of the witnesses, or substitute its judgment for that of the jury." *Tolbert v. Queens Coll.*, 242 F.3d 58, 70 (2d Cir. 2001) (quoting *Smith v. Lightning Bolt Prods., Inc.*, 861 F.2d 363, 367 (2d Cir.1988)). It is enough that this testimony was in evidence for the jury to consider. Where defendants' liability turns on the jury's credibility determinations, the Court "cannot disturb" that determination unless the verdict was "egregious." *See James v. Melendez*, 567 F. Supp. 2d 480, 484 (S.D.N.Y. 2008) (citing *DLC Mgmt. Corp. v. Town of Hyde Park*, 163 F.3d 124, 134 (2d Cir. 1998)).

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