

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

AZAM SAEED, :
Plaintiff, :
 :
-vs- : Civ. No. 3:00cv197 (PCD)
 :
THE WARNER-LAMBERT COMPANY, :
Defendant. :

RULING ON MOTION FOR SUMMARY JUDGMENT

Defendant moves for summary judgment on plaintiff's complaint in its entirety. For the reasons set forth herein, the motion is **granted**.

I. JURISDICTION

This court has subject matter jurisdiction over plaintiff's claims pursuant to 28 U.S.C. §§ 1331, 1332 & 1343.

II. BACKGROUND

In 1996, plaintiff, a United States citizen of Pakistani descent, was hired by defendant and selected for participation in its newly established Global Leadership Associates Program ("GLAP"), a program designed to develop its employees' international management potential. Defendant, through its employee handbook and its written offer of employment, expressly disclaimed an offer of more than at-

will employment.¹ Advancement through GLAP was contingent upon individual performance on assignments.²

Following orientation, plaintiff worked in the pharmaceutical manufacturing division in New Jersey developing defendant's global manufacturing strategy. He was assigned to Anthony Wild, the president of the Pharmaceutical Sector, who would also serve the function of GLAP mentor. He completed the assignment in New Jersey and sought a new assignment.

In June 1997, plaintiff's next assignment was to the sales and marketing division of the Parke-Davis West Business Unit in California. He reported to Daniel Green, vice president of the unit. Plaintiff was offered increased responsibility as an area business manager but declined the offer as it involved an extended stay in California. Plaintiff was given area business manager responsibility. In March 1998, plaintiff was evaluated as highly proficient in five of nine categories and competent in the other four categories. In June 1998, he was told by Sally Cunningham of a potential two to three year

¹ On July 22, 1996, plaintiff signed a "Colleague Agreement" that provided "[i]n consideration for your employment by Warner-Lambert or its subsidiaries (the "company"), you agree to the following: . . . [t]his Agreement is not an employment contract. Nothing in this Agreement may be interpreted to impair your right or the right of the Company to terminate the employment relationship at any time." On the same day, plaintiff acknowledged receipt of the Warner-Lambert Colleague Handbook, which receipt stated "I understand that none of this material constitutes an employment contract, that my employment is not for any stated period, and that my employment relationship with the company is based on our mutual consent." The Colleague Handbook also provided, *inter alia*, procedures for requesting job openings.

² The brochure provided that GLAP is "a special management development program. In Warner-Lambert's traditional MBA recruiting program, moving globally is presented as an option to successful managers with several years of Warner-Lambert experience. But for participants in [GLAP], moving globally is a requirement, indeed a key component." It further provided that "[i]n addition to moving from one country to another, you will need to be flexible to moving within Warner-Lambert's three business sectors Such diverse experience provides insight into the business as a whole and will help make you ready to assume assignments anywhere in the world." GLAP would "give you the chance to stretch your abilities to grow, and to learn with each new challenge. But, it is not, of course, a guarantee or promotions or a concrete road map to the future. It is a guide—a guide that will help you to attain the critical competencies that make for a global leader."

assignment to Italy. In her memorandum to plaintiff and Roberto Montanari, Pharmaceutical Business Director, memorializing her discussion with plaintiff, she stated that “I indicated that he would be assigned as a Marketing Director for CNS.”

In November 1998, plaintiff began his assignment with defendant’s Italian division. He reported to Maurizio Forloni, who in turn reported to Montanari. Raymond Fino was assigned as plaintiff’s GLAP mentor. In February 1999, plaintiff reported difficulties he was having in his role in Italy to Fino. In April 1999, plaintiff discussed with Wild the possibility of assignment to a different location. After a flurry of e-mails between plaintiff and management in an attempt to resolve differences as to plaintiff’s role in Italy, plaintiff’s employment was terminated on May 7, 1999.³ Defendant funded plaintiff’s move back to the United States.

III. DISCUSSION

Defendant moves for summary judgment on plaintiff’s claims alleging (1) violation of 42 U.S.C. § 1981, (2) breach of contract, (3) breach of an implied covenant of good faith and fair dealing, (4) negligent misrepresentation, (5) negligent infliction of emotional distress, (6) intentional infliction of emotional distress and (7) promissory estoppel.

A. Standard of Review

A party moving for summary judgment must establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. FED. R. CIV. P. 56 (c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). In determining whether a genuine issue has been raised, all ambiguities are resolved and all reasonable

³ Defendant terminated plaintiff’s employment but plaintiff also resigned by letter on May 27, 1999.

inferences are drawn against the moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962); *Quinn v. Syracuse Model Neighborhood Corp.*, 613 F.2d 438, 445 (2d Cir. 1980). Summary judgment is proper when reasonable minds could not differ as to the import of evidence. *Bryant v. Maffucci*, 923 F.2d 979, 982 (2d Cir. 1991). Determinations as to the weight to accord evidence or credibility assessments of witnesses are improper on a motion for summary judgment as such are within the sole province of the jury. *Hayes v. N.Y. City Dep't of Corr.*, 84 F.3d 614, 619 (2d Cir. 1996).

B. 42 U.S.C. § 1981 Claim

Defendant argues that plaintiff's claim of discrimination on the basis of national origin is not cognizable under § 1981 and that he cannot substantiate a claim of discriminatory discharge. He responds that the discrimination was based on ethnicity, not national origin, and that there are genuine issues of material fact as to whether his discharge was discriminatory.

Section 1981 prohibits intentional discrimination. *General Bldg. Contractors Ass'n v. Pennsylvania*, 458 U.S. 375, 391, 102 S. Ct. 3141, 73 L. Ed. 2d 835 (1982). A prima facie case of discrimination under § 1981 requires that plaintiff prove (1) membership in a protected class, (2) satisfactory performance of assigned duties, (3) that he was discharged, and (4) that his discharge occurred under circumstances invoking an inference of discrimination based on membership in that class. *McLee v. Chrysler Corp.*, 109 F.3d 130, 134 (2d Cir. 1997). Plaintiff's burden to establish these elements is minimal. *Id.* Once established, the prima facie case establishes a rebuttable presumption of discrimination.

Defendant argues that plaintiff alleges discrimination on the basis of national origin.

Discrimination based exclusively on national origin is not a violation of § 1981. *See St. Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 613, 107 S. Ct. 2022, 95 L. Ed. 2d 582 (1987); *Zar v. South Dakota Bd. of Exam'rs of Psychologists*, 976 F.2d 459, 467 (8th Cir. 1992). Section 1981 does, however, prohibit discrimination based on one's ethnicity. *See Anderson v. Conboy*, 156 F.3d 167, 170 (2d Cir. 1998). "[T]he line between discrimination based on ancestry or ethnic characteristics . . . and discrimination based on place or nation of . . . origin . . . is not a bright one." *St. Francis Coll.*, 481 U.S. at 614 (Brennan, J., concurring); *see also Von Zuckerstein v. Argonne Nat'l Lab.*, 984 F.2d 1467, 1472 (7th Cir. 1993); *Lopez v. S.B. Thomas, Inc.*, 831 F.2d 1184, 1188 (2d Cir. 1987)(allegation of discrimination based on Puerto Rican national origin construed as discrimination on basis of Hispanic ethnicity) .

The present allegations are illustrative of the difficulty in discerning remarks implicating ethnicity from those implicating national origin. The alleged discriminatory remarks range from the innocuous to specific references to plaintiff's national origin.⁴ Ethnicity is defined by characteristics "relating to

⁴ The alleged offensive remarks are attributed to Green and Montanari. On several occasions, Green told plaintiff "don't behave as if there is a golden rocket in your ass," "that you are a child," "how did your parents manage to get you from the third world into the first world," "[a]re you from a rich family," "your knowledge of Indian languages doesn't mean much, it's irrelevant for a global company" and that his aristocratic background is leading him to be aggressive and take charge of the assignment," "is your wife complaining," "[h]ow many kids do you have," "[i]s she planning to have children" and "[w]hy don't you bring her over and start a family here." During one meeting, Green allegedly said "I would really like to blow up Islamists." Montanari allegedly said "north Italians are very hard working people, people in the south don't work so hard. You will often see Moroccans are lazy. You will see Africans begging in the streets, but you will never see Chinese people begging in the streets because they work hard" and "we have a very large business in Italy, our doctors are very sophisticated, this -- it will take you a long time to understand this business, this is not a third world country." Montanari also illustrated the difference between Italy and Pakistan in stating "I understand the difference between the United States and Italy. In many ways the United States is much more advanced. And there are some differences in the United States and Italy, but with Pakistan, Italy must be a really advanced country, or there must be a big difference in that respect."

community of physical and mental traits possessed by members of a group as a product of their common heredity and cultural traditions.” WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 782 (1991). The remarks as a whole invoke notions of family, wealth, religion, social status. It is not apparent, given the range of statements here involved, that the statements are limited to plaintiff's national origin and do not implicate his ethnicity. *See Bullard v. Omi Georgia, Inc.*, 640 F.2d 632, 634 (5th Cir. 1981).

Defendant also argues that plaintiff was not discharged under circumstances giving rise to an inference of discrimination. Plaintiff alleges that Montanari made derogatory comments about his ethnicity, Montanari provided input to Wild and Wild terminated plaintiff's employment. The connection between the arguably discriminatory remarks and the termination of employment is dubious at best. An inference of discrimination requires discriminatory remarks to be relatively contemporaneous to the adverse employment action and related to the employment decision in question.⁵ *See Rush v. McDonald's Corp.*, 966 F.2d 1104, 1116 (7th Cir. 1992). The alleged discriminatory remarks by Montanari, which at best can be interpreted as identifying plaintiff as “slow” and implicating “third world” origins, were in response to plaintiff's request for greater responsibility, not his continued employment. Although made within eight weeks of the adverse action and thus relatively contemporaneous, they do not reasonably give rise to an inference that they were related to the employment decision.

⁵ The adverse employment action relevant to the § 1981 claim is termination of plaintiff's employment. As will be discussed in *infra* Part II.C, there was no contract establishing an obligation on the part of defendant to promote plaintiff, thus no possibility of defendant interfering with plaintiff's rights under the same.

Assuming arguendo plaintiff could establish his prima facie case, the burden then shifts to defendant to establish “a legitimate, clear, specific and non-discriminatory reason for discharging” him. *Quarantino v. Tiffany & Co.*, 71 F.3d 58, 64 (2d Cir. 1995). If the employer establishes such a reason, the rebuttable presumption is defeated. *Id.* Defendant provides a legitimate basis for discharging plaintiff in his refusal to accept assignments offered. Although plaintiff claims that “he rightly saw himself as being shunted aside to do work that would not be consistent with his acquiring the skills he had been promised,” this is not an adequate basis on which to refuse to perform tasks assigned. Notwithstanding the fact that he may have viewed this as a bargaining tactic to get the position he believed that he was promised by senior management, his refusal to perform when so ordered by his supervisors, *i.e.* writing a product launch plan when requested to do so, provided them a legitimate reason to terminate his employment. *See Palucki v. Sears Roebuck & Co.*, 879 F.2d 1568, 1571 (7th Cir. 1989).

As defendant satisfies the requirement that it provide a legitimate reason for the adverse action taken, plaintiff must establish that its reason was a pretext for discrimination. “An employer's reason for termination cannot be proved to be a pretext for discrimination unless it is shown both that the reason was false, and that discrimination was the real reason.” *Kerzer v. Kingly Mfg.*, 156 F.3d 396, 401 (2d Cir. 1998)(internal quotation marks omitted).

In the summary judgment context, this means that the plaintiff must establish a genuine issue of material fact either through direct, statistical or circumstantial evidence as to whether the employer’s reason for [taking an adverse employment action against] him is false and whether it is more likely that a discriminatory reason motivated the employer to make the adverse employment decision.

Id. (internal quotation marks omitted).

Plaintiff, as he is entitled to do, relies on evidence used to establish defendant's legitimate reason for terminating his employment to prove it was in fact a pretext for discrimination. The dubious support provided by plaintiff in satisfying his prima facie case will not establish a genuine issue as to whether the legitimate reason offered was pretextual. Plaintiff argues that "[t]he Italian management repeatedly gave [plaintiff] conflicting signals about [his] role in Italy and refused to provide him with any of the responsibility [defendant] agreed to provide. [Plaintiff] was willing to perform the tasks assigned to him. However, he also wanted [defendant] to follow through with its end of the bargain." Plaintiff may have felt that he was entitled to more responsibility and was willing to do what was asked of him conditioned upon some assurance that he would be given that responsibility but, his subjective good intentions notwithstanding, he refused to perform tasks assigned him. The fact that Montanati may have made what was arguably an off color remark two months prior does not establish pretext. *See id.* It also does not account for the fact that it was ultimately Wild, not Montanari, that terminated his employment, accepting that Montanari as local supervisor may have provided input to Wild in making the decision. Summary judgment is therefore granted on the count alleging violation of § 1981.

C. Breach of Contract Claim⁶

Defendant argues that plaintiff was an at-will employee, thus it could permissibly end the employment relationship for virtually any reason. Plaintiff responds that defendant created a contract by promises of future responsibilities and assignments.

⁶ Defendant argues that New Jersey law should govern resolution of the state law claims. Plaintiff offers no opposition to defendant's argument but cites to New Jersey authority in its memorandum in opposition to defendant's motion. The parties are therefore deemed to have agreed on the applicable state law. *See Stanford v. Kuwait Airways Corp.*, 89 F.3d 117, 122 (2d Cir. 1996); *Clarkson Co. v. Shaheen*, 660 F.2d 506, 512 n.4 (2d Cir. 1981).

An employment contract may be established through express or implied promises. *See Troy v. Rutgers*, 168 N.J. 354, 365, 774 A.2d 476 (2001). Promises may take the form of oral representations, employee manuals or the conduct of parties. *Id.* The existence of an implied-in-fact contract depends on “[t]he intent of the parties [that] may be ascertained from the language employed, from all attending circumstances, and from the presence or absence of the giving by the employee of consideration additional to the services incident to his employment.” *Id.* at 368. In the absence of a contract, employment is terminable at will with or without cause. *Jorgensen v. Pennsylvania R.R. Co.*, 25 N.J. 541, 554, 138 A.2d 24, 72 A.L.R.2d 1415 (1948). Employment remains terminable at will unless an agreement is identified which establishes otherwise. *See Witkowski v. Thomas J. Lipton, Inc.*, 136 N.J. 385, 397, 643 A.2d 546 (1994).

Plaintiff argues that a number of representations led him to reasonably expect that he would become marketing director in Italy. He points to his being assigned to a director’s position in June 1998 by Cunningham and the GLAP brochure’s statement that “with success in your first assignment you will usually move . . . to a position building on the experiential learning of your orientation and first assignment. With continued success, you will move into the third phase — the development sequence, envisioned as a large management role.” He further points to Montanari’s assurances that there would be sufficient responsibility to support his intended role as marketing director, notwithstanding plaintiff’s observations that defendant’s Italian operation did not appear sufficiently large to support a marketing director assignment.

It is undisputed that defendant’s employee manual and the GLAP program disclaimed their constituting an employment contract. It is further without dispute that plaintiff was assigned to be a

marketing director but never acted in that capacity. The mere fact that he was promised another assignment within the same company does not establish a contract requiring that defendant provide him the same. As an at-will employee from the outset, defendant is within its rights “to change the wages and all other working conditions without having to consult anyone and without anyone’s agreement.” *Jackson v. Georgia-Pacific Corp.*, 296 N.J. Super. 1, 15, 685 A.2d 1329 (1996). Nor is his at-will status changed by Cunningham’s statement that it was to be a two to three-year assignment. Plaintiff must establish that the promise of an assignment, considered in addition to the employment manual dictating procedures for assignment,⁷ his acknowledgment that the manual did not establish an employment contract and the GLAP brochure statement that the employee must be flexible created a reasonable expectation that he was no longer an at-will employee. *Id.* at 12, 14. This he has not done.

Even if it were reasonable for plaintiff to expect his assignment would be there when he arrived, his claim overlooks the requirement that he provide additional consideration if he is to bind defendant to an agreement beyond the at-will employment agreement.⁸ *Troy*, 168 N.J. at 368. It is his burden to prove that defendant agreed to something other than employment at will. *Hindle v. Morrison Steel Co.*, 92 N.J. Super. 75, 81, 223 A.2d 193 (App. Div.1966). The presumption against him presents a formidable obstacle, as plaintiff does not allege that he moved to Italy and relinquished some right or

⁷ Plaintiff does not claim that the assignment procedures in the employee handbook were not followed. He thus does not claim that the assignment procedures constitute an implied promise in and of themselves. *See id.* at 12. However, the existence of procedures and his acknowledgment that the procedures do not constitute an employment contract cut against his argument that he had a reasonable expectation that receiving an assignment constituted a contract.

⁸ *Kass v. Brown Boveri Corp.*, 199 N.J. Super. 42, 49-50, 488 A.2d 242 (1985), cited by plaintiff in support of his argument that a demotion may constitute a breach of contract is inapposite to his circumstances as the claim involved the breach of an express employment contract of a definite duration. No written agreement was executed in the present case.

expectation in doing so, such as some other employment opportunity. *See Shebar v. Sanyo Business Systems Corp.*, 111 N.J. 276, 288-89, 544 A.2d 377 (1988). Nor could the act of relocating without something more constitute legally adequate consideration sufficient to create an employment contract. *See, e.g., Peck v. Imedia, Inc.*, 293 N.J. Super. 151, 165, 679 A.2d 745 (App. Div. 1996); *Wior v. Anchor Indus., Inc.*, 669 N.E.2d 172, 176 (1996); *but see Dennis v. Thermoid Co.*, 128 N.J.L. 303, 304-05, 25 A.2d 886 (E. & A. 1942)(holding that relocation may establish sufficient consideration). As alleged, plaintiff was employed by defendant in California and moved to Italy to assume a position within the same company, surrendering no benefits in doing so, for the prospects of a more prestigious position overseas.⁹ Under the circumstances, plaintiff cannot have had a reasonable expectation of obtaining a directors position or of a contract for a term of years, nor did he provide consideration sufficient to establish a different agreement. Summary judgment is therefore granted on his breach of contract claim.

D. Breach of an Implied Covenant of Good Faith and Fair Dealing

Defendant argues that plaintiff, as an at-will employee, may not benefit from an implied covenant of good faith and fair dealing. Plaintiff responds that the covenant is inherent in all contracts and that defendant breached the covenant by luring him to Italy and then forcing him to resign to obtain relocation benefits.

An implied covenant of good faith and fair dealing is inherent in all contracts in New Jersey, including those contracts terminable at will. *See Wilson v. Amerada Hess Corp.*,

⁹ Plaintiff does allege that his wife left her work as a physician to accompany him to Italy. Plaintiff does not provide legal support for the proposition that he may claim the income she relinquished as consideration or a detriment suffered under either a contract or promissory estoppel theory.

168 N.J. 236, 244, 773 A.2d 1121 (2001); *Bonczek v. Carter-Wallace, Inc.*, 304 N.J. Super. 593, 599, 701 A.2d 742 (App. Div. 1997).¹⁰ The covenant “emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party; it excludes a variety of types of conduct characterized as involving ‘bad faith’ because they violate community standards of decency, fairness or reasonableness.” *Wilson*, 168 N.J. at 245 (internal quotation marks omitted). “[A]n allegation of bad faith or unfair dealing should not be permitted to be advanced in the abstract and absent improper motive.” *Id.* at 251.

Plaintiff argues that defendant never intended to give him the director’s position promised him, that senior management shunted him when he sought to resolve the situation and that he was forced to resign to secure return travel to the United States. Nowhere does he provide an improper motive in defendant in moving him to Italy only to have him fail. *See id.* Defendant’s improper motivation against him is contradicted by its wait until his third assignment to act on that motive. Plaintiff challenged senior management by deciding not to accept an assignment. Defendant’s response to his refusal cannot be said to violate community standards of decency and fairness. *See id.* Summary judgment is therefore granted on the count alleging a breach of an implied covenant of good faith and fair dealing.

E. Intentional or Negligent Misrepresentation Claim

Plaintiff’s misrepresentation claim points to no independent duty outside of his employment relationship that would substantiate a tort claim. He alleges only that defendant

¹⁰ Defendant cites to *McDermott v. Chilton Co.*, 938 F. Supp. 240, 246 (D.N.J. 1995), and *McQuitty v. General Dynamics Corp.*, 204 N.J. Super. 514, 520, 499 A.2d 526 (1985), for the proposition that there is no implied covenant of good faith and fair dealing in at-will employment agreements. These decisions contradict and predate *Wilson*, 168 N.J. at 244, thus would no longer represent an accurate statement of the law of implied covenants of good faith and fair dealing in New Jersey.

represented to and promised [him] that it would provide him with a career path and responsibilities and opportunities at Warner-Lambert that included challenging assignments with significant responsibility at Warner-Lambert and within GLAP and would make him an affiliate president/general manager within 3 to 5 years of his date of employment.

“Under New Jersey law, a tort remedy does not arise from a contractual relationship unless the breaching party owes an independent duty imposed by law.” *Saltiel v. GSI Consultants, Inc.*, 170 N.J. 297, 316, 788 A.2d 268 (2002). As discussed in *supra* Part II.D, plaintiff’s contract of employment, terminable at will, is nonetheless a contract of employment. Absent an identified independent duty, no tortious violation arises out of his employment agreement with defendant. *See id.* at 317.

F. Negligent Infliction of Emotional Distress

Defendant argues that plaintiff’s claim is barred by the exclusivity of the Workers’ Compensation Act and also fails as plaintiff was owed no other duty of care. Plaintiff does not respond to the argument. Plaintiff must identify specific facts precluding summary judgment for his claim to survive. *See Celotex Corp.*, 477 U.S. at 322-23. On review, finding the claim meritless, summary judgment is granted. *See D. CONN. L. CIV. R. 9(a)*.¹¹

G. Intentional Infliction of Emotional Distress

¹¹ Plaintiff’s claim lack merit in light of the exclusivity of New Jersey Workers’ Compensation Act, which bars claims against employers by employees for torts sounding in negligence, *see Ditzel v. Univ. of Med. & Dentistry*, 962 F. Supp. 595, 608 (D.N.J. 1997), and the limited duty of care owed to an at-will employee by an employer that may fire him for no reason whatsoever, *see Brunner v. Abex Corp.*, 661 F. Supp. 1351, 1357 (D.N.J. 1986).

Defendant argues that plaintiff fails to establish either that its conduct was outrageous or that the distress resulting from its conduct was severe. Plaintiff responds that a genuine issue of material fact exists as to whether defendant's conduct in terminating his employment was outrageous and whether the distress suffered was severe.¹²

Intentional infliction of emotional distress requires that plaintiff establish (1) reckless or intentional and outrageous conduct by the defendant; (2) proximate cause; and (3) severe emotional distress resulting from the conduct. *See Griffin v. Tops Appliance City, Inc.*, 337 N.J. Super. 15, 22, 766 A.2d 292 (App. Div. 2001). To be "extreme and outrageous," the conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id.* The distress inflicted must be "so severe that no reasonable man could be expected to endure it." *Id.* at 23.

Plaintiff argues that Montanari's promise of a director's position, his "repeatedly and maliciously toy[ing] with [his] career and shunt[ing] him aside, employing racial/ethnic slurs in the process" constitutes extreme and outrageous conduct. A termination of employment does not in and of itself constitute extreme and outrageous conduct. *See McDonnell v. Illinois*, 319 N.J. Super. 324, 332, 342, 725 A.2d 126 (App. Div. 1999). However, New Jersey recognizes a special dynamic between supervisor and employee and a supervisor's single racial remark to a subordinate may

¹² Defendant argues that plaintiff's claims of intentional and negligent infliction of emotional distress are barred by the exclusivity provision of the New Jersey Workers' Compensation Act, N.J. STAT. ANN. § 34:15-8. Assuming infliction of emotional distress was compensable under the Workers' Compensation Act, *see Cairns v. East Orange*, 267 N.J. Super. 395, 631 A.2d 978 (1993)(psychological distress resulting from layoff not compensable under the Act); *Ditzel v. University of Medicine and Dentistry of New Jersey*, 962 F. Supp. 595, 608 (1997)(concluding that negligent infliction of emotional distress claim was barred by exclusivity provision), the intentional variant would by definition satisfy the "intentional wrong" exception to the exclusivity provision of the Act and thus would not be barred. *See Millison v. E.I. du Pont de Nemours & Co.*, 101 N.J. 161, 170, 501 A.2d 505 (1985)(intentional wrong requires "a deliberate intention to injure").

constitute extreme and outrageous behavior. *See Taylor v. Metzger*, 152 N.J. 490, 511-13, 706 A.2d 685 (1998). The remarks attributed to Montanari, though not unambiguously derogatory, may be found to be racially derogatory.

Plaintiff must also establish emotional distress of such severity that no reasonable man could be expected to endure it. *See Griffin*, 337 N.J. Super. at 26. Plaintiff alleges that his distress resulted in loss of sleep and hair loss and he sought counsel from his wife, a licensed physician. Loss of sleep, headaches, aggravation, embarrassment and nervous tension have been found not to constitute severe emotional distress. *See Buckley v. Trenton Sav. Fund Soc'y*, 111 N.J. 355, 368, 544 A.2d 857 (1988). Absence of sustained physical maladies and interference with daily routines is telling. *See id.* Plaintiff alleges never sought treatment for his alleged conditions. The alleged consequences of defendant's misconduct are of the same character as those alleged in *Buckley* and thus are inadequate as a matter of law. Summary judgment is thus granted on the count alleging intentional infliction of emotional distress.

H. Promissory Estoppel

Defendant argues that plaintiff has failed to establish any element of promissory estoppel. Plaintiff responds that there are genuine issues as to whether representations to him were false.

Promissory estoppel applies only when plaintiff establishes (1) a clear and definite promise by the promisor; (2) made with the expectation that the promisee would rely thereon; (3) the promisee reasonably relies on the promise, and (4) a definite and substantial detriment was incurred by the promisee's reliance on the promise. *Pop's Cones, Inc. v. Resorts Int'l Hotel, Inc.*, 307 N.J. Super. 461, 469, 704 A.2d 1321 (App. Div. 1998); *Peck*, 293 N.J. Super. at 167-68.

Plaintiff alleges that Montanari assured him that the director's position would be available when he arrived. In response to plaintiff's inquiry as to the apparent absence of responsibility necessary to justify a director's position, Montanari allegedly stated that "[t]his would all change when you come here. This business is growing rapidly and we already need at least two Product Managers in this department. I have told [Forloni] that we should wait until Azam [Saeed] is here before making those decisions." A "truthful statement as to the present intention of a party with regard to future acts is not the foundation upon which an estoppel may be built. The intention is subject to change." *In re Phillips Petroleum Sec. Litig.*, 881 F.2d 1236, 1250 (3d Cir.1989); *see also Havens v. C & D Plastics, Inc.*, 124 Wash. 2d 158, 173-75, 876 P.2d 435 (1994)(denying promissory estoppel claim by intracorporate transfer of employee). Montanari's statement can reasonably be interpreted as a prediction, and plaintiff provides no basis to establish that it was false when made. In fact, plaintiff's own observations of the situation indicated otherwise. Montanari's statement was not clear and definite promise, thus it may not provide a basis for a promissory estoppel claim. *See Alexander v. CIGNA Corp.*, 991 F. Supp. 427, 439 (D.N.J. 1998); *Malaker Corp. Stockholders Protective Comm. v. First Jersey Nat'l Bank*, 163 N.J. Super. 463, 480, 395 A.2d 222 (App. Div. 1978). Furthermore, the GLAP brochure, requiring that employees be flexible and adaptable, would not support a claim that plaintiff should expect his assignment would dovetail neatly with its description.

If the assignment could be considered a promise to make plaintiff a director, his claim would fail nonetheless. Promissory estoppel requires abandonment of an existing right. *See Friedman v. Tappan Dev. Corp.*, 22 N.J. 523, 537, 126 A.2d 646 (1956). Plaintiff alleges that he lost his job, that the termination injured his professional reputation and that he was required to move because of his

reliance on defendant's promise of a director's position. The transfer was within the same company, and there is no evidence that he surrendered anything moving from one position to the other. He relinquished nothing of value he possessed in reliance on the promise. *See id.* Summary judgment is granted on the promissory estoppel claim.

IV. CONCLUSION

Plaintiff's motion for summary judgment (Doc. 29) is **granted**. The Clerk shall close the file.

SO ORDERED.

Dated at New Haven, Connecticut, May __, 2002.

Peter C. Dorsey
United States District Judge