UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SUSAN NUCIFORA, Plaintiff	:	
v.	:	3:99-CV-00079 (EBB)
BRIDGEPORT BOARD OF EDUCATION, JAMES A. CONNELLY, WILLIAM GLASS, JOSEPH RODRIQUEZ, and JOYCE UNDELLA, Defendants	:	

RULING ON MOTION TO DISMISS

INTRODUCTION

On February 9, 2000 this Court granted Defendants' Motion to Dismiss with leave to replead only the Americans with Disabilities Act claim. Plaintiff did so in a timely matter. Defendants have again moved to dismiss the complaint in its entirety, pursuant to Federal Rule of Civil Procedure 12(b)(6).

LEGAL ANALYSIS

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) should be granted only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. Spalding, 467 U.S. 69, 73, 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984). "The function of a motion to dismiss is merely to assess the legal feasibility of a complaint, not to assay the weight of evidence which might be offered in

support thereof." Ryder Energy Distribution Corp. v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984) *quoting* Geisler v. Petrocelli, 616 F.2d 636, 639 (2d Cir. 1980).

Pursuant to a Rule 12(b)(6) analysis, the Court takes all well-pleaded allegations as true, and all reasonable inferences are drawn and viewed in a light most favorable to the plaintiff. Leeds v. Meltz, 85 F.3d 51, 53 (2d Cir. 1996). *See also* Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)(Federal Rules reject approach that pleading is a game of skill in which one misstep by counsel may be decisive of the case).

Applying these standards to the case before it -- although acknowledging that it is a close call -- the Court holds that the Amended Complaint sets forth a cause of action under the Americans With Disabilities Act ("ADA") against the Bridgeport Board of Education, given the liberal standard of pleading under Rule 8 of the Federal Rules of Civil Procedure. Although the Amended Complaint does not specify why Plaintiff was placed into the Alternative Evaluation Program, she does plead that her alcoholism is a disability which was openly manifested. She also pleads that she expressly agreed to undergo treatment for her alcoholism and expressly stated her desire to take a temporary leave of absence and/or any other option that would allow her to retain her job. It is not pleaded with whom she had this

conversation, but it is alleged that she was terminated instead, when other teachers similarly situated were allowed to exercise this option.

The Amended Complaint does contain an inconsistency, however, which undercuts her *prima facie* case under the ADA, in that, while she pleads that her alcoholism substantially limited her major life activities, the only life activity she pleads is "working", as required for a *prima facie* case for determination of disability. However, she next pleads that she was qualified for her job and could perform the essential functions of her job and that she continued to work consistently and adequately through her course of employment. However, this inconsistentcy is insufficient at this stage of the litigation to hold that she does not plead a claim upon which relief may be granted under the strictures of Fed.R.Civ.P. 12(b)(6). Following discovery, this may be fodder for a motion for summary judgment, but it is premature at this time to dismiss her claim against the Board itself.

As to the liability of the individual Defendants under the ADA, inasmuch as Plaintiff has not opposed their arguments, the claim may be deemed abandoned. Even if the Court did not so hold, however, the claims against the individual Defendants must be dismissed in any event.

In Tomka v. Seiler Corp., 66 F.3d 1295, 1314 (2d Cir. 1995),

the Second Circuit Court of Appeals, observing that individual liability "would lead to results that Congress could not have contemplated," held that "the statutory scheme and remedial provisions of Title VII indicate that Congress intended to limit liability to employer-entities with fifteen or more employees." While the Second Circuit has yet to address the issue of individual liability under the ADA, the Tenth, Seventh and Eleventh Circuit Courts of Appeal have both held that individuals who do not otherwise meet the statutory definition of "employer" under the ADA cannot be held liable under the statute. *See* Butler v. City of Prairie Village, (10th Cir. 1999); Mason v. Stallings, 82 F.3d 1007, 1009 (11th Cir. 1996); E.E.O.C. v. AIC Security Investigations, Ltd. 55 F.3d 1276, 1282 (7th Cir. 1995). Indeed, citing to these decisions, the Eighth Circuit Court of Appeals decided the very issue before this Court and held that there could be no individual liability under Title II of the ADA. Alsbrook v. City of Maumelle, 184 F.3d 999, 1004, n.8 (8th Cir. 1999)(en banc), *cert. granted in part* by Alsbrook v. Arkansas, 120 S.Ct. 1003 (Jan.25, 2000), *cert dismissed* 120 S.Ct. 1265 (March 1, 2000). *Accord*, Smith v. Univ. Of State of New York, 1997 WL 800882 at *8 (W.D.N.Y. Dec. 31, 1997)(Title II covers only "public entities" and "public entities" does not include individuals).

Moreover, as Title VII's definition of "employer" mirrors

the ADA's (compare 42 U.S.C. § 2000e(b) with 42 U.S.C. § 12111(5)(A)), district courts within the Second Circuit considering the issue have similarly held that no individual liability exists under the ADA. *See e.g.*, Corr. V. MTA Long *Island Bus, et al*., 27 F.Supp.2d 359, 370 (E.D.N.Y. 1998)(collecting eleven cases); Doyle v. Columbia Presbyterian Medical Center, et al., 1998 WL 430551 at *2 (S.D.N.Y. July 29, 1998); Northrup v. Connecticut Commission on Human Rights and Opportunities, 1998 WL 118145 at *3 (D.Conn. February 2, 1998); Lopez-Salerno v. Hartford Fire Ins. Co., 1997 WL 766890 at *4 (D.Conn. Dec. 8, 1997).

In light of Tomka, and the overwhelming authority prohibiting individual liability under the ADA, Plaintiff's ADA claim against James Connelly, William Glass, Joseph Rodriguez, and Joyce Undella, is not viable and is hereby dismissed.

As to the claims of negligent and intentional infliction of emotional distress, again it is premature to dismiss these claims, as they incorporate the allegations of the ADA claim, which the Court has not dismissed. As noted above, following discovery, defense counsel may determine that a motion for summary judgment is appropriate as to all three remaining claims.

CONCLUSION

For the foregoing reasons, the Motion to Dismiss [Doc. No. 28] is hereby GRANTED IN PART AND DENIED IN PART. The ADA claim

survives against the Bridgeport Board of Education, but is dismissed as to the four individual Defendants. The claims for both intentional and negligent infliction of emotional distress will not be dismissed at this time.

SO ORDERED

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ELLEN BREE BURNS
SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this ___ day of May, 2000.