

MS

COMMONWEALTH OF MASSACHUSETTS

Superior Court

Suffolk, ss

BENJAMIN EDELMAN,)
))
Plaintiff)
))
v.)
))
PRESIDENT AND FELLOWS OF)
HARVARD COLLEGE,)
))
Defendant.)

Civil Action No. 2384CV00395-BLS2

ANSWER TO COMPLAINT AND JURY DEMAND

President and Fellows of Harvard College (“Harvard”) hereby responds to Plaintiff’s Complaint and Jury Demand in numbered paragraphs corresponding to the numbered paragraphs of Plaintiff’s Complaint.

1. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies the allegations of this paragraph.
2. Harvard admits that Plaintiff was a non-tenured professor at Harvard Business School (“HBS”) from 2007 to 2018. Harvard is without information sufficient to admit or deny whether Plaintiff “is a world-leading expert on online markets and the internet.” Harvard denies that his “academic work, teaching, and service at HBS were unusually clearly worthy of tenure[.]”
3. Harvard admits that Plaintiff’s actions resulted in negative publicity in 2014 but denies that the negative publicity was unrelated to his role at HBS. Harvard admits that a Faculty Review Board (“FRB”) was convened in conjunction with Plaintiff’s application for tenure in 2015 and admits that a policy known as “Principles and Procedures for Responding to Matters of Faculty Conduct” was used to evaluate concerns about his conduct as part of the tenure process.

4. Harvard admits that HBS gave Plaintiff a two-year extension as a non-tenured professor after the 2015 review. Harvard otherwise denies the allegations of this paragraph.

5. Harvard denies the allegations of this paragraph.

6. Harvard denies the allegations of this paragraph.

7. Harvard denies the allegations of this paragraph.

8. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies the allegations of this paragraph.

9. Harvard denies the allegations of this paragraph.

PARTIES

10. Harvard responds that it is without information sufficient to admit or deny where Plaintiff resides. Otherwise, Harvard admits the allegations of this paragraph.

11. Harvard admits the allegations of this paragraph.

JURISDICTION AND VENUE

12. This paragraph states a legal conclusion to which no response is required.

13. Harvard admits that it has multiple places of business in Suffolk County, including 65 North Harvard Street and 25 Shattuck Street, Boston. Harvard states that the other allegations of this paragraph state legal conclusions to which no response is required.

FACTS

14. Harvard admits that Plaintiff joined HBS as a non-tenured faculty member in 2007 in the Negotiation, Organizations and Market (“NOM”) Unit.

15. Harvard admits that Plaintiff holds the degrees specified from the schools identified. Harvard is without information sufficient to admit or deny whether Plaintiff “was already an established authority, and sought-after expert witness, on online markets.”

16. Harvard responds that Plaintiff's published research speaks for itself. Harvard is otherwise without information sufficient to admit or deny the allegations of this paragraph.

17. Harvard responds that Plaintiff's published research speaks for itself. Harvard is otherwise without information sufficient to admit or deny the allegations of this paragraph.

18. Harvard responds that Plaintiff's published research speaks for itself. Harvard is otherwise without information sufficient to admit or deny the allegations of this paragraph.

19. Harvard admits that Plaintiff was one of four Associate Professors named a Marvin Bower Fellow in 2013, and further responds that Plaintiff's published research speaks for itself. Harvard is otherwise without information sufficient to admit or deny the allegations of this paragraph.

20. Harvard is without information sufficient to admit or deny the allegations of this paragraph.

21. Harvard admits that Plaintiff was appointed to Associate Professor in 2012. Harvard denies that "HBS determined that Plaintiff could realistically expect to meet the criteria for tenure within four years." Harvard is otherwise without information sufficient to admit or deny the remaining allegations of this paragraph.

22. Harvard admits that Plaintiff's writing about Blinkx raised concerns. Harvard denies that Plaintiff's writing fully complied with HBS' requirements. Harvard admits that, at HBS's request, Plaintiff modified the disclosure statement. Harvard is without information sufficient to admit or deny the remaining allegations of this paragraph.

23. Harvard admits that Plaintiff's actions resulted in negative publicity for himself and for HBS. Harvard denies that his conduct was reasonable. Harvard is otherwise without information sufficient to admit or deny the allegations of this paragraph.

24. Harvard admits Plaintiff's action resulted in extremely negative press coverage, including negative statements about HBS. Harvard is otherwise without information sufficient to admit or deny the allegations of this paragraph.

25. Harvard admits that HBS adopted "Principles and Procedures for Responding to Matters of Faculty Conduct" (the "FRB Principles") in 2015. Harvard denies the remaining allegations of this paragraph.

26. Harvard responds that the FRB Principles speak for themselves. Harvard otherwise denies this paragraph and its sub-paragraphs, including to the extent they purport to state legal conclusions.

27. Harvard responds that the FRB Principles speak for themselves. Harvard otherwise denies this paragraph, including to the extent it purports to state a legal conclusion.

28. Harvard responds that a copy of the FRB Principles was attached to Plaintiff's Complaint, and that no further response from Harvard is required.

29. Harvard admits that Plaintiff sought appointment as a tenured professor at HBS in 2015.

30. Harvard admits that the Policies and Procedures with Respect to Faculty Appointments and Promotions (the "Tenure Procedures") outlined the tenure process at HBS.

31. Harvard denies that the Appointments Committee responsible for reviewing Plaintiff's application for tenure consisted of Baker Foundation Professors. Harvard responds that the Tenure Procedures speak for themselves, and that no further response is required. To the extent that any response is required, Harvard denies the allegations of this paragraph.

32. Harvard admits the allegations of this paragraph.

33. Harvard responds that the source cited speaks for itself, and that no further response is required. To the extent that any response is required, Harvard denies the allegations of this paragraph.

34. Harvard denies the allegations of this paragraph.

35. Harvard admits the allegation of this paragraph.

36. Harvard admits that the FRB issued a draft report in 2015. Harvard states that the Report speaks for itself and no further response is required. Harvard denies that the report relied on conclusory allegations and misleading, selectively chosen emails. Otherwise, the allegations of this paragraph are denied, including to the extent it purports to state legal conclusions.

37. Harvard admits that Plaintiff provided responses to the FRB's report. Harvard states that those responses speak for themselves, and no further response is required. Otherwise, the allegations of this paragraph are denied, including to the extent to which they purport to state legal conclusions.

38. Harvard admits that the FRB provided its report and Plaintiff's responses to the Standing Committee of the Appointments Committee. Harvard denies the remaining allegations of this paragraph.

39. Harvard responds that it is without sufficient information to admit or deny the allegations of this paragraph, other than to deny any legal conclusion this paragraph purports to state.

40. Harvard admits that part of the Standing Committee's process is to make a recommendation to the Dean as to the delay of tenure, and that the Dean—in consultation with others—came up with specific further actions for Plaintiff to take. Harvard denies that the described steps constitute a comprehensive list.

41. Harvard admits that Plaintiff accepted the two-year delay. Harvard is otherwise without information sufficient to admit or deny the allegations of this paragraph, other than to deny any legal conclusion that this paragraph purports to state.

42. Harvard responds that Plaintiff's published research speaks for itself. Harvard is otherwise without information sufficient to admit or deny the allegations of this paragraph.

43. Harvard admits that Plaintiff taught a Leadership and Corporate Accountability ("LCA") course at HBS. Harvard is without information sufficient to admit or deny the remainder of this paragraph, except to respond that the sources cited speak for themselves.

44. Harvard is without information sufficient to admit or deny the allegations of this paragraph.

45. Harvard admits that Plaintiff worked at HBS between 2015 and 2017 and served as a member of the LCA team. Harvard otherwise denies the allegations of this paragraph.

46. Harvard admits that in 2017 Plaintiff submitted materials to the subcommittee responsible for evaluating his tenure case and wrote a letter to the FRB, which included a list of faculty and staff he believed would attest to positive interactions with him. Harvard otherwise denies the allegations of this paragraph.

47. Harvard admits that Professor Edmondson wrote to Plaintiff on July 6, 2017, and that Professor Edmondson's letter included the quoted language. Harvard states that the letter otherwise speaks for itself, and no further response is required.

48. Harvard responds that the source cited speaks for itself and no further response is required. Harvard otherwise denies the allegations of this paragraph.

49. Harvard denies the allegations of this paragraph.

50. Harvard admits the allegations of this paragraph.

51. Harvard admits that the FRB requested additional information from Plaintiff and states that Professor Edmondson's communication to Plaintiff speaks for itself. Harvard denies the other allegations of this paragraph, including any allegation that the FRB did not adhere to appropriate procedures.

52. Harvard responds that the sources cited speak for themselves. Harvard otherwise denies the allegations of this paragraph.

53. Harvard responds that it is without information sufficient to admit or deny the allegations of this paragraph, except that Harvard denies any allegation that the FRB did not adhere to appropriate procedures.

54. Harvard admits that the FRB issued a draft report in September 2017, and further responds that the report speaks for itself and no further response is required. To the extent that any response is required, Harvard denies the remaining allegations of this paragraph.

55. Harvard admits that the FRB issued a draft report in September 2017, and further responds that the report speaks for itself and no further response is required. To the extent that any response is required, Harvard denies the remaining allegations of this paragraph.

56. Harvard admits that the FRB issued a draft report in September 2017, and further responds that the report speaks for itself and no further response is required. Harvard otherwise denies the allegations of this paragraph, including any allegation that the FRB did not adhere to appropriate procedures.

57. Harvard responds that the FRB Policy and the FRB report speak for themselves, and that no further response is required. Harvard otherwise denies the allegations of this paragraph, including any allegation that the FRB did not adhere to appropriate procedures.

58. Harvard responds that the FRB Policy and the FRB report speak for themselves, and that no further response is required. Harvard otherwise denies the allegations of this paragraph, including any allegation that the FRB did not adhere to appropriate procedures.

59. Harvard admits that, at the time the FRB issued the report, it knew the identity of each person quoted in its Report, which speaks for itself and requires no further response. Harvard admits that it did not disclose the identity of those individuals to Plaintiff but denies that it had any obligation to do so. Harvard further denies any allegation that the FRB did not adhere to appropriate procedures.

60. Harvard denies that the FRB audio-recorded its interviews. Harvard admits that certain FRB members or staff took notes during certain interviews. Harvard admits that it did not provide those notes to Plaintiff but denies that it had any obligation to do so. Harvard further denies any allegation that the FRB did not adhere to appropriate procedures.

61. Harvard denies the allegations of this paragraph.

62. Harvard responds that the referenced Report speaks for itself and no further response is required. To the extent that any response is required, Harvard denies the allegations of this paragraph.

63. Harvard is without information sufficient to admit or deny this paragraph, other than to state that the sources cited speak for themselves. Harvard denies that Plaintiff was not able to address his written work with Google in his written statements to the FRB or in his in-person interview with the FRB. Harvard further denies any allegation that the FRB did not adhere to appropriate procedures.

64. Harvard is without information sufficient to admit or deny the allegations of this paragraph, other than to state that the sources cited speak for themselves. Harvard denies that Plaintiff's disclosures complied with HBS's Conflict of Interest ("COI") Policy.

65. Harvard admits that Plaintiff was the sole faculty attendee of an optional feedback session about the then-proposed COI Policy. Harvard otherwise denies the allegations of this paragraph.

66. Harvard denies the allegations of this paragraph and further denies any allegation that the FRB did not adhere to appropriate procedures.

67. Harvard states that the 2017 FRB Report and HBS Policy on Outside Activities of the Faculty speak for themselves and no further response is required. Harvard otherwise denies the allegations of this paragraph, including any allegation that the FRB did not adhere to appropriate procedures.

68. Harvard is without information sufficient to admit or deny the allegations of this paragraph, other than to state that the sources cited speak for themselves. Harvard further states that, to the extent this paragraph states a legal conclusion, no response is required. Harvard further denies any allegation that the FRB did not adhere to appropriate procedures.

69. Harvard denies the allegations of this paragraph. Harvard further states that, to the extent this paragraph states a legal conclusion, no response is required. Harvard further denies any allegation that the FRB did not adhere to appropriate procedures.

70. Harvard states that the FRB's final Report and Plaintiff's response to that Report speak for themselves and no further response is required. Harvard further states that, to the extent this paragraph states a legal conclusion, no response is required. Harvard further denies any allegation that the FRB did not adhere to appropriate procedures.

71. Harvard admits that the FRB submitted its final Report to the Appointments Committee in 2018. Harvard is without information sufficient to admit or deny the allegations concerning statements purportedly made by members of the Appointments Committee about its confidential proceedings. Harvard denies that the FRB's Report was the only negative factor before the Appointments Committee.

72. Harvard denies the allegations of this paragraph.

73. Harvard admits that 30 faculty members voted against Plaintiff receiving tenure. Harvard denies that 43 faculty members voted in favor of Plaintiff, and further denies the allegation that Dean Nohria required a particular "supermajority."

74. Harvard is without information sufficient to admit or deny the allegations of this paragraph.

75. Harvard admits that certain members of the Appointments Committee provided a written statement concerning Plaintiff's tenure candidacy. Harvard admits that it did not provide those written statements to Plaintiff. Harvard further denies that it was required to do so. Harvard denies that the FRB's Report was the sole or primary factor causing votes against Plaintiff's promotion.

76. Harvard admits the allegation of this paragraph.

77. Harvard admits that Dean Nohria spoke with Plaintiff in December 2017 and referred to his conduct, including conduct that preceded his 2015 tenure reviews. Harvard otherwise denies the allegations of this paragraph.

78. Harvard admits the administrative deans referred to in the Complaint as S1 and S2 participated in certain interactions between Plaintiff and HBS staff. Harvard otherwise denies the allegations of this paragraph.

79. Harvard admits that S1 and Plaintiff interacted with respect to the size of classroom projection screens. Harvard otherwise denies the allegations of this paragraph.

80. Harvard admits that Plaintiff and S2 interacted with respect to the use of a computer by another HBS faculty member. Harvard otherwise denies the allegations of this paragraph.

81. Harvard admits that Plaintiff and S2 discussed the Blinkx incident. Harvard otherwise denies the allegations of this paragraph.

82. Harvard admits that S2 interacted with Plaintiff concerning business cards. Harvard otherwise denies the allegations of this paragraph.

COUNT ONE

Breach of Contract

83. Harvard hereby incorporates its responses to the paragraphs above.

84. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

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103. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

104. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

105. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

COUNT TWO

Breach of the Duty of Good Faith and Fair Dealing

106. Harvard hereby incorporates its responses to the paragraphs above.

107. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

108. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

109. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

110. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

111. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

112. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

113. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

114. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

115. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

116. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

COUNT THREE

Promissory Estoppel

117. Harvard hereby incorporates its responses to the paragraphs above.

118. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

119. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

120. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

121. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

122. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

123. This paragraph states a legal conclusion to which no response is required. To the extent that any response is required, Harvard denies this allegation.

REQUESTED RELIEF

Harvard denies that Plaintiff is entitled to any of the relief requested of the Court in Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

While specifically denying any liability to Plaintiff and without assuming any legal or factual burden not otherwise assigned to it by virtue of listing these alternative defenses, Harvard asserts the following affirmative defenses. Harvard reserves the right to assert additional defenses and/or amend these defenses, as warranted by facts learned through investigation and discovery.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the equitable doctrine of laches, as his delay in bringing his claims was unjustified, unreasonable, and prejudicial to Harvard.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims fail because Harvard acted at all relevant times reasonably and in accordance with its Policies and Procedures.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims fail because the referenced Policies or Procedures did not create an implied or express legally binding contract between Plaintiff and Harvard.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims fail because, to the extent the above-referenced Policies or Procedures did create an implied or express legally binding contract between Plaintiff and Harvard, Harvard acted at all relevant times in good-faith performance of said contract.

In the alternative, and to the extent the above-referenced Policies or Procedures did create a legally binding contract which Harvard is found to have non-performed and/or breached, Plaintiff's claims fail because his actions (i) justified any such non-performance or breach of said contract; and/or (ii) indicated acquiescence to and acceptance of any such non-performance and/or breach, thereby constituting waiver of said contract.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims fail because his damages are speculative and/or not enforceable.

EIGHTH AFFIRMATIVE DEFENSE

To the extent Plaintiff's claims may be characterized as tort claims, Plaintiff's damages, if any, are limited in whole or in part by M.G.L. c. 231 § 85K.

Respectfully submitted,

**PRESIDENT & FELLOWS OF
HARVARD COLLEGE**

By its attorneys,

/s/ Martin F. Murphy
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Dated: March 29, 2024

CERTIFICATE OF SERVICE

I, Martin F. Murphy, certify that on March 29, 2024, a copy of this document was served
via email on the following individuals:

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/s/ Martin F. Murphy

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