

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
Dawn V. Martin,)	
)	
v.)	
)	Case No. 1:99CV01175
Howard University, <i>et. al.</i>)	Judge: TFH/AK
)	
_____)	

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION FOR JUDGMENT
ON HER BREACH OF CONTRACT CLAIM, AFTER VERDICT**

Plaintiff opposes *Defendant’s Motion for Judgment on her Breach of Contract Claim*, after Verdict. Plaintiff incorporates into this Opposition, her April 25, 2006 *Motions for Judgment on Her Sexual Harassment, Retaliation and Breach of Contract Claims* as well as her *Oppositions* to Defendant’s pending *Motions for Judgment on Plaintiff’s Sexual Harassment, Retaliation and Breach of Contract Claims* and incorporates this *Opposition* into the aforementioned motions.

I. **Relationship of Present Motion to Pending Motions**

The jury in this case determined that Prof. Martin endured severe and pervasive harassment in her workplace when she was stalked by Leonard Harrison, a homeless, delusional stranger with a criminal record and a history of violence. The jury further found that Howard failed to take reasonable steps to eliminate this hostile work environment; however, the jury then determined that Harrison’s pursuit of Prof. Martin, to be his “wife,” was not sexual in nature, or based on her gender. The jury therefore concluded that Plaintiff was not engaged in “protected activity” within the meaning of Title VII of the Civil Rights Act of 1964 or the D.C. Human Rights Act. As fully discussed in Plaintiff’s *Motion for Judgment on Her Sexual Harassment Claim* and her *Opposition to Defendant’s Motions for Judgment on Plaintiff’s Sexual Harassment*, the jury’s conclusion was based on a misunderstanding of law and should be set aside.¹

¹ The jury returned a verdict in favor of Defendant, although the Court has not yet issued a judgment pursuant to the verdict. Plaintiff has renewed her pre-verdict motions for judgment, on each of her claims. Howard has also renewed its three pre-verdict motions for judgment. It appears that Howard

If the jury had proceeded to the remaining questions on the verdict form regarding retaliation, it would have been compelled to find that Howard's ever-changing, purported reasons for Plaintiff's non-renewal are false and based, in part, on *perjury* by former Dean Alice Gresham Bullock. In addition, Bullock made statements constituting direct evidence of retaliatory animus. Bullock left faculty positions vacant, for which she admits Martin was well qualified. Bullock actually lied to her colleagues on the APT Committee about these vacancies in order to prevent the Committee from selecting Martin for one of these positions. The undisputed evidence of record compels judgment for Plaintiff, not Defendant, on her retaliation claims.

Finally, Martin alleges breach of contract. Howard breached its contract with Martin in retaliation for her complaints of the hostile work environment caused by Harrison and permitted by Howard. For this reason, the retaliation and breach of contract claims are inter-related and the facts supporting each claim are relevant to both claims.

Summary of Argument Regarding Proof on Breach of Contract Claim

Howard has admitted in its filings and through the deposition of APT Committee Vice Chair, Prof. Andrew Taslitz, that Taslitz had the authority to negotiate a contract with Prof. Martin for a faculty position, and to represent to her the terms and conditions of that contract. Martin presented substantial evidence, during discovery, cited and presented in her October 9, 2002 *Motion for Summary Judgment*, and again, at trial, that Prof. Taslitz represented to her that the "visitor ship" that Howard was offering her was "for all practical purposes, a tenure-track position," that it was a "visitorship name only" and that as soon as a tenure-track position became available, Howard would, "slide" her into that position from her visitorship slot.

During the 1997-1998 academic year, at least three, and, it appears, as many as six tenure-track positions became available for the 1998-1999 academic year. Prof. Martin applied for any available

recognizes that the Court may well set aside the jury verdict, for the reasons stated in Martin's motions. In fact, not only did Howard renew its motions for judgment, but it requested, and was granted, over Plaintiff's objection, an 12 day enlargement of time, in addition to the 11 days allotted by the Court's Rules, to respond to Martin's motions, to allow it additional time to "review the record," although Howard has a team of in-house and outside attorneys.

faculty position, tenure-track or, in the alternative, a renewed visitorship. Howard rejected her for all positions for which she applied. The Dean, Alice Gresham Bullock, left at least three positions vacant, for which Howard admits Plaintiff was well qualified, rather than authorize the APT Committee to fill them – even though at least one Committee member, Prof. Nolan, specifically asked Dean Bullock whether there were any additional vacancies which Plaintiff could fill. Dean Bullock actually lied to Prof. Nolan, stating that there were no additional vacant positions and concealed from the APT Committee the additional vacancies in order to avoid Plaintiff's permanent appointment to the faculty. As discussed below, as in Plaintiff's pending *Motion for Judgment on her Breach of Contract Claim*, and in her *Motion for Summary Judgment*, incorporated, by reference, herein, Plaintiff, not Defendant, is entitled to summary judgment on this claim. In any case, Howard is not entitled to judgment, as a matter of law, on this claim.

II. Legal Standard

A. Rule 50(B)

When assessing a Rule 50(b) motion for judgment after a jury verdict, the issue is whether there was sufficient evidence upon which the jury could base its verdict. *Scott v. District of Columbia*, 101 F.3d 748, 752-753 (D.C. Cir. 1996). Although the court cannot substitute its view for that of the jury, and can assess neither the credibility nor weight of the evidence, the jury's verdict can only stand if the evidence in support of it is "significantly probative" and "more than merely colorable." *Scott* at 752-753, citing *Mackey v. United States*, 303 U.S. App. D.C. 422, 8 F.3d 826, 829 (D.C. Cir. 1993), (citing *McNeal v. Hi-Lo Powered Scaffolding, Inc.*, 826 F.2d 637, 640-41 (D.C. Cir. 1988); *Ferguson v. F.R. Winkler GMBH & Co.*, 79 F.3d 1221, 1224 (D.C. Cir.), cert. denied, 136 L. Ed. 2d 252, 117 S. Ct. 360 (1996); see also *Siegel v. Mazda Motor Corp.*, 878 F.2d 435, 437 (D.C. Cir. 1989). The D.C. Circuit's analysis is consistent with that of the U.S. Supreme Court. *Gasperini v. Center for Humanities*, 518 U.S. 415 (1996); *Weisgram v. Marley Co.*, 528 U.S. 440 (2000).

The Court may grant judgment as a matter of law, after trial, where the facts are undisputed and/or no reasonable juror could find for the opposing party. This standard is the same standard used in

the context of motions for summary judgment. Summary judgment is also appropriate where “no reasonable juror” could determine the facts in favor of the opposing party, in light of the evidence presented. *Adickes v. S.H. Kress and Co.*, 398 U.S. 144 (1970); *Woodfield v. Providence Hospital*, 779A.2d 933, 936 (D.C. 2001). As the U.S. Court of Appeals for the D.C. Circuit has recently reaffirmed, where there is no genuine dispute as to material facts, there are no facts for a jury to determine and this case can be decided as a matter of law. *Holcomb v. Powell*, 433 F.3d 889 (D.C. C. 2006).

III. Facts as Set Forth in Chief Judge Hogan’s 1999 Decision

Chief Judge Hogan denied Howard’s *Motion to Dismiss, or in the Alternative, for Summary Judgment*. *Martin v. Howard University*, 1999 U.S. Dist. LEXIS 19516; 81 Fair Empl. Prac. Cas. (BNA) 964; 15 I.E.R. Cas. (BNA) 1587 (D.D.C. 1999). Judge Hogan summarized the facts, as alleged in Plaintiff’s Complaint, as follows.

Plaintiff Dawn Martin was a Visiting Associate Professor at Howard University School of Law from July 1996 through May 1998.

....

Plaintiff alleges that she has been the victim of hostile work environment sexual harassment as a result of the conduct of Mr. Leonard Harrison, a homeless person who resided in a shelter and was neither an employee nor a student of the University but who regularly used Howard University's Law School library. Specifically, Plaintiff claims that Defendants knowingly allowed Mr. Harrison, a man characterized by the D.C. Metropolitan Police Department as a "stalker" with a criminal record and history of violence, free access to the law school campus and buildings, thereby facilitating his sexual harassment of Plaintiff in her workplace. Due to this alleged inaction, Plaintiff claims that Defendants have violated both Title VII and the DCHRA as well as caused her intentional infliction of emotional distress. Plaintiff also claims that due to her complaints, Defendant Bullock took retaliatory measures, on five different occasions, to ensure that Plaintiff was not offered a permanent professorship or a renewed visitorship at the Law School. Furthermore, **Plaintiff alleges that Defendants Howard University and Howard University School of Law breached their contract with Plaintiff in failing to renew her contract or selecting her for a tenure-track position in violation of Professor Taslitz's alleged oral promise to Plaintiff that she would placed into a tenure track position as soon as one became available.** (Emphasis added)

1999 U.S. Dist. LEXIS 19516 at 2-4.

Judge Hogan concluded, as a matter of law, that a reasonable jury could conclude, based on the evidence of record, that Howard formed a valid contract with Prof. Martin and breached it.

In Count IV of the complaint, Plaintiff alleges that Howard University breached its contract with her by "not considering her, in good faith, for available permanent positions with Howard."

....

The question in this case is whether the tenure-track position which Professor Taslitz allegedly promised Plaintiff could have become available within one year of Plaintiff's acceptance of Defendant's offer of employment. Defendants argue that the tenure-track position could not have been offered to Plaintiff until the expiration of her two-year contract with the University. Plaintiff argues that this agreement could have been performed within one year if a tenure track position had become available within that one-year period because her contract did not preclude her from taking a tenured position. Based on the pleadings before the Court, this issue presents factual questions that cannot be resolved by the Court as a matter of law pursuant to a motion to dismiss or a motion for summary judgment. Whether or not Professor Taslitz had authority to bind the University and whether the University could have offered Plaintiff the tenure track position before her two-year term had expired are material factual disputes which are more appropriately left to a jury. Therefore, Defendants' Motion to Dismiss or Alternatively for Summary Judgment on the Breach of Contract claim must be denied.

1999 U.S. Dist. LEXIS 19516 at 21-22.

As discussed below, Howard's own admissions answer the questions posed by the Court.

It was therefore not necessary for these questions to proceed to a jury at trial.

IV. The Howard University's own Grievance Committee's Determination Demonstrates that a Reasonable Jury Could Conclude that Howard Contracted with Prof. Martin and Breached that Contract

A. The Howard Grievance Committee Report was Improperly Excluded at Trial

It is not clear whether the jury ever saw the Howard University Grievance Committee Report issued on Prof. Martin's grievance. Although the Court did enter this Report into evidence on or about April 26, 2006, during jury deliberations, it is not clear whether the document was ever forwarded to the jury during its deliberations. In any case, Plaintiff was deprived of using it to examine any witness and of referring to it in closing argument. The Court initially excluded the Howard University Grievance Committee Report from evidence because Howard's attorneys represented that the Committee had no

jurisdiction over EEO claims² and that Plaintiff did not allege that Howard breached any of her procedural rights. Both of these representations were false.³

There was no basis for Howard's claim that the Grievance Committee Report would cause undue prejudice and usurp the province of the jury. There was no hearing in the case because Dean Bullock refused to allow the law school to participate in the process; accordingly, the Committee did not decide the merits of the case; it did find that Prof. Martin was being deprived of her right to participate in the Grievance process, that there was evidence to indicate that the law school had acted in a manner that was arbitrary and capricious, and that the law school had violated Prof. Martin's rights to academic freedom. The University's conclusion constitutes an admission of a party and should have been admitted.

B. Howard's own Grievance Committee Determined that Martin's Claim, that Howard Contracted with her for a Tenure Track Position and Breached its Contract, "has Merit"

Prof. Martin has consistently alleged that: 1) Taslitz had authority or apparent authority to formulate a contract with her; 2) that Taslitz, in fact, promised her that that Prof. Taslitz represented to her that Howard was offering her was a "visitorship in name only" and that Howard would, "slide" her into a tenure-track position as soon as one became available; 3) that she reasonably relied on Taslitz promise, relocating, placing her house in Cleveland on the market for sale, relinquishing her tenure-track position in Cleveland, and foregoing interviews at other law schools; and 4) that Howard breached is promise to her, leaving her without a teaching position anywhere.

The Howard University Faculty Grievance Committee Report (**Ex. A**, Plaintiff's Trial Ex. 39) concluded that:

Professor Dawn V. Martin filed a grievance with the Faculty Grievance Committee on May 15, 1998. Her appointment began on August 16, 1996, by the Howard University Law School, as a Visiting Associate Professor, with a two year appointment. **She has stated in her grievance request for a hearing that she would not have made a commitment to take this position without some assurances that the nature of the position would not be temporary, and prior to her expiration date, she would be**

² The Committee's Preliminary Report on Plaintiff's Grievance, page 1, specifically states that the Committee has jurisdiction over EEO claims, including *sex discrimination* claims such as the one filed by Plaintiff. **Ex. A.**, page 2, paragraph 2.

³ Howard's representations violate Fed. R. Civ. P. 11 and should be sanctioned, not rewarded.

offered a tenure-track position. The record shows that Visiting Professor Martin left a tenure-track position to join the faculty at Howard.

It is clear that Professor Martin signed a contract for a two-year term. **What is not clear is what she was told about a tenure-track position.** A study of the documents sent to the Faculty Commission raises several questions which the primary reviewer considers relevant:

1. Who made the initial contract offer to Visiting Associate Professor Martin?
2. Who said what to Professor Martin to indicate that the contract would lead to a tenure track position?
3. Did the person who made the offer have the authority to make the initial offer and to give her a verbal commitment to a tenure track position?

Professor Martin stated in a telephone conversation on December 9, 1999, that Professor Andrew Tasltiz negotiated with her on the position to which she was appointed and told her that the position would become a tenure track position. Her position has merit because she left a tenure track position to come to Howard University. It also appears that the Law School changed job descriptions several times in order to avoid offering a slot to Professor Martin. Finally, the September 17, 1999 Association for Law Schools Placement Bulletin (AALS Placement bulletin, September 17, 1999), has a position listed for Howard University Law School that appears to be appropriate for Professor Dawn Martin, except that position announcement appears to want a person without experience, etc.

The primary reviewer finds from the documents submitted to the Faculty Grievance Commission that **Professor Dawn V. Martin was not given due process and that her academic freedom, rights and privileges may have been violated.** The primary reviewer strongly recommends that Professor Martin's grievance case move forward as quickly as possible to the next level of mediation and that a Formal Hearing take place if necessary to be resolved in the best interests of all concerned. (Emphasis added)

Ex. A, page 1.

If Howard University professors, forming Howard University's own Grievance Committee, concluded that Plaintiff's evidence supports her claims, a reasonable jury could certainly arrive at the same conclusion, presented with the same evidence.⁴

C. The Grievance Committee Found that Howard Violated Martin's Procedural Rights

Plaintiff specifically alleged that President Swygart acted with callous disregard and breached his duty to students and faculty by permitting Dean Bullock to remove her from the faculty in retaliation

⁴ In her pending *Motion for Judgment, as a Matter of Law, or, in the Alternative, for a New Trial, on her Breach of Contract Claim*, pages 3-32, Plaintiff has detailed rulings and conditions at trial that constitute reversible error and/or reasons for setting the jury verdict aside and granting to Plaintiff, judgment, as a matter of law, and/or a new trial. Plaintiff will not repeat all of those facts and arguments herein, but incorporates them, herein, by reference.

for her complaints about stalking and refusing to allow Plaintiff any means of addressing these issues within the University. Comp. ¶ 295, 317-324. In her Complaint ¶ 172, incorporated and discussed in ¶¶366-379, Plaintiff alleged that Prof. Taslitz represented to her that the visitorship she was being offered was “a visitorship in name,” and that “for all practical purposes, it is a tenure-track position.”

Howard University’s own Grievance Committee determined that the Law School had violated Prof. Martin’s procedural rights, under the Faculty Handbook, to avail herself of the grievance process to avoid her non-renewal or termination from the University. (Ex. A) The Grievance Committee determined that her rights to due process and academic freedom had been violated. By denying Prof. Martin the procedural rights that even the Grievance Committee held she was entitled to, Howard further breached its contract with Prof. Martin.

D. The Grievance Committee’s Findings Constitute Admissions of a Party and/or Declarations against Interest

Howard claimed that Section 2.8.3.4(C)(3) of the Faculty Handbook states that the Faculty Grievance Committee’s determinations are not binding on the University, but are only “recommendations,” without specifying to whom the recommendations are made. First, Section 2.8.3.4(c) states that the Grievance Committee makes its recommendation to the President of the University (President Swygart) -- not the Law School Dean (Bullock). Second, Howard failed to mention that Section 2.8.3.4(C) (3) also states that, if the President does not implement the Recommendation of the Grievance Committee, the matter may be appealed to the University Senate for a decision.

As stated in Handbook, Section 2.8.3.1, the Grievance Committee consists of tenured faculty members elected by the Senate to conduct hearings. The Senate has delegated its authority to conduct the hearings to the Committee. Howard does not deny that the decisions of the University President and/or the University Senate are binding upon the Law School.

Howard claims that Plaintiff was not entitled to use the University Grievance Procedure because she was a visiting professor; however, as the Grievance Committee file specifically states, the

questions of eligibility and jurisdiction are determinations made by the Grievance Committee -- not by the law school. (**Ex. A**, paragraph 2) The Grievance Committee specifically determined that it had jurisdiction over Prof. Martin's complaint and that Prof. Martin had the right as a faculty member to process her grievance through the Committee. (**Ex. A, page 1**, paragraph 1)

V. **The Undisputed Facts of Record Compelled Summary Judgment for Plaintiff**

As quoted above, Chief Judge Hogan denied Defendant's *Motion to Dismiss* in to allow the jury to decide: 1) whether Professor Taslitz had the authority to bind the University; 2) whether Taslitz actually led Plaintiff to believe that the Visiting Associate Professor position that she was being offered was expected to become a tenure-track position. 1999 U.S. Dist. LEXIS 19516 at 21-22. Howard has admitted that Taslitz had the authority to bind the University. Judge Hogan also held that Howard may not prevail on a Statute of Frauds Defense if the contract could conceivably have been performed in one years, even if was not actually performed in one year.

A. **Defendant has Admitted that Taslitz had the Authority to Bind the University when he Made an Offer to Plaintiff in 1996**

The issue of whether Prof. Taslitz had the authority, or the apparent authority, to bind the University should not have even been litigated during this trial. Howard had already admitted that Taslitz had the authority to bind the University. *Def.'s July 11, 2001 Answers to Interrogatories*, ¶ 18 (MSJ Ex. B; Pl.'s Trial Exhibit 26B; *see also* Taslitz deposition⁵ at 68-69, 75, 87. Evidence produced both in discovery and at trial demonstrates that Taslitz negotiated with candidates, including Plaintiff, wrote letters making offers and orally made offers, with the approval of Howard officials. (*Facts*, ¶ 16-17) Howard wasted the Court's, jury's and Plaintiff's time and energy on this issue at trial and confused the jury by asserting this defense.⁶

⁵ For purposes of this litigation, Howard has specifically identified Andrew Taslitz as one of the professors whose testimony has binding effect on the University; accordingly, his own statements that he did have the authority to bind the University when he made offers and representations about the terms and conditions of the offer, bind the University to those statements as admissions of a party.

⁶ In the confusion, the jury may well have mistakenly believed that Taslitz did not have the authority, or apparent authority, to bind the University and therefore "could not have" told Prof. Martin that she would be slid into a tenure track position. To the extent that Taslitz testimony at trial, purporting to "recall"

B. Defendant should not have been Permitted to Assert a Statute of Frauds under the Undisputed Facts

Plaintiff has consistently asserted, unchallenged, that a tenure-track could have become available at any moment, based on the resignation of a tenured or tenure-track faculty member, or the allocation of additional funds for faculty hiring. At trial, Plaintiff testified that both Prof. Taslitz and Dean Ramsey represented to her that if Prof. Argrett did not return from sabbatical, but relinquished her tenure-track slot on the faculty, that this was an example of a “slot” that Plaintiff could fill. Neither Taslitz nor Ramsey could “guarantee” if or when Prof. Argrett would resign, but agreed that she could resign at any moment, freeing up a faculty slot that Plaintiff could fill.

No one disputed Plaintiff’s testimony on these facts. Under these undisputed facts, there is no question that the contract could have been fulfilled in less than a year. Prof. Argrett could have resigned a week after Plaintiff joined Howard’s faculty and Howard could have filled the slot with Plaintiff, as agreed. The Statute of Frauds defense therefore does not apply to the facts of this case.

Again, Howard has wasted the Court’s, jury’s and Plaintiff’s time and energy on this issue and should not waste further time by re-arguing its own admission in motions.

C. The Totality of the Circumstances and the Parties ‘Actions Demonstrate a Meeting of the Minds and an Intend to be Bound by the Oral Representations

1. Plaintiff’s April 27, 1996 Letter to Dean Ramsey,

In her April 27, 1996 letter to Dean Ramsey, Prof. Martin expressly stated that she intended to make Howard her “permanent home.” Pl.’s MSJ Ex. VVVV, page 5. Martin added that, once she and her daughter returned to the D.C. area, she had “no intention of leaving.” *Id.* Plaintiff specifically informed Dean Ramsey that she had resigned from her tenure-track position in Cleveland and informed that she had lost her summer grant as a result, since Cleveland-Marshall believed that a summer grant should appropriately be awarded by Howard, her new school. Pl.’s MSJ Ex. VVVV. In response to this

what he said in negotiations, is inconsistent with his 2002 deposition testimony that he “[could] not recall” his precise words when he negotiated with Martin, his prior admissions should be held binding, particularly since Howard never updated discovery to reflect Talitz’ restoration of his lost memory.

letter, Howard granted Plaintiff a partial summer grant to assist with her moving expenses from Cleveland to Washington, D.C.

At no time did Dean Ramsey, Prof. Taslitz (whom Plaintiff sent a copy of the letter), or anyone at Howard write to Prof. Martin or call her to advise her that she was not guaranteed a permanent position, or a renewed visitorship, after the two year written guarantee expired. At no time did anyone advise her not to sell her house or to revoke her resignation at Cleveland-Marshall in favor of a leave of absence. Prof. Martin had plainly stated that once out of Cleveland, she would not return. She repeatedly referred to the “visitorship” that she was being offered in quotation marks, explaining that the unusual nature of her “visitorship,” as represented to her by Prof. Taslitz, left her in a position where she was technically not a permanent member of either faculty, though both parties understood that she would become a permanent member of Howard’s faculty. Prof Martin’s letter clearly indicates that she was only accepting this “visitorship” with the understanding that the visitorship would become a permanent position.

Prof. Martin understood that no one could “guarantee” *when* a tenure-track position would become available because it required a faculty member to resign or the designation of additional funds for faculty positions; accordingly, she knew that, while the parties were waiting for a tenure-track position to become available, she might be in a position of “visitor” status for several years – and that her two year visitor contract might have to be renewed before a tenure-track position became available for her, as Prof. Patricia Worthy’s contract was renewed for years beyond the three year limitation set by the Howard Handbook.⁷

⁷ On the last day of trial, on the stand, for the first time in the eight years of litigation in this case, Dean Bullock claimed that Prof. Worthy was *not* a visiting professor when Prof. Martin was hired, by that Prof. Worthy was converted to a tenure-track position *in 1993*. Bullock’s testimony directly conflicts with her own Answer to the Complaint, ¶ 179. In her Answer, Bullock specifically admitted that Prof. Worthy: “was a visitor at Howard University School of Law for between five and ten years before she received a tenured position,” and that “Professor Worthy was never a tenure-track professor, but remained a visitor until she received tenure.” Bullock has never amended her answer – nor has Howard amended it, even after MJ Facciola ruled, on May 30, 2001, that Bullock’s *Answer* would bind Howard, since Howard failed and refused to file a proper *Answer* to the *Complaint*. In fact, prior to trial, in 8 eights of litigation, Howard had never challenged Plaintiff’s repeated factual statements, and references to the record, that Prof. Worthy was a visitor for five to ten years and received tenure without being a tenure-track professor.

2. Taslitz' Admissions Regarding his Negotiations with Martin

Plaintiff alleges that Prof. Taslitz made representations to her, at the time of her hire in early 1996, that: 1) if a tenure track position had been available at the time of the offer, Howard would have offered it to Plaintiff (Facts, ¶ 17); 2) Howard was offering her a visiting position only because no tenure-track positions were available (Facts, ¶ 17); 3) Howard generally has visitorships available and has renewed visitors for many years, including Prof. Patricia Worthy and others (Facts, ¶ 17); 4) Howard could offer her a multiple year contract, if that would make her more inclined to accept the offer (Facts, ¶ 17); 5) Howard would just keep renewing Plaintiff as a visitor until a tenure-track position opened up and then they would “slide” her into it (Facts, ¶ 6, 17); 6) the visitorship being offered to her was a “visitorship only in name,” and “for all practical purposes, a tenure-track position.” Plaintiff also alleged that she told Taslitz that her daughter was starting high school that year and that she would not move her back to D.C. from Ohio, then “rip her out of high school” to move somewhere else. (Facts, ¶ 17)

In his deposition, Taslitz has admitted making the representations numbered 1, 2, 3 and 4 (*Facts*, ¶ 17). Taslitz also admitted that Plaintiff told him that she did not want to start her daughter in school and then move her after only one year. (*Facts*, ¶ 17) Taslitz testified that he could not recall his “exact words,” but that he intended to convey the message that, if Plaintiff accepted the visitorship, she would be

Bullock’s surprise testimony appears to be an additional instance of Dean Bullock committing perjury at trial. See discussion in Plaintiff’s *Opposition to Defendant’s Motion for Summary Judgment on Plaintiff’s Retaliation Claim*, page 2, fn. 1, providing documentation of Bullock’s perjury when she testified that she did not perceive Harrison’s stalking of Prof. Martin to constitute harassment based on her sex. Bullock’s testimony directly contradicted her own July 1, 1999 written statement to Howard’s General Counsel, prepared to submit to the U.S. EEOC, as part of Howard’s Position Statement, in response to Prof. Martin’s EEOC charges.

Plaintiff repeatedly requested the personnel files of all law school faculty members who had been hired or promoted within the last ten years; however, the Court repeatedly denied that request. Without Prof. Worthy’s personnel file, Plaintiff is deprived of the documentation to rebut Dean Bullock’s testimony. Since Howard has exclusive access to these records, the Best Evidence Rule, Fed. R. Ev. 1001-1002, requires that Howard produce the records documenting how long Prof. Worthy was a visiting professor before she was converted to a tenure-track position or awarded tenure. Without these records, Plaintiff is entitled to an adverse inference that Prof. Worthy was a visitor at least through her own tenure at Howard, until 1998. In any case, it is undisputed that Prof. Taslitz represented to Prof. Martin, at the time of her hire, that Prof. Worthy was still a visiting professor and that she had been renewed as a visitor for several years.

“well placed” for a permanent position when one opened up. (*Facts*, ¶ 18) The differences between Plaintiff’s allegations and Taslitz’ admissions are ones of degree, rather than substance. Taslitz was clearly giving Plaintiff a “sales pitch” to convince her to teach at Howard. As part of its enticement and an indication that its representations regarding job stability were made in good faith, Taslitz offered Plaintiff a two-year visitorship, as part of her written offer. (*Facts*, ¶ 19) Multiple year contracts were not offered to either of the other two visitors hired that year. Cunningham or Levin, nevertheless, both Cunningham and Levin were renewed for a second year (*Facts*, ¶ 27), consistent with Taslitz’ representations about the renewal of visitorships. These renewals reassured Plaintiff that she did not need to participate in the AALS conference or otherwise seek employment outside of Howard.

The representations made by Taslitz do not indicate a limited term visitorship. In fact, they go beyond even a “looksee visitorship.” A “looksee visitorship is defined as a visitorship allowing time for each party to determine whether it wanted the other (*Facts*, ¶ 24) Taslitz represented that Howard wanted Plaintiff, not that it wanted time to “check her out” as a professor. Similarly, Plaintiff made it plain that she wanted a tenure track position at Howard, not that she two years “check out” Howard. (*Facts*, ¶ 17) Plaintiff had already determined that she wanted to be a permanent member of the faculty. Taslitz knew that in order to accept Howard’s offer, Plaintiff had to forfeit job opportunities elsewhere.

Plaintiff testified that Taslitz told her that, if she accepted a visitorship at Howard, which was the only position available in 1996, Howard would simply continue to renew her each year, until a tenure-track position opened up and then “slide” her into it. Taslitz testified that he did not recall his “exact” words, but he does recall Martin stating that she did not want a visitorship, or to start her daughter and in high school, only to have to “rip her out” to move again. Pl. MSJ at 45. Taslitz admitted that Martin told him that she needed assurances of job security, and that he responded by conveying to her, in words that he “cannot recall,” the message that she would be well placed for a tenure-track position when one opened up.

Martin recalls the precise words Taslitz used, and understandably so, since she sold her house in Cleveland, resigned her tenure-track position at Cleveland-Marshall Law School, and started her daughter

in high school in Fairfax County, Virginia. Pl. MSJ at 45. With all that was at stake for Martin, the precise promise made was important to her in making these decisions.

3. **Objective Evidence Corroborates Martin's Testimony**

Objective evidence regarding visitorships corroborates Plaintiff's claims regarding Taslitz' representations. Howard uses its visitor slots fluidly, to suit its needs. For example, pursuant to the faculty handbook, a faculty member can only be a visitor if he/she holds rank at another University. (Facts, ¶ 14) Cunningham did not hold any rank at any other University before coming to Howard, since she had never previously taught; yet, she was brought on as a visitor because no tenure-track positions were available. She is now a tenured professor at Howard. Similarly, other tenured members of the faculty began at Howard as visitors, including Interim Dean Patricia Worthy (Facts, ¶ 10), J. Clay Smith (Facts, ¶ 10), Sherman Rogers (Facts, ¶ 10), Laurence Nolan (Facts, ¶ 10).

The "meeting of the minds," irrespective of the precise words used or "recalled" was that Plaintiff was being hired in the only position available for the longest period of time possible, to allow time for a permanent position to become available for her to officially become a permanent member of the faculty. If Taslitz "cannot recall" the precise words that he said, no reasonable juror could conclude that he did not say those words. Martin is entitled to an adverse inference that the words she recalls Taslitz using were said. This oral contract was breached when, during the 1997-1998 academic year, anywhere from three to six tenure-track positions became available and Plaintiff was not selected for any of them. The breach of contract was particularly egregious since Prof. Taslitz did not even give Prof. Martin any warning that she might not be hired (while he did so warn Prof. Cunningham), leaving her without a teaching job after the hiring season had ended.

Howard has not produced evidence to establish a genuine dispute of facts to survive Plaintiff's Motion for judgment, under *Holcomb v. Powell*, 433 F.3d 889. As discussed in Plaintiff's *Motion for Summary Judgment*, at 43-45, there are no genuine disputed material facts to be determined by a jury on Plaintiff's breach of contract claim.

VI. **Plaintiff's Motion for Summary Judgment on her Breach of Contract Claim was never**

Considered on its Merits because MJ Facciola Mistakenly believed that it was Dismissed in 1999

From the bench, on October 20, 2005, and in a written Order, dated October 21, 2005, this Court granted Plaintiff's September 23, 2005 *Motion to Correct the Court's September 16, 2005 Order*,⁸ which is incorporated into this motion, by reference. The Court's October 21, 2005 Order corrected the two most striking errors of fact in the Report: 1) MJ Facciola's misrepresentation that Chief Judge Hogan dismissed Plaintiff's breach of contract claim in his December 15, 1999 precedent-setting decision, *Martin v. Howard University*, 1999 U.S. Dist. LEXIS 19516; 81 FEP Cas. 964; 15 BNA IER CAS 1587 (D.D.C. 1999); and 2) MJ Facciola's erroneous claim that Plaintiff "forgot" to file a Rule 56.1 *Statement of Disputed Material Facts* with her *Opposition to Defendant's Motion for Summary Judgment*, when, in fact, Plaintiff appropriately filed a detailed Rule 56.1 Statement and even referred to it specifically in her *Reply to Defendant's Opposition to her own Motion for Summary Judgment*.

Because MJ Facciola erroneously determined that Judge Hogan had dismissed Plaintiff's breach of contract claim in 1999, he did not consider her motion for summary judgment on this issue. To date, the Court has never analyzed Plaintiff's motion on her breach of contract claim, in light of the evidence of record. MJ Facciola's failure to acknowledge and consider the factual representations and citations to the record in Plaintiff's Rule 56.1 *Statement of Disputed Material Facts* resulted in a litany of additional misrepresentations of material facts, as discussed in Plaintiff's *Objection and Reply*, incorporated by reference herein. In addition, pursuant to Fed. R. Civ. P. 56.1, Plaintiff was entitled to have the facts construed in her favor, as undisputed, since Howard failed to provide its own *Statement of Disputed Material Facts*, disputing, paragraph by numbered paragraph, the numbered paragraphs in Plaintiff's *Statement of Undisputed Material Facts*, supported by citations to the evidence of record. MJ Facciola's purported "divin[ation]" of the facts, in total disregard of Plaintiff's *Statement of Undisputed Material Facts* and the evidence of record, was a *monumental error of law*. It deprived Plaintiff of her right to have her motion and her evidence considered by the Court. Plaintiff respectfully asks that the Court now

⁸ The Court's September 16, 2005 Order adopted MJ Facciola's Report; however, the Court reconsidered its adoption of the Report in light of the parties' agreement that errors of fact in the Report should be corrected.

decide examine the evidence in her *Motion for Summary Judgment*, incorporated by reference herein, Howard's lack of evidence submitted to dispute *Plaintiff's Statement of Undisputed Material Facts* on her breach of contract claim, and award her summary judgment, or judgment, as a matter of law.

CONCLUSION

Plaintiff respectfully request that this Court deny Defendant's motion for judgment.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
Dawn V. Martin,)	
)	
v.)	
)	Case No. 1:99CV01775
Howard University, et. al.)	Judge: TFH
)	
_____)	

ORDER

Upon consideration of Defendant’s *Motion for Judgment on Plaintiff’s Breach of Contract Claim*, Plaintiff’s Opposition and the entire record in this case, Defendant’s Motion is hereby **DENIED**.
SO ORDERED.

Chief Judge Thomas F. Hogan
United States District Court for the District of Columbia