

No. 22-_____

In the
United States Supreme Court

DR. J. DAVID GOLUB

Petitioner,

v.

NORTHEASTERN UNIVERSITY

Respondent

ON PETITION FOR A WRIT OF
CERTIORARI TO THE FIRST
CIRCUIT COURT OF APPEALS

SUPREME COURT RULE 22
APPLICATION TO JUSTICE BREYER
TO STAY THE FIRST CIRCUIT
MANDATE IN DOCKET 20-1674

APPENDIX

DR. J. DAVID GOLUB

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- 1) 4.22.2022 FIRST CIRCUIT DENIAL OF MOTION TO STAY THE MANDATE
- 2) 2.17.2022 FIRST CIRCUIT DENIAL OF PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC
- 3) 7.20.2021 FIRST CIRCUIT DENIAL OF APPEAL

United States Court of Appeals For the First Circuit

No. 20-1674

DR. J. DAVID GOLUB,

Plaintiff - Appellant,

v.

NORTHEASTERN UNIVERSITY,

Defendant - Appellee.

ORDER OF COURT

Entered: April 22, 2022

Appellant Dr. J. David Golub has filed a motion seeking a stay of this court's mandate so that he may petition the Supreme Court of the United States for a writ of certiorari. Appellant has not shown that the extraordinary remedy of staying the mandate is warranted. See Fed. R. App. P. 41(d)(1) (party seeking stay of mandate "must show that the [cert.] petition would present a substantial question and that there is good cause for a stay"); see also Sup. Ct. R. 13 (90-day deadline for seeking writ of certiorari keyed to entry of this court's judgment and/or entry of order disposing of petition for rehearing).

Accordingly, the motion to stay the mandate is DENIED.

By the Court:

Maria R. Hamilton, Clerk

cc:

J. David Golub
Harry T. Daniels
Carolyn Marcotte Crowley

United States Court of Appeals For the First Circuit

No. 20-1674

DR. J. DAVID GOLUB,

Plaintiff - Appellant,

v.

NORTHEASTERN UNIVERSITY,

Defendant - Appellee.

Before

Howard, Chief Judge,
Selya, Lynch, Thompson,
Kayatta, Barron and Gelpí, Circuit Judges.

ORDER OF COURT

Entered: February 17, 2022

The petition for rehearing having been denied by the panel of judges who decided the case and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

cc:

J. David Golub
Harry T. Daniels
Carolyn Marcotte Crowley

United States Court of Appeals For the First Circuit

No. 20-1674

DR. J. DAVID GOLUB,

Plaintiff - Appellant,

v.

NORTHEASTERN UNIVERSITY,

Defendant - Appellee.

Before

Thompson, Selya and Barron,
Circuit Judges.

JUDGMENT

Entered: July 20, 2021

Plaintiff-appellant Dr. J. David Golub appeals from the decisions of the district court 1) dismissing his claims of age discrimination, lodged pursuant to the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621–634, on the grounds that the claims were time-barred and not adequately exhausted, and denying reconsideration of that decision; and 2) dismissing his related state-law claims.

After our own careful review of the record and the submissions of the parties, we affirm. We agree with the district court that appellant's claims of wrongful termination were time barred. See 29 U.S.C. §§ 626(d)(1)(B) (statutory deadline) & 633(b) (deadline "[i]n the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice"); see also Jorge v. Rumsfeld, 404 F.3d 556, 561 (1st Cir. 2005) (standard of review and general principles re ADEA claim dismissed as time-barred). We are unconvinced by appellant's contentions that the limitations period should be tolled or that appellant's untimely EEOC charge should be viewed as relating back to his submission of an undetailed inquiry on the EEOC's website. See generally Aly v. Mohegan Council, Boy Scouts of Am., 711 F.3d 34 (1st Cir. 2013) (discussing relevant relation-back principles). Appellant also has failed to demonstrate that the district court abused its discretion by denying his motion for reconsideration addressed to these

points. See Biltcliffe v. CitiMortgage, Inc., 772 F.3d 925, 930 (1st Cir. 2014) (court applies "deferential abuse of discretion standard" when reviewing denials of reconsideration).

On appeal, appellant has failed to demonstrate error as to the district court's conclusion that any failure-to-hire claim had not been properly exhausted. See 29 U.S.C. § 626(d) (statutory exhaustion requirement); Jorge, 404 F.3d at 561 (discussing § 626(d) exhaustion requirement); see also United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) (insufficiently developed claims are waived). Similarly, appellant has failed to demonstrate error as to the district court's conclusion that he failed to state a plausible claim of retaliation. See Pina v. Children's Place, 740 F.3d 785, 800-01 (1st Cir. 2014) (discussing elements of an actionable retaliation claim in the context of a racial-discrimination case).

To the extent appellant challenges the district court's dismissal of his claims under state law, we discern no error or abuse of discretion. We read the district court's memoranda and orders as dismissing the state-law claims without prejudice upon the conclusions that the claims should not be discretionarily entertained pursuant to 28 U.S.C. § 1367(c) and that the district court lacked diversity jurisdiction over the state-law claims under 28 U.S.C. § 1332 because appellant had failed to allege facts sufficient to establish the requisite amount in controversy. On appeal, appellant has failed to demonstrate an abuse of discretion as to the former conclusion or legal error as to the latter conclusion. See Roche v. John Hancock Mut. Life Ins. Co., 81 F.3d 249, 256-57 (1st Cir. 1996) ("In a federal-question case, the termination of the foundational federal claim does not divest the district court of power to exercise supplemental jurisdiction but, rather, sets the stage for an exercise of the court's informed discretion.") (applying 28 U.S.C. § 1367(c)); see also Ins. Brokers W., Inc. v. Liquid Outcome, LLC, 874 F.3d 294, 297 (1st Cir. 2017) (reviewing de novo question "whether the amount-in-controversy requirement is met").

The judgment of the district court is summarily affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc:

J. David Golub
Harry T. Daniels
Carolyn Marcotte Crowley