

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D26425  
H/hu

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Submitted - February 8, 2010

WILLIAM F. MASTRO, J.P.  
THOMAS A. DICKERSON  
ARIEL E. BELEN  
SHERI S. ROMAN, JJ.

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2009-01659

DECISION & ORDER

Glenda A. Michno, appellant, v New York Hospital  
Medical Center of Queens, respondent.

(Index No. 20695/01)

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Simon, Eisenberg & Baum LLP, New York, N.Y. (Sheldon Karasik of counsel), for  
appellant.

Mintz Levin Cohn Ferris Glovsky & Popeo, P.C., New York, N.Y. (James R. Hays  
of counsel), for respondent.

In an action to recover damages for discrimination in employment on the basis of race  
and national origin in violation of Executive Law § 296, the plaintiff appeals from an order of the  
Supreme Court, Queens County (Weiss, J.), entered October 30, 2008, which, inter alia, granted the  
defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

To establish entitlement to summary judgment in a case alleging discrimination, the  
“defendants must demonstrate either plaintiff's failure to establish every element of intentional  
discrimination, or, having offered legitimate, nondiscriminatory reasons for their challenged actions,  
the absence of a material issue of fact as to whether their explanations were pretextual” (*Forrest v  
Jewish Guild for the Blind*, 3 NY3d 295, 305; see *Apiado v North Shore Univ. Hosp. [At Syosset]*,  
66 AD3d 929; *Balsamo v Savin Corp.*, 61 AD3d 622; *DeFrancis v North Shore Plainview Hosp.*,  
52 AD3d 562; *Morse v Cowtan & Tout, Inc.*, 41 AD3d 563). The defendant established its  
entitlement to judgment as a matter of law by demonstrating that the plaintiff was discharged for a

March 9, 2010

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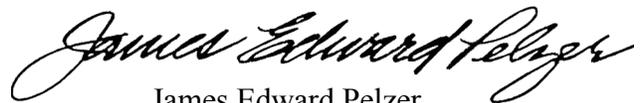
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legitimate nondiscriminatory reason consisting of her unexcused absence from work for more than three weeks for an alleged illness without proper medical documentation or application for a leave of absence, which was in violation of hospital policy and was a ground for dismissal (*see generally Forrest v Jewish Guild for the Blind*, 3 NY3d at 308). In opposition, the plaintiff failed to raise a triable issue of fact as to whether the defendant's explanation for her termination was false or unworthy of belief, or was a pretext for discrimination (*see id.*; *Apiado v North Shore Univ. Hosp. [At Syosset]*, 66 AD3d 929; *DeFrancis v North Shore Plainview Hosp.*, 52 AD3d 562; *Morse v Cowtan & Tout, Inc.*, 41 AD3d 563). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

The plaintiff's remaining contentions either are without merit or need not be reached in light of our determination.

MASTRO, J.P., DICKERSON, BELEN and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court