

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

D27552  
G/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - April 27, 2010

WILLIAM F. MASTRO, J.P.  
HOWARD MILLER  
JOHN M. LEVENTHAL  
ARIEL E. BELEN, JJ.

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2009-04239

DECISION & ORDER

Mila Lerner, et al., appellants, v Astoria Federal  
Savings and Loan Association, respondent.

(Index No. 26933/06)

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Steven A. Morelli, Carle Place, N.Y., for appellants.

Jackson Lewis LLP, Melville, N.Y. (Mark S. Mancher and Ana C. Shields of  
counsel), for respondent.

In an action, inter alia, to recover damages for discrimination in employment on the basis of national origin in violation of Executive Law § 296 and the Administrative Code of the City of New York § 8-107, the plaintiffs appeal from an order of the Supreme Court, Kings County (Schmidt, J.), dated March 17, 2009, which 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 defendant "must demonstrate either plaintiff's failure to establish every element of intentional discrimination, or, having offered legitimate, nondiscriminatory reasons for its 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 *Michno v New York Hosp. Med. Ctr. of Queens*, 71 AD3d 746; *Balsamo v Savin Corp.*, 61 AD3d 622; *DelPapa v Queensborough Community Coll.*, 27 AD3d 614).

May 25, 2010

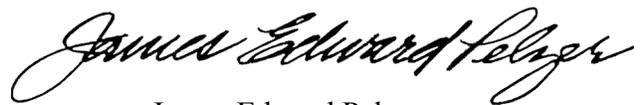
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Here, the defendant established, prima facie, that it issued reprimands to the plaintiffs and transferred them to different branches for legitimate nondiscriminatory reasons. In response, the plaintiffs failed to raise a triable issue of fact as to whether the actions taken by the defendant occurred under circumstances giving rise to an inference of discrimination or as to whether the defendant's motive was pretextual (see *Forrest v Jewish Guild for the Blind*, 3 NY3d at 306-308; *Michno v New York Hosp. Med. Ctr. of Queens*, 71 AD3d 746; *DeFrancis v North Shore Plainview Hosp.*, 52 AD3d 562; *Cesar v Highland Care Ctr., Inc.*, 37 AD3d 393). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

MASTRO, J.P., MILLER, LEVENTHAL and BELEN, 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