

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

D33072  
W/prt

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Argued - October 25, 2011

REINALDO E. RIVERA, J.P.  
DANIEL D. ANGIOLILLO  
ARIEL E. BELEN  
SHERI S. ROMAN, JJ.

2010-06211  
2011-00847  
2011-03392

DECISION & ORDER

Jason Cohen, et al., respondents, v National Grid  
USA, et al., appellants.

(Index No. 18536/08)

McCarter & English, LLP, New York, N.Y. (Patrick M. Collins of counsel), for  
appellants.

Meyer, Suozzi, English & Klein, P.C., Garden City, N.Y. (Erica B. Garay and Lynn  
M. Brown of counsel), for respondents.

In an action, inter alia, to recover damages for breach of contract, the defendants appeal (1), as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Warshawsky, J.), entered June 8, 2010, as granted that branch of the plaintiffs' motion which was for summary judgment on the first and second causes of action, (2), as limited by their brief, from so much of an amended order of the same court entered December 15, 2010, as denied that branch of their motion which was for leave to renew their opposition to that branch of the plaintiffs' motion which was for summary judgment on the first and second causes of action, and (3) from an amended judgment of the same court entered March 22, 2011, which, upon the order and the amended order, is in favor of each plaintiff and against them.

ORDERED that the appeals from the order and the amended order are dismissed; and it is further,

November 29, 2011

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ORDERED that the amended judgment is reversed, on the law, that branch of the plaintiffs' motion which was for summary judgment on the first and second causes of action is denied, that branch of the defendants' motion which was for leave to renew is denied as academic, and the order and the amended order are modified accordingly; and it is further,

ORDERED that one bill of costs is awarded to the defendants.

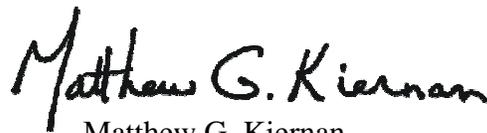
The appeals from the order and the amended order must be dismissed because the right of direct appeal therefrom terminated with the entry of the amended judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order and the amended order are brought up for review and have been considered on the appeal from the amended judgment (*see CPLR 5501[a][1]*).

The plaintiffs failed to establish their entitlement to judgment as a matter of law on the first and second causes of action, inter alia, to recover damages for breach of contract based on the defendants' failure to provide them with severance pay under a certain severance plan. The plaintiffs did not tender sufficient evidence demonstrating that the defendants had a regular practice of providing severance payments under the subject severance plan and that the plaintiffs had knowledge of such practice and relied on it in accepting or continuing their employment (*see Gallagher v Ashland Oil*, 183 AD2d 1033, 1034; *Smith v New York State Elec. & Gas Corp.*, 155 AD2d 850; *see also Bailey v New York Westchester Sq. Med. Ctr.*, 38 AD3d 119, 125; *Skarren v Household Fin. Corp.*, 296 AD2d 488, 490; *Hirschfeld v Institutional Inv.*, 260 AD2d 171, 172). Since the plaintiffs failed to meet their prima facie burden in connection with their motion for summary judgment, it is unnecessary to consider whether the papers submitted by the defendants in opposition were sufficient to raise a triable issue of fact (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

In light of our determination, we do not reach the parties' remaining contentions.

RIVERA, J.P., ANGIOLILLO, BELEN and ROMAN, JJ., concur.

ENTER:



Matthew G. Kiernan  
Clerk of the Court