

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

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_____AD3d_____

Argued - May 8, 2012

MARK C. DILLON, J.P.
RANDALL T. ENG
LEONARD B. AUSTIN
SANDRA L. SGROI, JJ.

2011-02577

DECISION & ORDER

Brian Clarke, appellant, v Arbor Care/ We Care,
respondent.

(Index No. 28585/08)

Brian Clarke, Brooklyn, N.Y., appellant pro se.

Hardin, Kundla, McKeon & Poletto, P.A., New York, N.Y. (Stephen J. Donahue of
counsel), for respondent.

In an action to recover damages for breach of contract and negligence, the plaintiff appeals from an order of the Supreme Court, Kings County (Vaughan, J.), dated January 26, 2011, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, without costs or disbursements.

Pursuant to an agreement between the defendant, a provider of vocational rehabilitation services to Social Services participants, and the New York City Human Resources Administration (hereinafter HRA), the HRA would refer to the defendant individuals seeking public assistance who claimed that they were unable to work due to medical or mental health conditions. In or around March 2008, the plaintiff, who allegedly suffered from back and Achilles tendon problems, was referred to the defendant and ultimately classified as "non-exempt but work limited," meaning that he was capable of performing sedentary work with intermittent rest periods. The plaintiff was assigned to work at St. Stephen's Outreach, but stayed for only one day. Thereafter, the plaintiff commenced this action alleging breach of contract and negligence. The Supreme Court granted the defendant's motion for summary judgment dismissing the complaint. The plaintiff appeals and we affirm.

June 13, 2012

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In support of its motion for summary judgment, the defendant submitted evidence sufficient to establish its prima facie entitlement to judgment as a matter of law. In opposition, the plaintiff failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint.

DILLON, J.P., ENG, AUSTIN and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court