

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

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_____AD3d_____

Argued - December 16, 2025

BETSY BARROS, J.P.
LARA J. GENOVESI
LOURDES M. VENTURA
ELENA GOLDBERG VELAZQUEZ, JJ.

2024-11834

DECISION & ORDER

Richard Ulysse, respondent, v State of New York,
et al., appellants.

(Index No. 720213/19)

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, Albany, NY (Christopher A. Priore of counsel), for appellants.

In an action, inter alia, to recover damages for employment discrimination on the basis of disability in violation of the New York State Human Rights Law, the defendants appeal from an order of the Supreme Court, Queens County (Cassandra A. Johnson, J.), dated May 7, 2024. The order denied the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendants' motion for summary judgment dismissing the complaint is granted.

In 2019, the plaintiff, a former employee of the defendant New York State Department of Corrections and Community Supervision (hereinafter DOCCS), commenced this action, alleging, inter alia, that the defendants discriminated against him on the basis of disability by failing to provide a reasonable accommodation in the form of light duty and retaliated against him for filing a grievance concerning alleged wrongful termination due to his medical issues, all in violation of the New York State Human Rights Law (NYSHRL) (Executive Law § 296). Following discovery, the defendants moved for summary judgment dismissing the complaint. In an order dated May 7, 2024, the Supreme Court denied the defendants' motion. The defendants appeal.

“The NYSHRL forbids employment discrimination on the basis of an employee’s disability” (*Alvarez v New York City Tr. Auth.*, 230 AD3d 541, 542 [alterations and internal quotation marks omitted]; see *Jacobsen v New York City Health & Hosp. Corp.*, 22 NY3d 824, 833-

834). Under the NYSHRL, “if a reasonable accommodation would permit the employee to perform the essential functions of the employee’s position, the employee has a disability within the meaning of the statute, and the employer cannot disadvantage the employee based on that disability” (*Alvarez v New York City Tr. Auth.*, 230 AD3d at 542 [internal quotation marks omitted]; see *Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d at 834). “A plaintiff alleging discrimination in violation of NYSHRL must establish that (1) he or she is a member of a protected class, (2) he or she was qualified to hold the position, (3) he or she suffered an adverse employment action, and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination” (*Reichman v City of New York*, 179 AD3d 1115, 1116-1117; see *Bilitch v New York City Health & Hosp. Corp.*, 194 AD3d 999, 1001). “To prevail on a summary judgment motion in an action alleging discrimination in violation of NYSHRL, a defendant must demonstrate either the plaintiff’s failure to establish every element of intentional discrimination, or, having offered legitimate, nondiscriminatory reasons for the challenged actions, the absence of a triable issue of fact as to whether the explanations were pretextual” (*Reichman v City of New York*, 179 AD3d at 1117 [internal quotation marks omitted]; see *Bilitch v New York City Health & Hosp. Corp.*, 194 AD3d at 1001). Here, the defendants established their prima facie entitlement to judgment as a matter of law dismissing the cause of action to recover damages for employment discrimination under the NYSHRL by showing that they had a legitimate, nondiscriminatory reason for terminating the plaintiff’s employment and that there were no triable issues of fact as to whether their explanation for the termination was pretextual (see *Andaya v Atlas Air, Inc.*, 146 AD3d 740, 741; *Thide v New York State Dept. of Transp.*, 27 AD3d 452, 453). Specifically, the defendants presented evidence that, according to the plaintiff’s medical records, he was 66.67% disabled and that the plaintiff’s employment was terminated in accordance with a policy that required that “[a]n employee requesting to return to work light duty or be placed on must be less than 50% disabled” (see *Singh v Covenant Aviation Sec., LLC*, 131 AD3d 1158, 1159). In opposition to the motion, the plaintiff failed to raise a triable issue of fact as to whether the reason proffered by the defendants was merely pretextual (see *Bilitch v New York City Health & Hosps. Corp.*, 194 AD3d at 1002; *Furfero v St. John’s Univ.*, 94 AD3d 695, 698). Accordingly, the Supreme Court should have granted that branch of the defendants’ motion which was for summary judgment dismissing the cause of action alleging discrimination under the NYSHRL.

Moreover, the Supreme Court should have granted that branch of the defendants’ motion which was for summary judgment dismissing the cause of action alleging retaliation. To make a prima facie showing of retaliation under the NYSHRL, a “plaintiff must show that (1) she or he has engaged in protected activity, (2) her or his employer was aware that she or he participated in such activity, (3) she or he suffered an adverse employment action based upon her or his activity, and (4) there is a causal connection between the protected activity and the adverse action” (*Niemotko v Mount St. Mary Coll.*, 241 AD3d 701, 703 [alterations and internal quotation marks omitted]; see *Makharadze v Ognibene*, 239 AD3d 844, 846-847). “An employee engages in a ‘protected activity’ by ‘opposing or complaining about unlawful discrimination’” (*Diluglio v Liberty Mut. Group, Inc.*, 230 AD3d 643, 645, quoting *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 313). To establish its entitlement to summary judgment in an unlawful retaliation case under the NYSHRL, “a defendant must demonstrate that the plaintiff cannot make out a prima facie claim of retaliation or, having offered legitimate, nonretaliatory reasons for the challenged actions, that there exists no triable issue of fact as to whether the defendant’s explanations were pretextual” (*Niemotko v Mount*

St. Mary Coll., 241 AD3d at 703 [internal quotation marks omitted]; *see Diluglio v Liberty Mut. Group, Inc.*, 230 AD3d at 645). Here, the defendants also established their prima facie entitlement to judgment as a matter of law dismissing the cause of action alleging retaliation by submitting evidence that the plaintiff's employment was terminated for legitimate, nonretaliatory reasons (*see Andaya v Atlas Air, Inc.*, 146 AD3d at 741; *Thide v New York State Dept. of Transp.*, 27 AD3d at 454). In opposition, the plaintiff failed to raise a triable issue of fact.

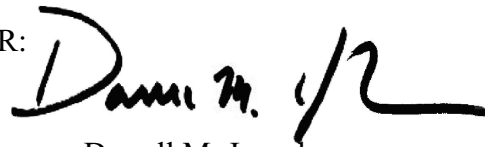
Lastly, the defendants established that providing the plaintiff with an accommodation would impose an undue hardship on them because it would require the defendants to violate their internal policies and procedures that require "an employee requesting to return to work light duty or be placed on must be less than 50% disabled" (*see Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d at 835; *see generally Walrond v New York City Health & Hosps. Corp.*, 240 AD3d 933, 935). In opposition, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

Accordingly, the Supreme Court should have granted the defendants' motion for summary judgment dismissing the complaint.

The defendants' remaining contentions need not be reached in light of our determination.

BARROS, J.P., GENOVESI, VENTURA and GOLDBERG VELAZQUEZ, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Darrell M. Joseph", followed by a long horizontal flourish.

Darrell M. Joseph
Clerk of the Court