

<b>Castro v New York University</b>
2003 NY Slip Op 30058(U)
August 21, 2003
Supreme Court, New York County
Docket Number:
Judge: Rosalyn H. Richter
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Rosalyn Richter  
Justice

PART 24

0110024/2000

CASTRO, LUDWIG  
VS  
NEW YORK UNIVERSITY

SEQ 3

DISMISS ACTION

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

826

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

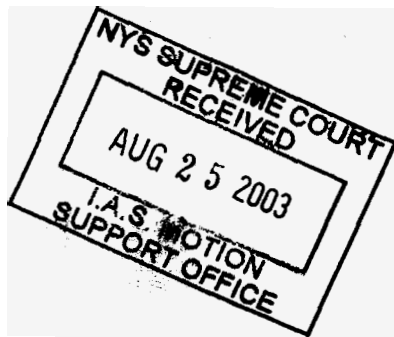
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE  
WITH THE ATTACHED MEMORANDUM DECISION.**



MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 8/21/03

Rosalyn Richter  
HON. ROSALYN RICHTER, J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

*MDA*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 24

-----X  
LUDWIG CASTRO,

Plaintiff,

-against-

NEW YORK UNIVERSITY and  
JULES MARTIN,

Defendants.

..... X  
Justice Rosalyn Richter:

DECISION and ORDER

Index No. 110024/00  
Sequence No. 3

Plaintiff Ludwig Castro (“Castro”), a former Sergeant who is Hispanic, commenced this action against defendants New York University (“NYU”) and Jules A. Martin (“Martin”), plaintiffs former supervisor and Asst. Vice President for Protection Services, alleging national origin discrimination under N.Y. Executive Law § 296 and N.Y. Administrative Code § 8-107. Castro’s complaint alleges that he was subjected to different terms and conditions of employment on the grounds of his race. Further, Castro alleges that other Hispanic employees in the Protection Department have also been subjected to discriminatory treatment as a result of Martin’s preferential hiring and promotion of African Americans at the expense of others with better qualifications. Defendants New York University (“NYU”) and Jules Martin (“Martin”), Assistant Vice President for Protection, bring this motion for summary judgment to dismiss plaintiffs claim on the grounds that Castro was demoted for nondiscriminatory reasons related to his work performance.

To support a prima facie case of race discrimination under the Human Rights Law, a plaintiff must demonstrate that: (1) he is a member of a class protected by the statute; (2) he was qualified for the position; (3) he suffered an adverse employment action; and (4) this occurred under circumstances giving rise to an inference of discrimination. *See McDonnell Douglas*, 411 U.S. 792 (1973); *Brennan v. Metro. Opera Ass’n*, 284 A.D.2d 66 (1st Dept. 2001). The plaintiffs initial burden to establish a prima facie case is a minimal one. *Graham v. Long Island Rail Road*, 230 F.3d 23 (2d Cir. 2000).

Thereafter, the burden then shifts to the defendants to rebut the presumption of discrimination by setting forth legitimate nondiscriminatory reasons to support its employment decision. *Miller Brewing Co. v. State Div. of Human Rights*, 66 N.Y.2d 937 (1985). Once a defendant demonstrates that it had a nondiscriminatory reason for the questioned conduct, the burden is shifted back to plaintiff to raise an issue of fact as to whether the defendant's proffered reason were a pretext for discrimination. *Sommerville v. R. C.I.*, 257 A.D.2d 884 (3d Dept. 1999); *see also, Sculerati v. New York Univ.*, 2003 **NY** Slip Op50928U (Sup. Ct. N.Y. Co., May 16, 2003).

In this case, the parties agree that Castro is Hispanic and that he was demoted. However, the parties disagree over whether Castro was still qualified for the Sergeant position at the time of his demotion and whether his demotion took place under circumstances giving rise to an inference of discrimination. Castro alleges that he was demoted from Sergeant to Security Officer as a result of an incident that occurred on October 17, 1999, while other non-Hispanic supervisory staff on duty did not receive such harsh punishment. According to Castro, on October 17 Security Officer Betty Norris ("Norris") appeared at 11:15 p.m. and informed Castro that she needed to park her car before assuming her security post at Bobst Library. Castro alleges that the Department became busy and that he and *Sgt.* John Gray were left alone to handle numerous calls that came in. Castro states that he radioed Norris at 2:00 a.m., and again at 2:08 a.m. and received no response. At 5 a.m. it was determined that Norris never arrived at her post, and Castro informed Lieut. Gedzinsky, who then attempted to find Norris.

On November 10 an investigation was conducted regarding the late discovery of Norris's absence on October 17, and Assistant Directors Robert Hughes and Craig Griffin subsequently issued a report recommending that Castro be demoted. The report indicated that Castro: (1) failed to follow-up when Norris did not respond to radio transmissions; (2) made two false entries in the command log confirming all officers were on post and accounted for; and (3) failed to notify the tour supervisor when Norris did not respond to radio transmissions. Castro alleges that his punishment far exceeded those

who were also responsible. According to Castro, Lieut. Gedzinsky, who is white, was only issued a warning letter even though he was in charge that night and therefore was responsible for checking if everyone punched in. *Sgt.* Gray, who is African American, received no punishment was even though he was responsible for entering the communications checks into the computer. Norris, who is African American, was suspended for ten days without pay.

In support of their motion for summary judgment, defendants argue that Castro was demoted because he failed to follow procedures after Norris did not respond to repeated radio and beeper requests and for falsifying command log entries. Defendants cite to Castro's disciplinary hearing report for this incident, which indicated that Castro admitted to all of the allegations. In support of their motion, defendants also submitted affidavits from Kieselmontas, a Training Manager, and Tunji Adenji, Assistant Director of Operations, which stated that Castro's security breach would have warranted the termination of his employment because Castro jeopardized the safety of Norris and the library patrons. According to defendants, Castro received his demotion because he had a prior disciplinary record of verbal and written warnings, which Lt. Gedzinsky and *Sgt.* Gray did not have. Defendants argue that Lt. Gedzinsky received a warning because he was not directly responsible for Norris that night, and that *Sgt.* Gray was not disciplined because he would not have known she was missing but for Castro alerting him of that fact. Moreover, defendants attach the affidavits of David Badillo, a Sergeant who is Puerto Rican, Lourdes LeBron, an administrative aide who is Puerto Rican, and of Oscar Pimiento, a Security Officer who is Columbian, which state that defendant Martin has never discriminated against them because of their national origin.

The Court finds that the defendants have satisfied their burden in showing a legitimate, nondiscriminatory reason for demoting Castro. The burden then shifts back to the plaintiff to raise an issue of fact as to whether the proffered reason is a pretext for illegal discrimination. *See Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253; *McDonnell Douglas Corp.*, 411 U.S. at 804;

*Wozniak v. Components Assembly Div.*, 220 A.D.2d 934 (3d Dept. 1995).

Plaintiff contends that he was treated more harshly than Lt. Gedzinsky and Sgt. Gray because he is Hispanic. He submits the affidavits of Errol Hannah, a Security Officer, Michael Pidoto, a Security Officer and President of Local 1 Security Officers Union, Peter Cistull, a Security Officer and Vice President of Local 1, and Mark Fischetti, a Security Officer, who all state that they believe Castro was unfairly treated because he is Hispanic and because Martin, who is African American, favored African Americans. Errol Hannah, who has worked with both Castro and Security Officer Norris, said that he believed that it was discriminatory for Castro to be the only person disciplined and that Security Officer Norris, who is African American, has committed numerous infractions in the past and was never subjected to even handed discipline. Hannah also stated that Castro is well qualified for the Sergeant position and that he believed that Martin disproportionately hired and promoted African Americans. Castro also cites to the affidavit of Sergeant Evelyn Marrero, who stated that since becoming a Sergeant in 1989 she has been a victim of discrimination by Martin because she is Hispanic and has received harsher penalties than her non-Hispanic colleagues.

Further, Castro argues that his demotion came at a time when defendant Martin had increased the hiring and promotion of African Americans who had less experience and seniority than non-African Americans. He refers to the affidavit of Michael Pidoto, a security officer and President of Local 1 Security Officers Union, who states that he investigated the hiring and promotion practices of defendant Martin at the request of white officers and found that African Americans were being hired and promoted above non-African Americans with more experience and seniority. In addition, Mark Fischetti, a Security Officer, states that he applied for a promotion to Special Events Sergeant and was told by Martin that the position was a lateral promotion which also required a college degree. Fischetti states that the last three Special Events Sergeants had been Security Officers, and that the individual who was promoted was African American and did not have a college degree.

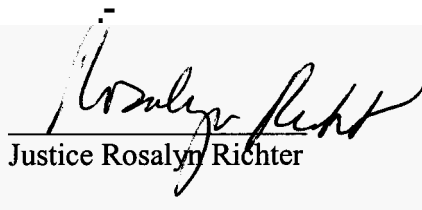
Here, plaintiff has raised an issue of fact as to whether defendants discriminated against him based on his race by demonstrating that defendants treated Castro less favorably than Sgt. Gray, who was a similarly situated employee outside his protected group. *See Graham v. Long Island Railroad*, 230 F.3d at 34; *Nowille v. Staten Island Univ. Hosp.*, 196 F.3d 89 (2d Cir. 1999) (in order for employees to be similarly situated they must “have been subject to the same standards governing performance evaluation and discipline, and must have engaged in conduct similar to the plaintiffs”). The affidavits provided by the plaintiff to support his position create issues as to the reason for Castro’s demotion and also indicate a possible pattern of discrimination by Martin against officers who are not African American. Although these affidavits conflict with those provided by the defendants, summary judgment is a drastic remedy and should not be granted when triable issues of fact have been raised. *Mason v. Dupont Direct Financial Holdings, Inc.*, 302 A.D.2d 260 (1st Dept. 2003).

In his opposition papers plaintiff additionally asserts that defendant Martin is liable for aiding and abetting discrimination under Executive Law § 296(1). The Court declines to address plaintiff’s alternative theory, since defendants’ summary judgment motion is being denied with respect to their direct liability alleged in the complaint. Accordingly, it is

ORDERED that defendants’ motion for summary judgment is denied.

This constitutes the order and decision of the Court.

August 21, 2003



Justice Rosalyn Richter