

**Odeh v Brown Harris Stevens Residential
Mgt., LLC**

2008 NY Slip Op 30050(U)

January 7, 2008

Supreme Court, New York County

Docket Number: 0119173/2006

Judge: Doris Ling-Cohan

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. Boris Ling-Cohan

PART 36

Index Number : 119173/2006

ODEH, DAFER

INDEX NO. _____

vs

BROWN HARRIS STEVENS

MOTION DATE _____

Sequence Number : 001

MOTION SEQ. NO. _____

DISMISS ACTION

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for stay, dismissal & arbitration

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... <u>7 Mem</u>	<u>1, 2, 3, 4</u>
Answering Affidavits — Exhibits <u>Mem</u>	<u>5</u>
Replying Affidavits <u>Mem</u>	<u>6</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is granted in accordance with the attached memorandum decision.

FILED
JAN 11 2008
NEW YORK
COUNTY CLERK'S OFFICE

HON. BORIS LING-COHAN

Dated: 1/7/08

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 36

-----X
DAFER ODEH,

Plaintiff,

-against-

Index No. 119173/06

BROWN HARRIS STEVENS RESIDENTIAL
MANAGEMENT, LLC,

Motion Seq: 001

Defendant.

FILED
JAN 11 2008
NEW YORK
COUNTY CLERK'S OFFICE

Doris Ling-Cohan, J.:

Defendant Brown Harris Stevens Residential Management, LLC moves to stay this action and to compel arbitration, or, in the alternative, to dismiss this action in its entirety or to compel joinder of an indispensable party, pursuant to CPLR 1001 (a), 3211 (a) (1), 3211 (a) (7), and 3211 (a) (10).

Plaintiff Dafer Odeh alleges that, from November 2004 to October 2005, he was employed as a doorman or concierge by Brown Harris on behalf of nonparty West Perry Condominium. Brown Harris is West Perry's managing agent for its two residential buildings located at 173-176 Perry Street in Manhattan. Odeh alleges that, while on duty, he witnessed conduct demonstrating sexual harassment of Aida Melesse, a female doorperson, by a male co-worker. Odeh further alleges that, in retaliation for his support of the female co-worker's sexual harassment action against Brown Harris and West Perry (see Melesse v Brown Harris Stevens Residential Mgt., LLC & West Perry

Condominium, Sup Ct, NY County, Braun, J., Index No. 101052/06), Brown Harris improperly revoked both a promotion to head concierge and a pay raise that had been promised to him, denied him permission to change his shift and to use accrued vacation time, and then terminated his employment

On these factual allegations, Odeh asserts claims in the complaint for retaliation in violation of the Human Rights Laws of this State and New York City (see Executive Law §§ 296, et seq.; Administrative Code of the City of New York §§ 8-101, et seq.), making it illegal to retaliate against an employee for opposing discriminatory practices. Odeh seeks to recover \$1 million in wages and benefits and \$1 million in punitive, liquidated, and compensatory damages for pain and suffering, anxiety, humiliation, physical injury, and emotional distress, together with interest and attorneys' fees, costs and disbursements.

Brown Harris now seeks to compel arbitration of Odeh's claims on the ground that the terms and conditions of Odeh's employment are governed by a mandatory arbitration provision set forth in a 2003 apartment building agreement. Brown Harris and West Perry consent to arbitration of this dispute (see Felice B. Ekelman, Esq., Mar. 11, 2007, Aff., ¶¶ 3, 4).

In opposition, Odeh contends that the arbitration provision is not binding on him or Brown Harris because neither of them signed the agreement and because West Perry is not Odeh's employer and is only peripherally involved in the circumstances underlying this dispute.

The apartment building agreement cited by Brown Harris is a collective bargaining agreement (CBA), in effect from April 21, 2003 to April 20, 2006, that was negotiated by the Realty Advisory Board on Labor Relations Inc. and the Service Employees International Union, Local 32BJ, AFL-CIO (the Union). The CBA expressly provides that union member claims of violations of the State and City Human Rights Laws are subject to mandatory arbitration (see CBA Art. XIX ¶ 23, citing CBA Arts. VII, VIII).

The subject CBA provision requiring mandatory arbitration of employment discrimination and harassment claims is enforceable. Collective bargaining agreements are contracts entailing transaction in commerce and, therefore, are governed by the Federal Arbitration Act (FAA) (Fletcher v Kidder, Peabody & Co., 81 NY2d 623, cert denied 510 US 993 [1993]; Lewandoski v Collins Bldg. Servs., Sup Ct, NY County, Dec. 6, 2006, Gruner Gans, J., Index No. 104657/2000 [Exh. E, Affidavit of Ekelman]; see 9 USC §§ 1, et seq.). The FAA provides that a party seeking to compel arbitration must establish that an arbitration agreement exists, that the dispute falls within the scope of the agreement, and that the dispute does not involve the making of the agreement or the failure to comply with it (Lewandoski v Collins Bldg. Servs., supra; FAA § 4).

Further, a union-negotiated mandatory arbitration provision that specifically references the waiver of an employee's right to a judicial forum to pursue the employee's statutory employment discrimination or harassment claims is enforceable (Sum v Tishman Speyer Props., Inc., 37 AD3d 284 [1st Dept 2007]; Garcia v Bellmarc Prop. Mgt., 295

AD2d 233 [1st Dept 2002]; Lewandoski v Collins Bldg. Servs., supra [same]). " '[B]y agreeing to arbitrate a statutory claim, a party does not forego the substantive rights afforded by the statute; it only, submits [the claim] for resolution in an arbitral, rather than a judicial, forum...' " (Garcia v Bellmarc Prop. Mgt., 295 AD2d at 234, quoting Circuit City Stores, Inc. v Adams, 532 US 105, 123 [2001]). Therefore, if, as Brown Harris urges, Odeh's claims are governed by the CBA, then they must be resolved in an arbitration proceeding, rather than in a court of law.

Odeh's claims fall within the scope of the CBA arbitration provision, as do the claims asserted by Melesse, Odeh's co-worker, (see Melesse v Brown Harris Stevens Residential Mgt., LLC, Sup Ct, NY County, Nov. 21, 2006, Braun, J., Index No. 101052/06 [Exh C, Affidavit of Ekelman] [holding that the CBA mandatory arbitration provision required arbitration of plaintiff's claims and a stay of the action]). Odeh does not dispute that he was a member of the Union during the relevant time period or that he was employed as a doorman at West Perry's building located at 173 Perry Street while the CBA was in effect. Odeh does not dispute that West Perry is a signatory of the CBA. The court notes that the letter advising Odeh of the termination of his employment indicates that Brown Harris sent copies to West Perry, the Realty Advisory Board on Labor Relations, and the Union.

Contrary to Odeh's contention, the objective record and Odeh's own admissions conclusively demonstrate that Odeh was employed by West Perry. Odeh admits that,

when he applied for the position of concierge at the West Perry building, he was interviewed initially by a Brown Harris employee and then by a West Perry employee (see Dafer Odeh, June 15, 2007 Aff., ¶ 5). Odeh also admits in the complaint that he was employed by Brown Harris "on behalf of . . . West Perry" (Complaint, ¶ 3). Odeh's form W-2 wage and tax statement for 2005 lists West Perry as Odeh's employer and Brown Harris as West Perry's agent [see Exh. B, Plaintiff's Memo in Opposition]. Odeh's pay stub similarly lists West Perry as Odeh's employer and Brown Harris as West Perry's agent [see id.]. The October 3, 2005 letter advising Odeh of the termination of his employment, while printed on Brown Harris letterhead paper, is signed by Brown Harris as agent for West Perry and identifies the position being terminated as Odeh's position with West Perry [see id.].

Moreover, Odeh's admissions demonstrate that he reported to, and was supervised by, a West Perry employee. Odeh indicates that nonparty Jose Alvarez was employed by West Perry as superintendent of the West Perry building (see Pl. Memo in Opp., at 4). In the complaint, Odeh admits that Alvarez was his direct supervisor, that Alvarez offered to promote Odeh to the supervisory position of head concierge, and that Odeh contacted Alvarez to complain when the promotion was given to another employee (see Complaint, ¶¶ 5, 10). Odeh also admits that he contacted Alvarez to request a different work shift and to request permission to use his accrued vacation time, and that, when a Brown Harris employee wished to speak privately with Odeh, she requested permission from Alvarez

(see id., ¶¶ 11, 12, 13). Odeh admits that it was Alvarez who questioned him about taking some nuts from a jar in a restaurant in the building (see id., ¶ 15).

Based upon the above, the CBA arbitration provision is enforceable, and Odeh's claims are subject to such provision; that branch of the motion to stay this action and to compel arbitration is granted. Having found that Odeh's claims must be resolved in an arbitration proceeding and may not be resolved in a court of law, this court need not reach the remaining branches of Brown Harris's motion to dismiss this action or compel joinder of West Perry, as an indispensable party.


Accordingly, it is

ORDERED that the motion is granted to the extent that plaintiff Dafer Odeh is directed to proceed to arbitration and this case is dismissed. This dismissal is without prejudice to plaintiff's right to bring a new proceeding, should it be warranted, upon completion of arbitration.

HON. DORIS LING-COHAN

Dated: January 7, 2008

FILED
JAN 11 2008
NEW YORK
COUNTY CLERK'S OFFICE



Hon. Doris Ling-Cohan, J.S.C.