

<b>Hoffman v Parade Publs.</b>
2008 NY Slip Op 31892(U)
July 2, 2008
Supreme Court, New York County
Docket Number: 0115851/2007
Judge: Martin Shulman
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PRESENT: **MARTIN SHULMAN**  
**J.S.C.**

PART 1

Index Number : 115851/2007 *Justice*

HOFFMAN, HOWARD

vs

PARADE PUBLICATIONS

Sequence Number : 001

DISMISS COMPLAINT

INDEX NO. 115851/07

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

MOTION SEQ. NO. 001

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

The following papers, numbered 1 to \_\_\_\_\_ s motion to/for \_\_\_\_\_

Notice of Motion/ ~~Order to Show Cause~~ — Affidavits — Exhibits A+B

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

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

PAPERS NUMBERED

1  
2

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in  
accordance with the attached decision and order.

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

**FILED**  
JUL 07 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: JUL - 2 2008

MARTIN SHULMAN *J.S.C.*

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 1

-----X  
HOWARD HOFFMAN,

Plaintiff,

Index No. 115851/2007

-against-

PARADE PUBLICATIONS, CONDE NAST  
PUBLICATIONS and ADVANCE PUBLICATIONS,  
INC.,

Defendants.

**FILED**  
JUL 07 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

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**Shulman, J.:**

In motion sequence 001, defendants Parade Publications ("Parade"), Conde Nast Publications and Advance Publications, Inc. (collectively "defendants") move, pursuant to CPLR 3211 (a) (2) and (7), to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim.

**Background**

Plaintiff Howard Hoffman ("Hoffman" or "plaintiff") brings this action to redress defendants' alleged unlawful discrimination against him by terminating his employment on the basis of age in violation of the New York State Human Rights Law (N.Y. Executive Law § 290, *et seq.*) ("NYSHRL") and the New York City Human Rights Law (N.Y.C. Administrative Code § 8-101, *et seq.*) ("NYCHRL").

On October 2, 2007, Randy Siegel, President and Publisher of Parade, called Hoffman as he was on an aircraft at the Atlanta, Georgia airport, and informed him that, due to economic concerns, Parade's Atlanta office, where Hoffman worked, would close at the year's end. Siegel allegedly told Hoffman that Parade was terminating his employment, and he would have to take an early retirement. As Hoffman and his

secretary were the only employees in Parade's Atlanta office, Siegel allegedly asked Hoffman to inform his secretary that the Atlanta office would be closing.

Hoffman worked for Parade for sixteen years. When Hoffman was terminated, he was a Managing Director in Parade's newspaper relations group. Hoffman was based in the Atlanta office, and his territory consisted of ten states, Florida, Georgia, Alabama, Mississippi, Louisiana, Texas, Oklahoma, New Mexico, Kansas and Colorado. Hoffman alleges that, although his office was in Atlanta, he would participate in weekly telephone conferences with Parade's New York office, would attend quarterly meetings in the New York office, and from "time to time" would travel to the New York office to discuss projects and other assignments.

Hoffman alleges that all of his work was monitored by his superiors in the New York office. His budget was created in the New York office, and all marketing and public relations activities were centered in New York. Further, all corporate contracts were negotiated through Parade's New York headquarters.

After Hoffman's termination, he met with Siegel at Parade's New York office on October 12, 2007. Hoffman alleges that, at this meeting, he explained to Siegel that he did not want to be forced into early retirement, and proposed that he work from home to cut costs. However, this proposal was later rejected by Parade's Chairman and the Chief Operating Officer.

Hoffman asserts that he was terminated because of his age, as at 62 years old, he was Parade's oldest manager in the newspaper relations group. Plaintiff argues that his termination on the basis of age is a violation of the NYCHRL and NYSHRL.

## Analysis

Defendants move to dismiss on the grounds that this court lacks subject matter jurisdiction. Defendants argue that, in order to have a viable claim under the NYCHRL or NYSHRL, over which this court has subject matter jurisdiction, the impact of defendants' conduct must be felt inside New York City or New York State, respectively. This court agrees.

In *Shah v Wilco Systems, Inc.*, 27 A.D.3d 169 (1<sup>st</sup> Dept 2005), the Appellate Division, First Department held that, when a non-resident seeks to invoke the coverage of the NYCHRL, he or she must establish that the impact of the discriminatory act was felt by the plaintiff in New York City. The First Department stated that, even if the termination decision had happened in New York City, the NYCHRL would not apply since the impact on the plaintiff occurred outside of New York City. Although Hoffman alleges that the decision to terminate him was made in New York City, it is not enough, because he did not allege that the impact of his termination was felt by him in New York. "The locus of the decision to terminate [plaintiff] is of no moment. What is significant is where the impact is felt." *Id.* at 176.

In support of his claims, Hoffman cites to New York Federal District Court decisions that only look to where the termination actually occurred. This court notes that there also are New York Federal District Court decisions that, like *Shah*, look to where the impact is felt. See *Lucas v Pathfinder's Pers., Inc.*, 2002 WL 986641 (SDNY 2002); *Wahlstrom v Metro-North Commuter R.R. Co.*, 89 F.Supp.2d 506, 527 (SDNY 2000). Nevertheless, this court follows the New York State Appellate Court's authority requiring a showing of impact.

Hoffman also alleges that he was discriminated against in violation of the NYSHRL. The two New York State court decisions that involve non-residents bringing claims under the NYSHRL do not address impact, because the plaintiffs failed to even allege that the discriminatory acts took place in New York. See *Iwankow v Mobil Corp.*, 150 AD2d 272 (1<sup>st</sup> Dept 1989); *Walston & Co., Inc. v New York City Comm. on Human Rights*, 41 AD2d 238 (1<sup>st</sup> Dept 1973).

Nevertheless, it is most logical that the same test that applies to a non-resident bringing a claim under the NYCHRL would apply to a non-resident bringing a claim under the NYSHRL. Both the City and State human rights laws do not provide a non-resident with a private cause of action for discriminatory conduct outside the City and State, respectively. See N.Y.C. Administrative Code § 8-101, *et seq.*; N.Y. Executive Law § 290, *et seq.* Therefore, the same test should apply for both.

Again, Hoffman's reliance on federal case law is not persuasive in light of the First Department's decision in *Shah*. Further, as with the NYCHRL cases, the federal court decisions involving the NYSHRL are mixed as to whether a non-resident plaintiff must sufficiently allege where the impact of the discriminatory conduct was felt in order for the court to have subject matter jurisdiction over his or her claims.

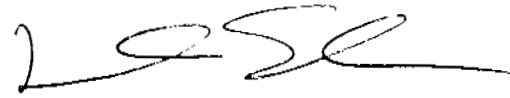
Accordingly, it is

ORDERED that defendants Parade Publications, Conde Nast Publications and Advance Publications' motion to dismiss is granted and the complaint is dismissed with costs and disbursements to defendants as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes this court's Decision and Order. Courtesy copies of this Decision and Order have been provided to counsel for the parties.

DATED: New York, New York  
July 2, 2008



HON. MARTIN SHULMAN, J.S.C.

**FILED**  
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COUNTY CLERK'S OFFICE  
NEW YORK