

**Alesandro v Elliman**

2010 NY Slip Op 33356(U)

December 2, 2010

Supreme Court, New York County

Docket Number: 109332/10

Judge: Eileen A. Rakower

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

HON. EILEEN A. RAKOWER

PRESENT:

PART 15

Index Number : 109332/2010

ALESANDRO, DANIEL

vs

PRUDENTIAL DOUGLAS ELLIMAN

Sequence Number : 003

DISM ACTION/ INCONVENIENT FORUM

INDEX NO.

109332/10

MOTION DATE

MOTION SEQ. NO.

003

MOTION CAL. NO.

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

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

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

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

PAPERS NUMBERED

1

2

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

FILED

DEC 06 2010

COUNTY CLERK'S OFFICE  
NEW YORK

MOTION IS DECIDED IN ACCORDANCE WITH  
THE ACCOMPANYING MEMORANDUM DECISION.

Dated:

12/2/10

*[Signature]*

HON. EILEEN A. RAKOWER

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: PART 15

-----X  
DANIEL ALESANDRO,

Plaintiff,

Index No.  
109332/10

Seq No.: 001 &  
003

- against -

Decision and  
Order

PRUDENTIAL DOUGLAS ELLIMAN, MICHELE  
GOLDEN, AKAM ASSOCIATES, INC. NANCY CHAS  
and WESTMORE OWNERS CORP.

Defendants.

**FILED**  
DEC 06 2010  
COUNTY CLERK'S OFFICE  
NEW YORK

-----X  
HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff brings this action for violation of both the New York City and New York State anti-discrimination laws. Specifically, plaintiff alleges that defendants discriminated against him based on his sexual orientation. Defendants Akam Associates, Inc. and Westmore Owners Corp. ("the Co-op") now move to dismiss pursuant to CPLR 3211(a)(1) & (a)(7). By separate motion, defendant Nancy Chas also moves to dismiss pursuant to CPLR 3211(a)(1) & (a)(7). Plaintiff opposes both motions. Previously, this Court issued an Order, dated November 23, 2010, dismissing the complaint as against defendants Prudential Douglas Elliman and Michele Golden.

In, or about, October 2009 plaintiff and his then domestic partner sought to lease the subject unit from its owner, defendant Nancy Chas ("Chas"). Prudential was employed by Chas to list the unit and find a subtenant for her. Golden worked as a realtor for Prudential. Westmore Owners Corp. ("Westmore") is the alleged "condominium corporation" and the owner of the subject building. Akam Associates, Inc. ("Akam") is the managing agent of the building.

As a prospective sub-tenant, plaintiff was required to fill out a form titled "Applicant Information for Lease." In the section titled "Housing History," for each former residence, there is a space provided to list "reason for leaving." Plaintiff listed his reason for leaving the last apartment he lived in as:

Landlord began a 2 year facade restoration involving jack hammering in front of [illegible] windows 3-4 days per week. Plus move in my Partner.

Plaintiff alleges that Golden reviewed the application and "informed Plaintiff that if he acknowledged his homosexual relationship with his co-applicant that his chances of being approved for the subject unit would be reduced." Plaintiff alleges that Prudential and Golden changed the reason for leaving to "bigger apartment." Plaintiff submits emails from Golden confirming these changes. Plaintiff also submits a copy of the revised application. Plaintiff's application was accepted and plaintiff alleges that "after moving into the subject unit Plaintiff and his domestic partner were repeatedly referred to as roommate/brothers by WESTMORE Staff even after explaining that they were in a romantic relationship."

The Co-op, in support of its motion, submits; the pleadings, a copy of the "Proprietary Lease;" and a copy of a document titled "Westmore Owners Corp. Certificate of Waiver Right of First Refusal of Sublease of Apartment." The Co-op asserts that it had no power to accept or reject a sub-lessor. Rather, it merely had the "Right of First Refusal," if a Tenant wanted to sub-lease his or her apartment. The only action it too regarding plaintiff's application was to waive its right to first refusal. Co-op argues that plaintiff fails to state a claim for housing discrimination under either New York State housing discrimination law or the New York City Administrative Code.

CPLR §3211 provides, in relevant part:

(a) a party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

(7) the pleading fails to state a cause of action.

New York State Executive Law §296(5)( a)(2) states, in relevant part:

(a) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:

(2) To discriminate against any person because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

The New York City Administrative Code mirrors the state statute almost exactly.

On a motion to dismiss under CPLR 3211(a)(7) "...the court's task is to determine only whether the facts as alleged, accepting them as true and according plaintiff every possible favorable inference, fit within any cognizable legal theory." (*Ladenburg Thalmann & Co., Inc. v. Tim's Amusements, Inc.*, 275 AD2d 243, 245[1st Dept. 2000]).

The discriminatory practice against the Co-op plaintiff alleges in his complaint is that "[a]fter moving into the subject unit Plaintiff and his domestic partner were repeatedly referred to as roommate/brothers by WESTMORE staff even after explaining that they were in a romantic relationship." As against Chas, plaintiff generally states that "[he] was told to hide his homosexuality by PDE and GOLDEN at the behest and insistence of WESTMORE, CHAS, and AKAM."

Even if the facts alleged are taken as true, as they must be on a motion to dismiss, plaintiff fails to allege that either the Co-op or Chas denied him housing or discriminated against him "because of [his] sexual orientation . . . in the terms, conditions or privileges of the . . . rental or lease of any . . . housing accommodation or in the furnishing of facilities or services in connection therewith."

Wherefore it is hereby

ORDERED that Akam Associates, Inc. and Westmore Owners Corp.'s motion

to dismiss is granted and the complaint is dismissed in its entirety as against said defendants; and it is further

ORDERED that Nancy Chas' motion to dismiss is granted and the complaint is dismissed in its entirety as against said defendant; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: December 2, 2010

  
\_\_\_\_\_  
EILEEN A. RAKOWER, J.S.C

**FILED**  
DEC 06 2010  
COUNTY CLERK'S OFFICE  
NEW YORK