SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. GERALD LEBOVITS **PART** IAS MOTION 7EFM

Justice

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DAVID FRIEDMAN,

Plaintiff,

- v -

HASON SEYUN, THE FARM ENTERPRISES LLC, SOHO WORKSPACES, INC., THE FARM 2 LLC, and THE FARM 3 LLC,

Defendants.

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INDEX NO. 651061/2019

MOTION DATE 10/23/2019

MOTION SEQ. NO. 002

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 1, 4, 5, 6, 7, 11, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion for DISMISSAL.

Bell Law PLLC, New York, NY (Henry Bell of counsel), for plaintiff.
Weinburg Zareh Malkin Price, LLP, New York, NY (Omid Zareh of counsel), for defendants.

Gerald Lebovits, J.:

This case arises out of a dispute over ownership of "The Farm," a shared work space in New York County currently operated by Soho Workspaces, Inc. Plaintiff, David Friedman, alleges that he and defendant Hason Seyhun formed an equal partnership to co-found and co-own the Farm (and other Farm-related entities) and that Seyhun improperly stripped him of his interest in the Farm entities.

Friedman has sued Seyhun, Soho Workspaces, and several Farm entities (collectively, "Seyhun"), seeking (i) a partnership accounting based on Friedman's (putative) status as Farm co-partner; in the alternative, (ii) breach of contract for assertedly unpaid wages and (iii) Labor Law violations for those same unpaid wages; and (iv) violations of the New York State and New York City Human Rights Laws for allegedly terminating Friedman on the basis of his race and national origin. Defendants move to dismiss under CPLR 3211 (a) (1) and (7). Defendants' motion to dismiss is granted.

I. Plaintiff's Cause of Action for an Accounting

Friedman's first cause of action seeks an accounting following the asserted dissolution of a partnership between Friedman and Seyhun. But the allegations of Friedman's complaint do not establish that he and Seyhun ever were partners, legally speaking.

The law does not require a written agreement to find a partnership or joint venture. (*Prince v O'Brien*, 234 AD2d 12, 12 [1st Dept 1996].) A party claiming a partnership, however, has the burden of proving its existence. (*Ramirez v Goldberg*, 82 AD2d 850, 852 [2d Dept 1981]. Friedman's complaint merely states in conclusory terms that he and Seyhun "agreed to be equal partners and co-found and co-own The Farm," and that they "operate[d] the Farm together as partners[,] splitting management and operating responsibilities," for several years. (NYSCEF No. 1, at ¶¶ 8, 19.) But Friedman does not allege the presence of standard indicia of a partnership, such as sharing of profits and losses and joint ownership of capital assets. (*See American Bus. Training Inc. v American Mgt. Assn.*, 50 AD3d 219, 225 [1st Dept 2008].) Indeed, he supplies no details or material terms of the supposed partnership agreement.

In opposing the motion to dismiss, Friedman relies on several emails to third parties in which Seyhun refers to Friedman as his "partner." But these emails do not establish that Friedman and Seyhun were partners in the *legal* sense of being shared equity owners in a business. Without more, merely "calling an organization a partnership does not make it one." (*Brodsky v Stadlen*, 138 AD2d 662, 663 [2d Dept 1988].)

Furthermore, Seyhun's name alone is on all corporate formation records, tax documents, and the leases for the work spaces on both Spring Street and Broadway. The documentation shows that Seyhun was the individual legally responsible for management and potential losses. (*See Ramirez*, 82 AD2d at 852 [noting partnership indicia].) Friedman argues that an IRS Form 1125-E for Soho Workspaces listed Seyhun only as a 50% owner of the company. (*See* NYSCEF No. 48.) But that fact, without more, does not show that *Friedman*, rather than some other individual, owned the other 50%.

Friedman's cause of action for a partnership accounting is dismissed. Friedman has not sufficiently alleged that he was a partner at all.

II. Plaintiff's Cause of Action for Breach of Contract

Friedman also asserts, in the alternative, that he had agreed to provide work to Seyhun in exchange for reasonable compensation and that Seyhun breached their contract by failing to pay Friedman properly. This cause of action is subject to dismissal as well, because Friedman fails to identify how Seyhun breached the relevant provisions of their contract—to the extent those can be discerned.

Friedman alleges, at most, that Seyhun agreed to pay him "reasonable wages" and that Seyhun did not do so. Friedman's complaint does not, however, give any reference point by which the parties (or this court) might define "reasonable wages"—nor how the wages Seyhun paid Friedman, if any, fell short of being "reasonable."[1] (*See* NYSCEF No. 1, at ¶ 25.) Friedman

[1] Friedman suggests that for these purposes the term "reasonable wage" is as capable of being determined objectively as the term "fair market value." (*See* NYSCEF No. 26, at 7 & n 32.) This court is skeptical of this suggestion—at least absent additional detail about the business and its market context. But even if Friedman were correct on this point, his failure to allege any facts

cannot build a claim for breach of contract on so flimsy a foundation. (*See Caniglia v Chicago Tribune-N.Y. News Syndicate*, 204 AD2d 233, 234 [1st Dept 1994] [affirming the dismissal of a breach of contract claim based on plaintiff's "failure to allege, in nonconclusory language, as required, the essential terms of the parties' purported personal services contract, including those specific provisions of the contract upon which liability is predicated," or the plaintiff's "rate of compensation"].)

III. Plaintiff's Cause of Action for Unpaid Wages

Friedman also asserts, again in the alternative, that Seyhun violated article 6 of the Labor Law by failing to pay him the wages he was owed under their agreement. As discussed above, though, Friedman has failed to allege even the amount of these supposed wages. More fundamentally, "to state a claim under article 6, a plaintiff must first demonstrate that he or she is an employee entitled to its protections," rather than an independent contractor. (*Bhanti v Brookhaven Memorial Hosp. Med. Ctr., Inc.*, 260 AD2d 334, 335 [2d Dept 1999].) The distinction between an employer-employee relationship and one involving independent contractors turns on whether the alleged employer "exercises either control over the results produced or over the means used to achieve the results." (*Id.*) Friedman's complaint does not allege that Seyhun exercised control over him in either respect. Friedman's Labor Law claim, too, is subject to dismissal.

IV. Plaintiff's Claims under the New York State and New York City Human Rights Laws

Finally, Friedman brings claims under the State and City Human Rights Laws, asserting that "Defendants terminated Plaintiff on the basis of race and/or national origin." (NYSCEF No. 1, at ¶¶ 32, 36.) But Friedman has simply failed to allege any facts at all to support these claims—not even what his race and national origin *are*. The bare, conclusory assertion that Friedman was fired on discriminatory grounds is not sufficient to withstand a CPLR 3211 motion to dismiss. (*See e.g. DuBois v Brookdale Univ. Hosp. & Med. Ctr.*, 29 AD3d 731, 732 [2d Dept 2006].) Friedman provides not a scintilla more.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss Friedman's complaint, pursuant to CPLR 3211, is granted, and the complaint is dismissed in its entirety, with costs and disbursements to defendants as taxed by the Clerk of the Court upon submission of an appropriate bill of costs; and it is further

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relating to Seyhun's asserted failure to pay Friedman "reasonable" wages is fatal to the breach-of-contract claim regardless.

ORDERED that defendants shall serve a copy of this order on Friedman and on the Office of the County Clerk, which is directed to enter judgment accordingly.

12/9/2019
DATE

GERALD LEBOVITS, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[x]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE