

**Casiano v City of New York**

2020 NY Slip Op 31480(U)

May 15, 2020

Supreme Court, New York County

Docket Number: 159344/2018

Judge: Laurence L. Love

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 62

Justice

-----X

MICHAEL CASIANO

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 159344/2018
MOTION DATE 03/12/2020
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for DISMISSAL

Upon the foregoing documents, the motion is decided as follows:

The following documents read on defendant, The City of New York's motion to dismiss, pursuant to CPLR 3211. Plaintiff Michael Casiano's complaint alleges violations of Executive Law §296 and New York City Administrative Code §§ 8-107(1)(a), 8-107(6), 8-107(7), 8-107(13); alleging discrimination based on his race and retaliation for complaining about said discrimination.

Michael Casiano is a male of self described Puerto Rican and Taino Indian ancestry. Plaintiff commenced employment with The New York City Department of Transportation in May 2005, as a Security Inspector at the Whitehall Ferry Terminal. Casiano was reassigned to the Staten Island Ferry Terminal in the summer of 2009. Plaintiff's new direct supervisor was Director of Security, Cousillas and the supervisor of the entire department was Executive Director of Safety and Security, Margaret Gordon.

Plaintiff's complaint, alleges that "[Casiano] has been subjected to numerous acts of discrimination as well as a hostile work environment due to his race."

Paragraph seventeen alleges that plaintiff was harassed by Cousillas when he was directed to “retrieve boxes from the store room to store files.” Paragraph eighteen alleges that “Cousillas would make repeated derogatory comments.” Paragraph nineteen states, “Casiano complained to Gordon about Cousillas’ behavior and his comments. Gordon advised Casiano that she would speak to Cousillas about the behavior and advised Casiano to put his complaint down in writing.” Paragraph twenty-two states, “[i]n June or July 2014, Cousillas hung a pair of slavery style shackles on the wall of the security office within Casiano’s view.” In paragraphs thirty-eight and thirty-nine of the complaint, plaintiff alleges “In February 2016, Casiano was served with numerous [c]harges and [s]pecifications alleging numerous serious violations. A Section 75 Hearing was conducted in connection with these charges on June 7, 2016. At the hearing, New York City Department of Transportation (“NYCDOT”) sought the extreme punishment of termination for Casiano’s alleged violations despite Casiano having no disciplinary history prior to the hearing. After the completion of the Section 75 hearing but prior to a decision being issued, Casiano was forced to resign from his position with the NYCDOT. Casiano was advised that he should resign, or risk being barred from any future employment with the City of New York.”

Executive Law § 296 states, “(1) [i]t shall be an unlawful discriminatory practice: a) for an employer or licensing agency, because of an individual’s age, race, creed, color, national origin, . . . , to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.”

New York City Administrative Code 8-107(1)(a). Unlawful discriminatory practices, states, “Employment. It shall be an unlawful discriminatory practice: For an employer . . . , because

of the actual or perceived age, race, creed, color, national origin, ... , of any person: to represent that any employment or position is not available when in fact it is available.”

New York City Administrative Code 8-107(6), Aiding and abetting, states, “[i]t shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter, or to attempt to do so.”

New York City Administrative Code 8-107(7), Retaliation, states, “[i]t shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such person has (i) opposed any practice forbidden under this chapter.”

New York City Administrative Code 8-107(13), states, “[e]mployer liability for discriminatory conduct by employee, agent or independent contractor.”

A party may move for judgment dismissing one or more causes of action asserted against him on the ground that the pleadings fail to state a cause of action (CPLR R 3211(a)(7)). A complaint must be construed in favor of the plaintiff, and courts must “accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). However, in employment discrimination cases, “bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration” (*Silverman v Nicholson*, 110 AD3d 1054, 1055 [2d Dep’t 2013]).

Plaintiff contends that he “has sufficiently pled that his discipline and subsequent discharge were related to his race,” and that Cousillas’ “repeated insult[s] and mistreatment” of plaintiff “continued in the year and month leading up to Casiano’s discipline and discharge (see plaintiff opposition at 8). Plaintiff’s complaint makes clear that he chose to resign rather than go through

the contractually based disciplinary process afforded to him. The application of the employer's disciplinary policies to the employee, without more, does not constitute adverse employment action (*Messinger v Girl Scouts of the USA*, 16 AD3d 314, 314-315 [1<sup>st</sup> Dep't 2005]). Plaintiff has not connected any adverse action to the purported discriminatory actions.

Plaintiff further proffers that an inference of discrimination may be found where a plaintiff sufficiently alleges that similarly situated employees outside his protected class were given preferential treatment. Plaintiff's pleadings and submissions do not identify anyone who was similarly situated to plaintiff in all material ways, but was treated better due to his/her race. Allegations regarding materially similarly situated comparators must include details regarding the purported comparators' responsibilities, positions, and conduct (see *Whitfield-Ortiz v Dep't of Educ*, 116 AD3d 580, 581 [1<sup>st</sup> Dep't 2014]).

Plaintiff further claims retaliation in his opposition by stating, "[m]ere months after complaining about the hostile work environment created by Cousillas' acts, Casiano was terminated (see plaintiff opposition at 14). However, Casiano was not terminated, and plaintiff provides no dates to establish the timing of a hostile work environment for retaliation purposes.

Defendant proffers that personal jurisdiction has not been obtained over Ed Cousillas and that plaintiff's claims are time barred due to Statute of Limitations. These points are moot as plaintiff has not connected an alleged discrimination to an adverse work outcome.

ORDERED that the motion of defendant, The City of New York, to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

5/15/2020  
DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE