

**Kay v Banchik**

2025 NY Slip Op 32233(U)

June 17, 2025

Supreme Court, New York County

Docket Number: Index No. 654454/2023

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 654454/2023

JENNIFER KAY,

MOTION DATE 11/30/2023

Plaintiff,

MOTION SEQ. NO. 001

- v -

MITCHELL BANCHIK, MICHAEL ASCH, MNM2
MANAGEMENT INC.

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for DISMISS

Upon the foregoing documents, and after oral argument, which took place on February 25, 2025, where Joseph Diego Taylor, Esq. appeared for Plaintiff Jennifer Kay, and Adam S. Gross, Esq. appeared for all Defendants, the Defendants' motion to dismiss pursuant to the statute of limitations and based on failure to state a claim is granted.

I. Background

Plaintiff is a 52-year-old single woman with no children and formerly employed for 29 years with Defendant MNM2 Management, Inc. ("MNM2") as an operations manager prior to her termination. Defendant Mitchell Bankchik ("Bankchik") is the President and founder of MNM2 and Defendant Michael Asch ("Asch") was the Vice-President and Chief Financial Officer of MNM2 during the period in question.

Plaintiff alleges she worked her way up from an entry level employee beginning in 1994, received repeated promotions and became an operations manager of MNM2 and various bars owned and managed by MNM2. Plaintiff alleges she was discriminated against based on her age

and gender during her tenure with MNM2. She cites as examples the following: in 2012 she was asked to share managerial responsibilities and compensation with a male colleague who allegedly had less experience; in 2014 Asch asked Plaintiff if she was a lesbian, and she received a scolding in April 2018 for not attending a company function in South Carolina.<sup>1</sup> She further alleges that married male equity partners were favored over females because the males were given higher raises and had more opportunities to buy equity, and cited two examples where she was not offered to purchase departing partners' equity in 2021 and in 2022.

At a meeting sometime in 2022, Plaintiff discussed the devaluation shares Plaintiff held equity in, at which Banchik and Asch stated the shares were being devalued to allow for new and younger partners to purchase a stake in the entities. Plaintiff then alleges on March 24, 2023, she was "abruptly terminated." She now sues for age and gender discrimination in violation of the New York State and City Human Rights laws. Defendants move to dismiss, arguing the allegations are time barred and fail to state a claim. Plaintiff opposes.

## II. Discussion

### A. Statute of Limitations

Defendants' motion to dismiss the allegations of discrimination found in paragraph 21 of Plaintiff's Complaint is granted. These allegations claim Plaintiff suffered discrimination in isolated and discrete episodes "[i]n or around 2012," "[i]n or around 2014" and "[i]n or around April 2018." The statute of limitations under the New York State and City Human Rights laws is three years (CPLR 214(2); N.Y.C. Admin Code § 8-502(d); CPLR 214[5]; *see also Campbell v NYC Dept. of Educ.*, 200 AD3d 488, 489 [1st Dept 2021]). However, the Complaint was not filed until September 13, 2023, well after the three-year statute of limitations expired. Indeed, not even

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<sup>1</sup> Allegedly, during the scolding, Defendant Banchik told Plaintiff she should be able to afford going to South Carolina because she does not have children.

the tolling of the statute of limitations effectuated by Governor Cuomo's Executive Order No. 202.8 save these alleged claims.

Nor can the continuing violations doctrine save these time barred allegations. For the continuing violations doctrine to apply, the plaintiff must show proof of a "single continuing pattern of unlawful conduct extending into the period immediately preceding the filing of the complaint" (*Campbell v New York City Dept. of Educ.*, 200 AD3d 488, 489 [1st Dept 2021] quoting *Herrington v Metro-North Commuter R.R. Co.*, 118 AD3d 544 [1st Dept 2014]). Allegations of discrete events occurring years apart are insufficient to invoke this doctrine (*Lasher v New York City Dept. of Educ.*, 215 AD3d 590 [1st Dept 2023]).

#### **B. Failure to State a Claim**

Defendants' motion to dismiss Plaintiff's remaining allegations for failure to state a claim is granted. When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and determine only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). However, conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009] *Barnes v Hodge*, 118 AD3d 633, 633-634 [1st Dept 2014]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

Although both the New York State and City Human Rights laws protect caregivers and pregnant persons from discrimination, there is no protected class for "childless" adults, which Plaintiff claims served as the basis for her discrimination. To the extent Plaintiff alleges that she

disagreed with the devaluation of shares to allow younger employees to purchase equity, this dispute amounts to a shareholder dispute and not employment discrimination. Indeed, Plaintiff is litigating against the Defendants based on the alleged devaluation of her shares in arbitration and in this Court (*see Kay v Banchik et al.*, Index No. 650380/2024).

To the extent Plaintiff alleges gender discrimination based on the one alleged instance where male equity partners were given an opportunity to purchase more shares when she was not, this single instance, which is devoid of any facts giving rise to an inference of discrimination aside from the parties differing protected characteristics, is insufficient to withstand a motion to dismiss (*Biggan v City of New York*, 192 AD3d 498, 499 [1st Dept 2021] [isolated incident which served as basis for alleged discrimination claim insufficient]; *Askin v Department of Educ. of City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013] [conclusory allegations insufficient to support element of discriminatory animus]). Indeed, the Complaint fails to allege with factual specificity a causal link between Plaintiff's age and gender and the complained of discrimination, or that others outside of her class were treated better because of discriminatory animus (*Thomas v Mintz*, 182 AD3d 490, 491 [1st Dept 2020]; *Wolfe-Santos v NYS Gaming Commission*, 188 AD2d 622, 622 [1st Dept 2020]). Therefore, Plaintiff's Complaint is dismissed.

[The remainder of this page is intentionally left blank.]

Accordingly, it is hereby,

ORDERED that Defendants' motion to dismiss is granted, and Plaintiff's Complaint is hereby dismissed; and it is further

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

6/17/2025  
DATE

Mary V Rosado JSC  
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE