

**Duff v Royer Cooper Cohen Braunfeld LLC**

2025 NY Slip Op 32619(U)

July 10, 2025

Supreme Court, New York County

Docket Number: Index No. 659884/2024

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. 659884/2024

WILLIAM B. DUFF,

MOTION DATE 03/20/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

ROYER COOPER COHEN BRAUNFELD LLC, JOHN E. ROYER, BARRY COHEN, NEIL COOPER, and HOPE HAMMER

DECISION + ORDER ON MOTION

Defendants.

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

were read on this motion to/for DISMISS

Upon the foregoing documents, and after a final submission date of May 9, 2025, Defendants Royer Cooper Cohen Braunfeld LLC ("RCCB"), John E. Royer ("Mr. Royer"), Barry Cohen ("Mr. Cohen"), Neil Cooper ("Mr. Cooper"), and Hope Hammer's ("Ms. Hammer") (collectively "Defendants") motion to dismiss Plaintiff William B. Duff's ("Plaintiff") third cause of action pursuant to CPLR 3211(a)(3) and fourth cause of action pursuant to CPLR 3211(a)(1) and (a)(7) is granted.

RCCB is a law firm with offices in New York. RCCB's executive committee consists of Mr. Royer, Mr. Cohen, Mr. Cooper, and Ms. Hammer. On April 9, 2018, when Plaintiff was 69 years old, RCCB hired Plaintiff as a formula partner. Plaintiff's offer letter guaranteed him annual payment of \$250,000.00 and described his employment as "at will." Allegedly, in 2020 due to the Covid-19 pandemic, RCCB reduced all formula partners' salaries to \$200,000.00. However, Plaintiff alleges that RCCB restored other's salaries and made them whole for the reduction, but

they never did the same for him. In July 2024, Mr. Royer told Plaintiff it was within the Executive Committee's authority to change Plaintiff's compensation.

Plaintiff alleges on June 28, 2024, RCCB notified him that he would be terminated as of August 31, 2024. Plaintiff was told he was terminated due to low fee collections. But Plaintiff claims he was discriminated against based on age. He now sues for age discrimination in violation of the New York Human Rights Law and the New York City Human Rights Law, age discrimination in violation of 29 U.S.C. § 623, breach of contract, and an alleged violation of 61 Pa. Code § 113.7. Defendants move to dismiss Plaintiff's cause of action alleging a violation of 29 U.S.C. § 623 and Plaintiff's cause of action alleging breach of contract. Plaintiff opposes dismissal of his cause of action alleging breach of contract but does not oppose dismissal of his 29 U.S.C. § 623 claim, therefore the third cause of action alleging a violation of 29 U.S.C. § 623 is dismissed as abandoned.

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must accept the factual allegations as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). 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]). 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]). A motion to dismiss based on documentary evidence pursuant to CPLR § 3211(a)(1) is appropriately granted only when the documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). The documentary

evidence must be unambiguous, of undisputed authenticity, and its contents must be essentially undeniable (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]).

The documentary evidence, namely the offer letter (NYSCEF Doc. 5), establishes that Plaintiff does not have a valid breach of contract claim. The offer letter expressly states Plaintiff's position was "at will" and that after the first year of his employment, his compensation package would be revisited by the Executive Committee. Plaintiff was on notice of the Executive Committee's right to revisit his compensation package, and because Plaintiff's employment was at will, it could be terminated or modified at any time.

Therefore, he does not have a breach of contract claim based on the \$250,000 annual compensation guaranteed for his first year of employment, as promised in the April 2018 offer letter (*see, e.g. Cuervo v Opera Solutions LLC*, 87 AD3d 426, 426-27 [1st Dept 2011]; *Parker v Hill and Knowlton, Inc.*, 282 AD2d 397, 397 [1st Dept 2001]). Plaintiff was not guaranteed a \$250,000 annual salary for his entire employment with Defendants – he was guaranteed that salary for a year, after which time his compensation package would be revisited by the Executive Committee. The Complaint does not allege that Plaintiff was unpaid for work done, but alleges he was not paid the same amount as his peers. While, he does not have a viable breach of contract claim, Plaintiff's age discrimination claims alleging violations of the New York State and City Human Rights Laws survive. To the extent Plaintiff alleges he was damaged by alleged age discrimination due to lower compensation, he is may still litigate that issue.

Accordingly, it is hereby,

ORDERED that Defendants' motion to dismiss Plaintiff's third cause of action alleging a violation of 29 U.S.C. § 623 and fourth cause of action alleging breach of contract is granted, and the third and fourth causes of action are hereby dismissed; and it is further

ORDERED that within twenty days of entry, counsel for Defendants shall serve an Answer to Plaintiff's Complaint; and it is further

ORDERED that the parties are directed to meet and confer immediately and submit a proposed preliminary conference order to the Court via e-mail at SFC-Part33-Clerk@nycourts.gov, but in no event shall the proposed order be submitted any later than September 3, 2025;<sup>1</sup> 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.

<u>7/10/2025</u> DATE		<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE

<sup>1</sup> This date is for the submission of a proposed preliminary conference order only. It is not to appear for a conference. If the parties have a serious discovery dispute requiring Court intervention, they shall contact the Court via e-mail to SFC-Part33-Clerk@nycourts.gov to be provided a date for an in-person conference.