

**Malkoukian v Nest Seekers Intl.**

2025 NY Slip Op 34163(U)

October 31, 2025

Supreme Court, New York County

Docket Number: Index No. 152981/2023

Judge: Judy H. Kim

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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. JUDY H. KIM PART 04**

*Justice*

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NATANEL MALKOUKIAN,

Plaintiff,

- v -

NEST SEEKERS INTERNATIONAL, EDDIE SHAPIRO,  
MICHAEL BETHONY,

Defendants.

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INDEX NO. 152981/2023

MOTION DATE 07/17/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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

were read on this motion to/for DISMISS.

Upon the foregoing documents, Nest Seekers International and Eddie Shapiro’s motion, pursuant to CPLR 3211(a)(7), to dismiss the complaint is granted to the extent that the Labor Law 740(2) claim is dismissed, on consent, and otherwise denied.

**FACTUAL BACKGROUND**

Plaintiff is a licensed real estate salesperson who began working full-time for defendant Nest Seekers International (“Nest Seekers”), a “global real estate brokerage firm,” in June 2018 (NYSCEF Doc No. 2, complaint at 2, 4, 7). Plaintiff alleges that he was a Nest Seekers’ employee and this his duties included, inter alia, soliciting developers to list condominium apartments with Nest Seekers and finding purchasers for those apartments (*id.* at 8). When an apartment listed by Nest Seekers was sold, the developer would pay Nest Seekers a commission which was then distributed among the employees who had worked on that listing (*id.*). On December 8, 2020,

plaintiff and Nest Seekers entered into a written agreement which provided for compensation to be paid to plaintiff for the services that he was providing to Nest Seekers (*id.* at 29).

Defendant Eddie Shapiro is the founder, president and chief executive officer of Nest Seekers and defendant Michael Bethoney was, at all relevant times, a senior vice president and a managing director of Nest Seekers (*id.* at 5-6). Plaintiff alleges, upon information and belief, that Bethoney “has a history of harassing [female] agents and employees of Nest Seekers” and identifies specific female employees that Bethoney has allegedly “threatened ... belittled [and] screamed at” (*id.* at 10). Plaintiff further alleges that he is an orthodox Jew and does not work on Saturdays and Jewish holidays and that Bethoney “belittled and disparaged” him for his religious practice, referring to him as lazy, and also “threatened and bullied” him, “to the extent that plaintiff felt threatened physically” (*id.* at 11). Plaintiff repeatedly complained to Shapiro about Bethoney’s conduct toward himself and Nest Seekers’ female employees, most recently in April 2022 (*id.* at 13). In that same month, Bethoney (with Shapiro’s approval) removed plaintiff from group text messages for the projects that plaintiff was working on, and informed plaintiff that he would not receive commissions on contracts that Nest Seekers “entered into after March 1, 2022” (*id.* at 15). Plaintiff alleges that he has, in fact, been deprived of commissions for the projects he worked on, in violation of his written agreement with Nest Seekers (*id.* at 15, 29).

In his complaint, plaintiff asserts claims for: (1) retaliation in violation of Labor Law Section 740(2), Executive Law §296(1)(e) (the New York State Human Rights Law, or “NYSHRL”), and Administrative Code §8-107(7) (the New York City Human Rights Law, or “NYCHRL”); (2) breach of contract; (3) quantum meruit; and (4) unjust enrichment.<sup>1</sup>

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<sup>1</sup> While the complaint initially states that it also sounds in discrimination under the Human Rights Laws, this is belied by the substance of the complaint.

Nest Seekers and Eddie Shapiro (referred to collectively, for purposes of this motion, as “defendants”) now move to dismiss the complaint, arguing that plaintiff fails to plead particularized facts as to plaintiff’s retaliation and breach of contract claims. Specifically, as to the retaliation claims, defendants argue that the complaint does not allege facts establishing that plaintiff engaged in any protected activity but only that plaintiff made general complaints made about Bethoney’s conduct. Defendants argue that their alleged acts in removing plaintiff from group text messages and threatening that he would not receive commissions on contracts do not constitute “adverse acts” for purposes of the City or State Human Rights Laws and that the complaint does not include facts establishing any causal connection between the purported protected activity and adverse acts. Defendants further argue that plaintiff fails to state a breach of contract claim because he has not pled the essential elements of the contract or identified the specific provisions which were breached. Finally, they argue that the quantum meruit and unjust enrichment claims must be dismissed as duplicative of plaintiff’s breach of claim.

In opposition, plaintiff consents to the dismissal of the Labor Law §740(2) claim. As to the remaining claims, he argues that the complaint’s allegations are sufficiently specific to support the remaining retaliation claims and breach of contract claim, and that the quantum meruit and unjust enrichment claims are properly pled in the alternative.

### DISCUSSION

In addressing a motion to dismiss pursuant to CPLR 3211(a)(7), the pleading is afforded a liberal construction and the court must accept as true the facts alleged in the complaint, accord the pleading the benefit of every reasonable inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory (*see Leon v Martinez*, 84 NY2d 83 [1994]). Claims arising under the NYCHRL must be reviewed with “an independent liberal construction analysis

in all circumstances ... targeted to understanding and fulfilling ... the [NYCHRL's] uniquely broad and remedial purposes" (*Williams v New York City Hous. Auth.*, 61 AD3d 62, 66 [1st Dept 2009] [internal citations and quotations omitted]) and must be construed "broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible" (*Albunio v City of New York*, 16 NY3d 472, 477-478 [2011]). Retaliation claims under the City and State Human Rights Laws<sup>2</sup> are reviewed under a notice pleading standard, in which a plaintiff "need not plead specific facts establishing a prima facie case ... but need only give fair notice of the nature of the claim and its grounds" (*Eustache v Bd. of Educ. of City School Dist. of City of New York*, 228 AD3d 482, 483 [1st Dept 2024]; see also *Herskowitz v State*, 222 AD3d 587, 588 [1st Dept 2023] ["Plaintiffs in retaliation cases are held to a lenient notice pleading standard and are generally afforded deference at the pleading stage"]).

Applying this lenient standard, defendants' motion to dismiss the NYSHRL and NYHCRL retaliation claims is denied. To state a claim for retaliation, plaintiff must allege that: (1) he engaged in a protected activity; (2) the employer was aware of the activity; (3) the employer acted in a manner reasonably likely to deter plaintiff from engaging in protected activity; and (4) a causal connection existed between the protected activity and the alleged retaliatory action (see *Fletcher v Dakota, Inc.*, 99 AD3d 43, 51 [1st Dept 2012]). "In this context, protected activity refers to actions taken to protest or oppose statutorily prohibited discrimination" (*Thomas v Mintz*, 60 Misc 3d 1218(A) [Sup Ct, NY County 2018] [internal citations omitted], *affd as mod*, 182 AD3d 490 [1st Dept 2020]).

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<sup>2</sup> Executive Law §300 was amended in 2019 to clarify that NYSHRL claims accruing after that amendment are to be interpreted in the same manner as the NYCHRL (see *Syeed v Bloomberg L.P.*, 41 NY3d 446, 451 [2024]), the NYSHRL claims here are properly assessed using the liberal approach employed under the NYCHRL (see e.g., *Hunold v City of New York*, 216 NYS3d 550 [Sup Ct, NY County 2024]; *Cannizzaro v City of New York*, 82 Misc 3d 563, 577 [Sup Ct, NY County 2023]).

Plaintiff has sufficiently alleged that he engaged in a protected activity. According to the plaintiff the benefit of every reasonable inference, he has sufficiently alleged that he informed Shapiro, the CEO of Nest Seekers, that Bethoney was creating a hostile work environment or otherwise discriminating on the basis of sex and religion in violation of the New York City and State Human Rights Laws (*see Madrigal v Montefiore Med. Ctr.*, 191 AD3d 407 [1st Dept 2021] [“Plaintiff engaged in protected activity by repeatedly complaining to her employer that supervisors were discriminating against her”]; *see also Krebaum v Capital One, N.A.*, 138 AD3d 528, 528 [1st Dept 2016] [motion court erred in dismissing retaliation claim where evidence showed that plaintiff complained of age discrimination to human resources]). That plaintiff was then allegedly deprived of commissions he had earned is a materially adverse act under the Human Rights Laws (*see Messinger v Girl Scouts of the U.S.A.*, 16 AD3d 314, 315 [1st Dept 2005] [“To be ‘materially adverse’ a change in working conditions must be ‘more disruptive than a mere inconvenience or an alteration of job responsibilities’ such as “a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities...”]) and is sufficiently close in time to his protected activity to establish, in and of itself, a causal connection between his protected activity and adverse act for pleading purposes (*see Herskowitz v State*, 222 AD3d 587, 588 [1st Dept 2023]).

Defendants’ motion to dismiss the breach of contract claim is also denied. To state a claim for breach of contract, plaintiff must allege the existence of a contract between plaintiff and defendants, plaintiff’s performance under the contract, defendants’ breach of the contract, and resulting damages (*see Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). Plaintiff has done so. Read as a whole, his complaint alleges that he entered into a written

agreement with Nest Seekers under which he was entitled to commissions on real estate transactions in which he participated, and that Nest Seekers has withheld commissions for projects on which he worked. Contrary to defendants' claim, plaintiff has sufficiently set forth the essential terms of the parties' contract and the specific provision breached (*see Retail Advisors Inc. v IT Holding SpA*, 2009 N.Y. Slip Op. 31563[U] [Sup Ct, NY County 2009] ["Plaintiff's complaint presented in detail the terms of the Agreement, including the promise that Plaintiff would secure an assignee of the lease in exchange for commission"]).

Finally, the branch of defendants' motion to dismiss plaintiff's quantum meruit and unjust enrichment claims is denied. These claims are properly pled in the alternative where, as here, the existence of the written contract alleged by plaintiff remains unsettled (*see Loheac v Children's Corner Learning Ctr.*, 51 AD3d 476 [1st Dept 2008]; *Kelley v Galina-Bouquet, Inc.*, 155 AD2d 96, 99 [1st Dept 1990]). While defendants argue that plaintiff has "conceded" the existence of this contract, they have not made such a concession.

Accordingly, it is

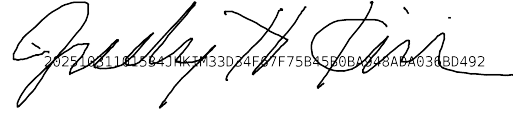
**ORDERED** that the motion to dismiss is granted to the limited extent that the second cause of action for retaliation under Labor Law 740(2) is dismissed on consent, and otherwise denied; and it is further

**ORDERED** that plaintiff shall, within ten days of the date of this decision and order, serve a copy of same with notice of entry on defendants and the Clerk of the Court; and it is further

**ORDERED** that service upon the Clerk 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); and it is further

**ORDERED** that the parties are to appear for a preliminary conference on January 15, 2026, at 9:30 am.

This constitutes the decision and order of the Court.



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10/31/2025  
DATE

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HON. JUDY H. KIM, J.S.C.

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	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
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