Schwartz v J. Nazmiyal, Inc.
2026 NY Slip Op 30343(U)
January 28, 2026
Supreme Court, New York County
Docket Number: Index No. 151276/2025
Judge: Leslie A. Stroth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LESLIE A. STROTH** **PART** **12M**

Justice

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OMRI SCHWARTZ,

Plaintiff,

- v -

J. NAZMIYAL, INC.,NAZMIYAL AUCTIONS, LLC,NAZMIYAL, LLC,JASON NAZMIYAL

Defendant.

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INDEX NO. 151276/2025

MOTION DATE 04/21/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 9, 10 were read on this motion to/for DISMISSAL.

Plaintiff is a former employee of defendants. The individual defendant Jason Nazmiyal is the principal and/or sole shareholder of the corporate defendants, and plaintiff's daily supervisor from January 2002 to September 23, 2024. Plaintiff alleges that he was subjected to ongoing national origin-based discrimination and harassment while he was employed by defendants, which culminated in a discriminatory termination.

The complaint asserts seven causes of action: (1) national origin based discrimination in violation of the New York City Human Rights Law ("NYCHRL"); (2) national origin based discrimination in violation of the New York State Human Rights Law ("NYSHRL"); (3) national origin based harassment/hostile work environment in violation of the NYSHRL; (4) national origin based harassment/hostile work environment in violation of the NYCHRL; (5) discrimination and hostile work environment in violation of New York Labor Law 201-D (Political and Recreational Activities); (6) civil assault under New York common law; (7) civil battery under New York common law.

Defendants now move to dismiss the claims for discrimination and hostile work environment, pursuant to CPLR 3211(a)(7). In its opposition, plaintiff voluntarily withdraws the fifth cause of action for discrimination and hostile work environment in violation of New York Labor Law § 201-d, relating to political and recreational activities.

DISCUSSION

In their motion to dismiss, defendants argue that the complaint fails to state cognizable claims of discrimination or hostile work environment and further fails to allege that plaintiff suffered "any adverse employment action because of his national origin."

Notably, the elements necessary to establish "national origin discrimination" and "hostile work environment" under both the NYSHRL and NYCHRL are sufficiently similar such that the examination of plaintiff's causes of action as related to each may be considered simultaneously on this motion. However, any subsequent motion for summary judgment will require a detailed review of the developed facts in light of the different standards of NYSHRL and NYCHRL (*see Hernandez v Haisman*, 103 AD3d 106 [1st Dept 2012]).

I. Employment Discrimination

To succeed on a claim of employment discrimination a plaintiff must establish that: (1) they are a member of a protected class, (2) they were qualified to hold the position, (3) they suffered an adverse employment action, and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination (*Ayers v Bloomberg, L.P.*, 203 AD3d 872, 874 [2d Dept 2022]; *see also Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004]). "Under the NYCHRL, the plaintiff must establish that she or he was subject to an unfavorable employment change or treated less well than other employees on the basis of a protected characteristic" (*Ayers v Bloomberg, L.P.*, 203 AD3d at 874).

Defendants argue that plaintiff cannot establish the fourth necessary element, that an adverse action occurred under circumstances giving rise to an inference of discrimination. Defendants contend that plaintiff's detailed allegation of having been assaulted and battered by defendant Jason Nazmiyal is not and cannot be related to the alleged earlier offending remarks made by defendant Jason Nazimayal, such as "You Israelis are too aggressive!", "You Israelis think you know everything", referring to plaintiff and others as "his slaves" and saying "look at how I keep my slaves." This argument urges a factual conclusion, which is insufficient to support dismissal under CPLR 3211(a)(7) (*Vig v New York Hairspray Co., L.P.*, 67 AD3d 140 [1st Dept 2009]).

Whether the evidence at trial establishes that defendant Jason Nazimayal assaulted and battered plaintiff in the first instance, and, secondly, whether that assault and battery is related to, or a continuation of, years-long derogatory and hostile remarks regarding Israelis, is a determination to be made by the ultimate trier of fact. Stated differently, whether plaintiff's dismissal resulted from a physical altercation unrelated to a history of verbalized animus toward plaintiff because of his national origin is a factual matter for determination at trial. The Court declines to conclude on this motion that plaintiff's evidence will fail to demonstrate the assault and battery and subsequent termination of plaintiff on September 23, 2024 was part of a continuous course of conduct and odious behavior toward plaintiff engendered by animus toward Israelis.

Defendants' argument that Plaintiff failed to plead an adverse employment action based on his national origin is also without merit. Notwithstanding the possible existence of evidence of any other adverse employment action that may be adduced at trial, summary dismissal from employment is perhaps the ultimate adverse employment action. Indeed, "termination of employment" is a defined adverse employment action in a matter relied upon by defendants for

other purposes discussed, and distinguished, below: *Henry v NYC Health and Hospitals Corp.*, 18 F. Supp. 3d 396 (SDNY March 10, 2014).

II. Comparators

As a further basis for dismissal, defendants argue that plaintiff failed to allege and set forth facts detailing similarly situated employees of a different protected category who were treated more favorably than plaintiff. Defendants' position that dismissal is warranted by plaintiff's failure to set forth proof of "comparators" is unsupported by the case law cited by defendants.

The court in *Henry v NYC Health and Hospitals Corp.* 18 F. Supp. 3d at 396, unambiguously notes that "[a] plaintiff *may support an inference of race discrimination* by demonstrating that similarly situated employees of a different race were treated more favorably" (emphasis added). The *Henry* court, however, does not transmute this potential for a supporting inference of employment discrimination into a *mandatory requirement* for success on a claim of employment discrimination.

The plaintiff in *Henry* alleged that she was subjected to insensitive remarks by supervisors with respect to being a Black female with blond hair. The complaint was ultimately dismissed upon the court's factual finding that plaintiff suffered no adverse employment action for the following reasons:

(a) Plaintiff having been removed from roll call on one occasion was a mere inconvenience, without allegations of lost pay or being subjected to a disciplinary proceeding;

(b) Plaintiff did not "allege facts rendering plausible an inference that other commanders were instructed not to work with her resulted in a negative change in her terms and

working conditions of her employment, or indeed that she suffered any career impediment whatsoever."

(c) Plaintiff's vague allegation that she was denied overtime did not rise to the level of an adverse employment action without "asserting facts plausibly indicating that she suffered from any material detriment as a result of being denied overtime, such as opportunities for career advancement."

(d) Changes to plaintiff's work schedule were not accompanied by a material detriment to her working conditions to constitute an adverse employment action and amounted to nothing more than a mere inconvenience.

(e) The allegation of being "written up" on false disciplinary charges without more does not constitute an adverse employment action.

The *Henry* court does, however, note that "allegations of discriminatory comments directed at the plaintiff's racial group are a recognized method of establishing discriminatory intent" (*Henry v NYC Health and Hospitals Corp.*, 18 F. Supp. 3d at 408).

In *Bintou Jaiteh v Whole Foods Mkt Grp, Inc., et al*, 2022 NY Slip Op 31915(U), (NY Sup Ct, New York Cty 2002), a Black grocery store clerk was terminated from employment after "air kicking" toward a customer while in a dispute over social distancing in the supermarket. The plaintiff alleged that her termination was bias-related. The court rejected this allegation in the absence of the ability to plead a different protected class of employees were not fired for "air kicking" toward a customer. The court also found that plaintiff's further effort to support her claim on hearsay that a different employee was sexually harassed by a store supervisor was equally insufficient to sustain her HRL causes of action. In *Jaiteh*, the Court did not conclude that "comparator" evidence is a necessary element to succeed on any HRL claim. That Court observed,

and this Court agrees, that a plaintiff pleading disparate treatment is "required to identify a comparator with facts and circumstances reasonably similar to her own" *in the absence* of other direct factual allegations supporting her claims. (*Id* at 4). Here, plaintiff has asserted other direct factual allegations supporting her claims.

In *Askin v Department of Educ. Of the City of N.Y.*, 110 AD3d 621 (1st Dept 2013), the plaintiff alleged she was terminated because of age-related bias; however, her allegation was not supported by a factual assertion that she was replaced by someone younger. The court held that the plaintiff failed to "adequately [plead] the fourth element of a *prima facie* claim of employment discrimination under the State and the City HRL, namely, that she was terminated or treated differently under circumstances giving rise to an inference of discrimination. . ." *Id.* In dismissing her complaint, the court noted that, although the plaintiff asserted that defendants' actions were motivated by age-related bias, she made no factual allegations in support of that claim, other than she was 54-years-old.

III. Fair Notice and Sufficiency of the Complaint

In matters of employment discrimination, the Appellate Division – First Department instructs:

> In considering a motion to dismiss for failure to state a cause of action (CPLR 3211[a][7]), the court is required to accept as true the facts as alleged in the complaint, accord the plaintiff the benefit of every favorable inference and strive to determine only whether the facts alleged fit within any cognizable theory (*Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]). In addition, employment discrimination cases are themselves generally reviewed under notice pleading standards. For example, under the Federal Rules of Civil Procedure, it has been held that a plaintiff alleging employment discrimination 'need not plead [specific facts establishing] a prima facie case of discrimination' but need only give 'fair notice' of the nature of the claim and its grounds.

(*Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 145 [1st Dept 2009] [internal citations omitted]; *see also Swierkiewicz v Sorema N.A.*, 534 US 506, 514-515 [2002]). Courts also apply these liberal pleading standards to hostile work environment claims.

Applying these standards here, plaintiff has stated cognizable causes of action for violations of both the NYSHRL and NYCHRL premised on employment discrimination and hostile work environment. The allegations are sufficiently detailed, providing fair notice of plaintiff's claims and the grounds for those claims, and satisfying the liberal New York pleading standards. While the NYSHRL has a more exacting burden of proof required of "severe and pervasive" offending conduct, and the NYCHRL requirements for "severity" and "pervasiveness" are applicable to consideration of the scope of damages, but not the question of underlying liability (*Hernandez v Kaisman,* 103 AD3d 106 [1st Dept 2012]), such distinction is irrelevant to this motion to dismiss.

Accordingly, it is

ORDERED that defendants' motion to dismiss is denied.

This constitutes the decision and order of the Court.

1/28/2026
DATE

HON. LESLIE A. STROTH
J.S.C.

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