SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHE J.S.C. Justice PART 10

T. Stalker

INDEX NO. 102442/10

MOTION DATE

- v -

MOTION SEQ. NO. 01

Stewart Tenants

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

motion (s) and cross-motion(s) decided in accordance with the annexed decision/order of even date.

RECEIVED
NOV 29 2010
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NYS SUPREME COURT - CIVIL

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: NOV 24 2010

HON. JUDITH J. GISCHE J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/JUDG. ☐ SETTLE ORDER /JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

----------x

TAMARA STALKER and ALEXANDRE MAIA,

Plaintiffs,

-against-

STEWART TENANTS CORPORATION, MARK WALLACE, ERIN HUSSEIN, JOAN SCHULTZ, RHONDA GOTTLIEB, ARTHUR SADOFF, CANDY SCHULMAN, TERRI GUMULA, ROBERT FUDIM, FRAN BORIS, MARVIN CARSON, individually and in their corporate capacities and JOHN DOES 1 THROUGH 10, intended to be persons unknown to the Plaintiffs but who may be necessary to afford the plaintiffs complete relief herein,

Defendants.

----------x

Decision/Order
Index No.: 102442/10
Seq. No. : 001

Present:
Hon. Judith J. Gische
J.S.C.

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

Papers	**Numbered**
Defs' n/m [dismiss] w/SFW affirm, exhs	1
Pltfs' opp w/JMD affirm	2
Defs' reply	3

Upon the foregoing papers, the decision and order of the court is as follows:

This is an action for monetary damages that arises from a dispute involving defendants' failure to consent to a proposed sale and assignment of the stock appurtenant to plaintiffs' cooperative apartment. Plaintiffs, Tamara Stalker ("Stalker") and Alexandre Maia ("Maia"), husband and wife, were at all relevant times the owners of the stock and lessees under the proprietary lease appurtenant to Unit 17S (the "Unit),

located at 70 East 10th Street, New York, NY (the "Building"). Defendant, Stewart Tenants Corporation (the "Co-op"), is the owner of the Building. The other named defendants are each members of the Co-op Board of Directors (collectively, the "Board"). Plaintiffs raise various claims against defendants for: violation of the New York State Human Rights Law (NYSHRL) and the Fair Housing Act (FHA), beach of fiduciary duty, *prima facie* tort, tortious interference with contract, and breach of contract.

Defendants now move for the pre-answer dismissal of each of the causes of action asserted in the complaint, based upon plaintiffs lack standing to assert them and they fail to state a cause of action. CPLR §§ 3211 (a)(3), (7). Plaintiffs oppose the motion to dismiss in its entirety.

Since defendants' motion is directed at the sufficiency of the pleadings, the court accepts the facts as alleged by plaintiffs as true, affording them the benefit of every possible favorable inference. EBC I, Inc v. Goldman, Sachs & Co., 5 N.Y.3d 11, 19 (2005); Sokoloff v. Harriman Estates Development Corp., 96 N.Y.2d 409, 414 (2001); P.T. Bank Central Asia v. ABN AMRO Bank NV, 301 A.D.2d 373, 375-76 (1st Dept. 2003).

Facts Presented and Arguments Considered

In August 2008, plaintiffs agreed to sell the Unit to non-parties, Herman Lederberg and Barbara Lederberg (the "Lederbergs"), for a purchase price of $1,750,000. On September 1, 2008, plaintiffs and the Lederbergs entered into a Contract of Sale for the Unit, subject to Board approval. On September 2, 2008, plaintiffs entered into a one-year rental contract with non-party Jack Tierney ("Tierney")

to rent an apartment in a different building (the "rental property"), with a monthly rent of $11,000, beginning on September 15, 2008. The Lederbergs submitted an application (the "Application") to the Board for its approval on September 8, 2008. The Application was rejected by the Board on October 6, 2008. Plaintiffs asked the Board to reconsider, and on October 9, 2008, the Lederbergs' Application was again rejected, on the grounds that the Lederbergs would not be using the Unit as their primary residence, an alleged violation of the by-laws. Plaintiffs contacted Hussein, Gumula, Boris, Fudim, and Carson, who reported that they had not been involved in the decision-making process regarding the Application. According to plaintiffs, Wallace, the President of the Board, told them that the entire Board had convened on October 15, 2008 and at that time rejected the Application, a third time.

In January of 2009, after Mr. Lederberg passed away, Mrs. Lederberg decided to move to New York on a permanent basis and was still interested in purchasing the Unit. Although this would now be Mrs. Lederberg's primary residence, Wallace refused to re-consider Mrs. Lederberg's application.

In July 2009, plaintiffs entered into a Contract of Sale with non-party, Deborah Reinisch ("Reinisch"), to sell the Unit for a reduced price, of $1,425,000, subject to Board approval. The Board approved the sale and the closing took place on October 9, 2009.

Plaintiffs argue that defendants' rejection of the Lederbergs' Application was racially motivated because Maia is Latino and defendants have previously discriminated against Latinos in the Building. Maia states that out of the 350 units in the Building, only 5 are owned by Latinos. Plaintiffs contend that Latino employees have routinely been

fired or demoted.

Plaintiffs claim the Lederbergs' Application was rejected because they are senior citizens. Plaintiffs state that defendants also regularly discriminate against the elderly residents in the Building by asking elderly residents to sign agreements limiting the amount of time they spend in the Building's lobby.

Plaintiffs also contend that defendants confiscated a storage unit from them and assigned it to another resident, which is a violation of the by-laws.

Based on these facts, plaintiffs assert six causes of action against defendants. They are: violation of the NYSHRL, specifically NY Executive Law §§ 291(2) and 296(5)(a) (1st COA); violation of the FHA, specifically 42 U.S.C. §§ 3604[a]-[c] (2nd COA); the Board's breach of fiduciary duty for improperly rejecting the Application and refusing the approval of sale (3rd COA); intentional or malicious harm to another (prima facie tort) for improperly refusing to approve the sale of the Unit to the Lederbergs (4th COA); tortious interference with a contract by interfering with plaintiffs' contract of sale and with the rental agreement for the rental property (5th COA); and breach of contract for seizing the storage unit (6th COA). Defendants seek monetary damages in the amount of $424,624 and punitive damages.

Defendants argue that the first cause of action should be dismissed because plaintiffs lack standing to bring a claim under NYSHRL. Defendants point out that because plaintiffs themselves are not elderly, they are not members of the protected class.

Defendants argue that the second cause of action should also be dismissed because plaintiffs lack standing to pursue a discrimination claim under the FHA. They

contend that although Maia (not Stalker) may be a member of a protected class, there is no precedent recognizing a cause of action for discrimination against a *seller* of residential housing and the FHA is only intended to protect renters or buyers.

According to defendants, the third cause of action, for breach of fiduciary duty, must be dismissed as well, because plaintiffs' allegations are merely speculative, they offer no factual support, and defendants' decisions are protected under the business judgment rule.

Defendants argue that the fourth cause of action for prima facie tort must be dismissed, based upon documentary evidence, because defendants' decision to deny the Lederbergs' Application was rationally based on the primary residence rule set forth in the by-laws.

Defendants argue that because the Lederbergs' contract was subject to Board approval and the Board was authorized to deny the Application, in its sole discretion, the fifth cause of action for tortious interference with contract should be dismissed, as well.

Defendants argue that the sixth cause of action for breach of contract must be dismissed because it does not specify which contract was breached and does not assert what damages resulted from the alleged breach.

Defendants further argue that plaintiffs are not entitled to punitive damages and that plaintiffs improperly sued the members of the Board in their individual capacities.

Discussion

In deciding whether any claims must be dismissed, the court is not required to decide whether plaintiffs have pled claims that they will eventually succeed on. Rather,

the court has to broadly examine the complaint to see whether, from its four corners, "factual allegations are discerned which taken together manifest any cause of action cognizable at law." Guggenheimer v. Ginzburg, 43 N.Y.2d 268 (1st Dept. 1977).

Where a motion to dismiss is premised upon CPLR § 3211 (a)(7), the legal sufficiency of the factual allegations are tested. The court, under those circumstances, is required to presume the truth of all allegations contained in the challenged pleadings and resolve all inferences which may reasonably flow therefrom in favor of the non-movant. Cron v. Hargro Fabrics, Inc., 91 N.Y.2d 362 (1998); Sanders v. Winship, 57 N.Y.2d 391 (1982). If, from its four corners, factual allegations are discerned, which taken together, manifest any cause of action cognizable at law, the motion for dismissal will fail. The courts' inquiry is whether the plaintiffs *have* a cause of action, not whether they have stated one. Guggenheimer v. Ginzberg, *supra*.

Consequently, unless disproved through, for example, lack of standing [CPLR § 3211 (a)(3)], or the complaint fails to set forth a cognizable cause of action [CPLR § 3211 (a)(7)], the complaint should be preserved until issue has been joined and the claims are ready for a dispositive motion or trial.

New York State Human Rights Law

Plaintiffs' first cause of action is that defendants violated the NYSHRL.

The relevant provisions of the NYSHRL provide:

> § 291. Equality of opportunity a civil right
>
> 2. The opportunity to . . . use and occupancy of housing accommodations and commercial space without discrimination because of age, race, creed, color, national

> origin . . . as specified in section two hundred ninety-six of this article, is hereby recognized as and declared to be a civil right.
>
> § 296. Unlawful discriminatory practices
>
> 5. (a) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:
>
> > (1) To refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available.

Plaintiffs allege in the complaint that defendants violated plaintiffs' civil rights by preventing the sale of the Unit to the Lederbergs based upon their age, thereby causing plaintiffs to suffer monetary damage in the amount of $424,624.

It is well established that, to establish a *prima facie* case for housing discrimination under Executive Law § 296(5), plaintiffs must demonstrate, as *buyers*: (1) that they are a member of the class protected by the statute; (2) that they sought and were qualified to purchase the apartment; (3) that they were rejected; and (4) that the co-op's denial of their application occurred under circumstances giving rise to an inference of discrimination. Sayeh v. 66 Madison Ave. Apt. Corp., 73 A.D.3d 459 (1st Dept. 2010); Dunleavy v. Hilton Hall Apts. Co., LLC, 14 A.D.3d 479, 480 (2d Dept. 2005).

Here, plaintiffs are alleging that even though they themselves are not buyers, their damages, as sellers, flow directly from defendants' discrimination against the Lederbergs in their capacity as buyers, who are members of a protected class.

At least one trial court has held that a plaintiff/seller has a viable cause of action if the plaintiff/seller can show that it was adversely affected by discrimination perpetrated against the prospective buyer who is a member of a protected class. Axelrod v. 400 Owners Corp., 189 Misc.2d 461, 466 (NY Sup Ct. 2001). Claims by persons who are not themselves members of a protected class but who were personally affected, albeit indirectly, by discriminatory acts taken against another, have been found to have stated a valid cause of action under the NYSHRL. *See* Bernstein v. 1995 Associates., 185 A.D.2d 160 (1st Dept. 1992) (valid cause of action stated where physician alleged that his landlord refused to renew his office lease because one of his subtenants was treating AIDS patients and performing abortions); Dunn v. Fishbein, 123 A.D.2d 659 (2d Dept. 1986) (valid cause of action stated where Caucasian person alleged that he was denied an apartment because his roommate was African-American); Axelrod v. 400 Owners Corp., *supra* (valid cause of action stated where seller alleged that the board of directors rejected prospective purchasers because they were a married couple in their thirties and were of child-bearing age).

This court agrees with the reasoning of Axelrod v. 400 Owners Corp., *supra*. The court concludes that, plaintiffs have pleaded a viable cause of action under the NYSHRL and have standing to bring a cause of action for age discrimination. Defendants' motion to dismiss plaintiffs' first cause of action is, therefore, denied.

Fair Housing Act

Plaintiffs' second cause of action claims defendants violated the FHA.

The relevant provisions of the FHA provide:

> § 3604. Discrimination in the sale or rental of housing and other prohibited practices.
>
> (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of . . . national origin.
>
> (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of . . . national origin.
>
> (c) To make . . . any . . . statement . . . with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on . . . national origin, or an intention to make any such preference, limitation, or discrimination.

Plaintiffs allege that defendants violated plaintiffs' civil rights by delaying the sale of the Unit and preventing plaintiffs from selling the Unit at the market height, solely because of defendants' antipathy towards Maia, because of his national origin. Plaintiffs allege that as a result of defendants' discrimination against Maia, they suffered a monetary loss of $424,624.

In order to state a *prima facie* case of housing discrimination, a plaintiff must establish: (1) that he is a member of a protected class; (2) that he applied for and was qualified to purchase the housing; (3) that he was rejected; and (4) that the housing opportunity remained available. Jiminez v. Southridge Co-op., Section I, Inc., 626 F.Supp. 732 (E.D.N.Y. 1985), *citing* Robinson v. 12 Lofts Realty, Inc., 610 F.2d 1032,

1036 (2d Cir.1979).

It is unrefuted that Maia is a member of a protected class. Maia, however, has not established that he applied for and was rejected from purchasing housing accommodations. Rather, he only claims to have been discriminated against as the owner of shares in a residential co-op. Thus by definition, Maia is not someone who applied for or made an offer to buy an apartment and was rejected.

Although plaintiffs contend that courts have broadly interpreted the FHA to eradicate discriminatory housing practices, there is no instance where such protections have been expansively applied to include sellers. The cases that plaintiffs site in their memorandum of law do not support their argument that the FHA applies to sellers (*see* U.S. v. Bankert, 186 F.Supp.2d 623 (E.D.N.C. 2000) (plaintiff had cause of action where seller of modular homes refused to complete sale to white purchasers because they insisted on obtaining a mortgage loan from a company owned by African-Americans). Similarly, the other cases that plaintiffs site are inapplicable to sellers. Defendants' motion to dismiss plaintiffs' second cause of action is granted.

Breach of Fiduciary Duty

Plaintiffs' third cause of action claims that defendants breached a fiduciary duty owed to plaintiffs. To establish a breach of fiduciary duty, the pleader must show the existence of a fiduciary relationship, misconduct that induced the pleader to engage in the transaction in question, and damages directly caused by that misconduct. Barrett v. Freifeld, 64 A.D.3d 736, 739 (2d Dept. 2009).

When the allegations are against a co-op, the court must decide whether the

board's determination was made in violation of its lawful procedure, was affected by an error of law, was arbitrary and capricious, or an abuse of its discretion. 4 NYCRR § 5.3 [b]; Pell v. Board of Education, 34 N.Y.2d 222 (1974); Gould v. Board of Education of the Sewanhaka Central High School, 81 N.Y.2d 446 (1993). Since the "governing body," in this case, is the co-op board, the court applies the business judgment rule in determining whether the Board's actions were arbitrary and capricious, or an abuse of discretion. Matter of Levandusky v. One Fifth Avenue Apartment Corp., 75 NY2d 530 at 531 (1990).

The court's inquiry is, therefore, whether the actions of the co-op board were taken in good faith and in the lawful and legitimate furtherance of a corporate purpose. Matter of Levandusky, *supra*. Actions of corporate directors taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes are not subject to judicial review. Auerbach v. Bennett, 47 N.Y.2d 619 (1979); Matter of Levandusky, *supra* at 537-38. Accordingly, courts must defer to good faith decisions made by a board of managers and absent illegal discrimination, fraud, self-dealing, etc., the Board has the right to withhold its approval of the purchase or sale of an apartment, for any reason, or even for no reason, under the business judgment rule. Matter of Levandusky, *supra* at 537-38; Rossi v. Simms, 119 A.D.2d 137, 140 (1st Dept. 1986). "To trigger further judicial scrutiny, an aggrieved [unit owner] must make a showing that the board acted (1) outside the scope of its authority, (2) in a way that did not legitimately further the corporate purpose or (3) in bad faith." Pelton v. 77 Park Ave. Condominium, 38 A.D.3d 1, 8-9 (2006) (internal citations omitted).

Here, plaintiffs allege that certain board members were not involved in the

decision-making process and that the "primary residence rule" does not actually exist, but was a pretext for denying the Lederbergs' otherwise acceptable Application to buy plaintiffs' co-op.

These factual allegations, when taken together, support a claim that the Board violated the business judgement rule by acting in bad faith. Plaintiffs have, therefore, manifested a cause of action cognizable at law. *See* Guggenheimer v. Ginzberg, *supra*. Accordingly, defendants' motion to dismiss plaintiffs' third cause of action is denied.

Prima Facie Tort

The requisite elements of a cause of action for prima facie tort are: (1) the intentional infliction of harm, (2) which results in special damages, (3) without any excuse or justification, (4) by an act or series of acts which would otherwise be lawful. Freihofer v. Hearst Corp., 65 N.Y.2d 135, 142-43 (1985); Curiano v. Suozzi, 63 N.Y.2d 113, 117 (1984); Burns Jackson Miller Summit & Spitzer v. Lindner, 59 N.Y.2d 314, 332 (1983). Plaintiffs must allege that the defendants' allegedly tortious conduct consisted of an otherwise lawful act that was performed with the intent to injure or with a "disinterested malevolence." Curiano v. Suozzi, *supra* at 117, *citing* Burns Jackson Miller Summit & Spitzer v. Lindner, *supra* at 333; *see also* Gold v. East Ramapo Central School Dist., 115 A.D.2d 636 (2d Dept. 1985) (a necessary element for prima facie tort is a desire to harm).

Here, plaintiffs' fourth cause of action for prima facie tort fails because, although they allege that defendants engaged in intentional and malicious action (e.g. denying the Application without proper motive), plaintiffs do not claim that defendants' sole

motivation was either due to their "disinterested malevolence" or a desire to harm the plaintiffs. Defendants' motion to dismiss plaintiffs' fourth cause of action, is therefore, granted.

Tortious Interference with Contract

Tortious interference with contract requires: (1) the existence of a valid contract between the plaintiff and a third party; (2) defendant's knowledge of that contract; (3) defendant's intentional procurement of the third-party's breach of the contract without justification and actual breach of the contract; and (4) damages resulting therefrom. Lama Holding Co. v. Smith Barney Inc., 88 N.Y.2d 413 (1996). Plaintiffs allege that defendants interfered with plaintiffs' contract of sale to the Lederbergs and with the one-year rental contract plaintiffs had with Tierney for the rental property.

It is unrefuted that the contract of sale for the Unit was subject to Board approval. Plaintiffs' decision to lease an apartment before the Board had approved their Application to sell the Unit was made independently. Thus, any damages that plaintiffs sustained as a result of getting a rental apartment they did not need is not causally related to defendants' decision to deny the Application. Plaintiffs knew or should have known that the Application could have been denied for any number of reasons, but they decided to enter into a rental agreement that was not contingent on the Board's approval of the Application. In any event, plaintiffs have not stated a cause of action for tortious interference with contract because there was no breach. Therefore, defendants' motion to dismiss plaintiffs' fifth cause of action is granted.

Breach of Contract

The elements of a cause of action for breach of contract are: (1) formation of a contract between the parties; (2) performance by plaintiff; (3) defendant's failure to perform; and (4) resulting damage. Furia v. Furia, 166 A.D.2d 694 (2d Dept. 1990). Here, plaintiffs allege that their storage unit was confiscated and given to another resident. Plaintiffs contend that the storage unit was a part of the purchase contract when they purchased the Unit in 2003. Accordingly, plaintiffs have stated a cognizable cause of action for breach of contract and defendants' motion to dismiss plaintiffs' sixth cause of action is denied.

Individual Liability

When bringing an action against individual members of a cooperative or condominium board based upon allegations of discrimination or similar wrongdoing, plaintiffs are required to plead with specificity independent tortious acts by each individual defendant in order to overcome the public policy that supports the business judgment rule. Pelton v. 77 Park Ave. Condominium, *supra* at 9-10; *see also* Konrad v. 136 East 64th Street Corp., 246 A.D.2d 324 (1st Dept. 1998). Where a complaint fails to plead that the individual members of a cooperative's board of directors have "acted tortiously other than in their capacity as board members," the cause of action as to the individual members shall be dismissed. Brasseur v Speranza, 21 A.D.3d 297, 298 (2005).

Here, plaintiffs' allegations that not every member of the Board convened to review the Application and that the Board had no proper basis to deny the Application,

are not specific claims asserted against any of the individual defendants, other than in their capacity as members of the Board. Plaintiffs have failed to show that any board member, much less each board member, has engaged in individual wrongdoing. Plaintiffs do not allege that defendants engaged in acts of discrimination separate and apart from the actions taken by the board members collectively and on behalf of the condominium. Accordingly, defendants' motion to dismiss the complaint against all defendants named in their individual capacity, is granted.

Punitive Damages

Defendants contend that even if plaintiffs prevail on their claims, they are not entitled to punitive damages. Punitive damages may be awarded in circumstances where the defendant acted with such a high degree of bad faith, and their wrongful act was so wonton, reckless, or malicious, that its actions are intentional, deliberate and therefore reprehensible to society as a whole. *See* Home Ins. Co. v. American Home Prods. Corp., 75 N.Y.2d 196, 200 (1990); Rivera v. City of New York, 40 A.D.3d 334, 344 (1st Dept. 2007); Freeman v. The Port Authority of New York and New Jersey, 243 A.D.2d 409, 410 (1st Dept. 1997); Aero Garage Corp. v. Hirschfeld, 185 A.D.2d 775 (1st Dept. 1992). Thus, the actions rise almost to the level of a crime. Liberman v. Riverside Mem. Chapel, 225 A.D.2d 283 (1st Dept. 1996).

Punitive damages are generally permitted for breach of contract where plaintiffs "demonstrate egregious tortious conduct . . . but also that such conduct was part of a pattern of similar conduct directed at the public generally." Rocanova v. Equitable Life Assur. Society of the United States, 83 N.Y.2d 603, 612 (1994). In cases involving a

breach of fiduciary duty, harm aimed at the public is not required, "so long as the very high threshold of moral culpability is satisfied." Giblin v. Murphy, 73 N.Y.2d 769, 772 (1988).

Pursuant to Executive Law § 297(9), punitive damages are not permitted in a court action for Human Rights Law violations. Thoreson v. Penthouse Intern., Ltd., 80 N.Y.2d 490 (1992). However, in 1991, the Human Rights Law was amended to add a specific provision for the award of punitive damages not to exceed the amount of $10,000, in cases of housing discrimination only. Executive Law § 297(4)(c)(iv); *see also* Thoreson v. Penthouse Intern., Ltd., *supra* at 498.

Although punitive damages are permitted for breach of contract, the facts as pled by plaintiffs do not rise to the level of being reckless or a conscious disregard of the rights of others (Hartford Accident & Indemnity Co. v. Hempstead, 48 N.Y.2d 218 [1979]) and plaintiffs have not demonstrated that confiscation of a storage unit constitutes "egregious and willful conduct" that is "'morally culpable, or is actuated by evil and reprehensible motives" (Munoz v. Puretz, 301 A.D.2d 382, 384 [1st Dept. 2003] [internal citations omitted]).

However, discrimination, which is the underpinning of plaintiffs' allegations, is a serious claim that offends the public. If there is a pattern or practice of pervasive discrimination, it may be construed as disregarding the rights of others. Accordingly, defendants' motion to dismiss plaintiffs' claim for punitive damages is denied as to the 1st and 3rd causes of action and granted as to the 6th cause of action.

Based on the foregoing, the court concludes that:

Defendants' motion to dismiss the complaint is denied as to plaintiffs' 1st, 3rd, and 6th causes of action for violation of the NYSHRL, breach of fiduciary duty, and breach of contract, respectively. Plaintiffs have, however, failed to plead causes of action against defendants based on its 2nd, 4th, and 5th causes of action for violation of the FHA, prima facie tort, and tortious interference with contract, respectively. Plaintiffs' motion for punitive damages is also severed and dismissed, as are all causes of actions against defendants in their individual capacities.

Conclusion

In accordance herewith, it is hereby:

ORDERED that defendants' motion to dismiss the complaint against plaintiffs is denied as to plaintiffs' 1st, 3rd, and 6th causes of action; and it is further

ORDERED that defendants' motion to dismiss the complaint against plaintiffs is granted as to plaintiffs' 2nd, 4th, and 5th causes of action, which are hereby severed and dismissed; and it is further

ORDERED that defendants' motion to dismiss plaintiffs' claim for punitive damages is denied as to the 1st and 3rd causes of action and granted as to the 6th cause of action; and it is further

ORDERED that defendants' motion to dismiss the complaint against defendants in their individual capacities is granted, and all claims against defendants' MARK WALLACE, ERIN HUSSEIN, JOAN SCHULTZ, RHONDA GOTTLIEB, ARTHUR

SADOFF, CANDY SCHULMAN, TERRI GUMULA, ROBERT FUDIM, FRAN BORIS, MARVIN CARSON, individually, are hereby severed and dismissed; and it is further

ORDERED that all remaining defendants shall answer the complaint within 20 days of date of entry; and it is further

ORDERED that this matter is scheduled for a **preliminary conference** on **January 27, 2011 at 9:30 a.m.**, at 60 Centre Street, room 232; and it is further

ORDERED that any relief requested but not expressly addressed herein is hereby denied; and it is further

ORDERED that this shall constitute the decision and order of the court.

Dated: New York, New York
November 24, 2010

So Ordered:

HON. JUDITH J. GISCHE, J.S.C.