Samuels v William Morris Agency
2013 NY Slip Op 30177(U)
January 14, 2013
Supreme Court, New York County
Docket Number: 402932/2011
Judge: Lucy Billings
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[* 1] SCANNED ON 1/30/2013

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: ______________________ **PART** 46

Justice

Index Number : 402932/2011
SAMUELS, JUSTIN
vs.
WILLIAM MORRIS AGENCY
SEQUENCE NUMBER : 001
DISMISS

INDEX NO. ______
MOTION DATE ______
MOTION SEQ. NO. ______

The following papers, numbered 1 to 3, were read on this motion to/for dismiss the complaint

Notice of Motion/Order to Show Cause — Affidavits — Exhibits | No(s). 1-2
Answering Affidavits — Exhibits | No(s). 3
Replying Affidavits | No(s). ______

Upon the foregoing papers, it is ordered ~~that this motion is~~ and adjudged that:

The court grants defendants' motion to dismiss the complaint, pursuant to the accompanying decision. C.P.L.R. § 3211(a)(7).

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

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 1/14/13

Lucy Billings, J.S.C.
LUCY BILLINGS
J.S.C.

1. CHECK ONE: ☑ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☑ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

[* 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

--------------------------------------x

JUSTIN SAMUELS,

Plaintiff

- against -

WILLIAM MORRIS AGENCY and CREATIVE ARTS AGENCY,

Defendants

--------------------------------------x

Index No. 402932/2011

DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiff, who describes himself as a "blackish" screenwriter, Aff. of Lawrence R. Sandak (Dec. 21, 2011) Ex. A (V. Compl.) ¶ 2, sues defendant talent agencies for racial discrimination. Defendants maintain a requirement for a referral by an "insider," a person whom the agencies already know and respect, before they will read a screenplay or consider a screenwriter for representation. Plaintiff alleges that he contacted defendants seeking their services to represent him or broker the sale of his screenplays, but defendants refused to read his screenplays because he lacks connections within the movie industry to obtain an insider referral. Plaintiff claims that the requirement for an insider referral discriminates against blacks, who constitute a significantly smaller portion of the movie industry than of the United States population as a whole.

Plaintiff previously alleged similar claims in Samuels v.

William Morris Agency, 2011 WL 2946708 (S.D.N.Y. July 19, 2011). The federal District Court dismissed his claims under federal law for failure to state a claim. Id. at *5. Declining to maintain jurisdiction over his claims under state law, the federal court dismissed them without prejudice. Id. He then commenced this action, which defendants move to dismiss. C.P.L.R. § 3211(a)(7). After oral argument, for the reasons explained below, the court grants defendants' motion to dismiss the complaint in full. Id.

II. STANDARDS FOR DISMISSAL

Upon defendants' motion to dismiss claims pursuant to C.P.L.R. § 3211(a)(7), the court may not rely on facts alleged by defendants to defeat the claims unless the evidence demonstrates the absence of any significant dispute regarding those facts and completely negates the allegations against defendants. Lawrence v. Graubard Miller, 11 N.Y.3d 588, 595 (2008); Goshen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d 98 N.Y.2d 314, 326 (2002); Leon v. Martinez, 84 N.Y.2d 83, 87-88 (1994). See C.P.L.R. § 3211(a)(1); Greenapple v. Capital One, N.A., 92 A.D.3d 548, 550 (1st Dep't 2012); Correa v. Orient-Express Hotels, Inc., 84 A.D.3d 650 (1st Dep't 2011); McCully v. Jersey Partners, Inc., 60 A.D.3d 562 (1st Dep't 2009). The court must accept the complaint's allegations as true, liberally construe them, and draw all reasonable inferences in plaintiff's favor. Walton v. New York State Dept. of Correctional Services, 13 N.Y.3d 475, 484 (2009); Nonnon v. City of New York, 9 N.Y.3d 825, 827 (2007); Goshen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d at 326; Wadiak

v. Pond Management, LLC, __ A.D.3d __, 955 N.Y.S.2d 51, 52 (1st Dep't 2012). In short, the court may dismiss a claim based on C.P.L.R. § 3211(a)(7) only if the allegations completely fail to state a claim. Nonnon v. City of New York, 9 N.Y.3d at 827; Harris v. IG Greenpoint Corp., 72 A.D.3d 608, 609 (1st Dep't 2010).

The court assesses employment discrimination claims under a particularly relaxed "notice pleading" standard. Vig v. New York Hairspray Co., L.P., 67 A.D.3d 140, 144-45 (1st Dep't 2009). Under notice pleading, plaintiff need not plead specific facts, but need only give defendants "fair notice" of the nature and grounds of his claims. Id. Although Vig v. New York Hairspray Co., L.P., 67 A.D.3d at 145, cites a 2002 United States Supreme Court decision applying the Federal Rules of Civil Procedure, the First Department decided Vig September 15, 2009, four months after the Supreme Court's rearticulation of federal pleading standards in Ashcroft v. Iqbal, 556 U.S. 662 (2009). Vig therefore represents the First Department's determination to adhere to notice pleading standards under New York law regardless of Iqbal's implications for notice pleading under federal law.

III. PLAINTIFF FAILS TO STATE A CLAIM FOR RACIAL DISCRIMINATION.

Despite these forgiving standards, plaintiff fails to allege several essential elements under the New York State and New York City Human Rights Laws. Plaintiff alleges not that he sought employment with defendants, but that he sought defendants' services in brokering the sale of his screenplays, activity that

is not covered by the state and city anti-discrimination statutes. N.Y. Exec. Law § 296(1); N.Y.C. Admin. Code § 8-107(1); Scott v. Massachusetts Mut. Life Ins. Co., 86 N.Y.2d 429, 433-34 (1995); Papp v. Debbane, 16 A.D.3d 128 (1st Dep't 2005). Nor does he state a claim of an unlawful boycott. Although a formal boycott is unnecessary to such a claim, Scott v. Massachusetts Mut. Life Ins. Co., 86 N.Y.2d at 436, he does not allege that defendants were "propelled by ... a desire to collectively discriminate" on the basis of race, which is necessary to such a claim. Id. at 437. See N.Y. Exec. Law § 296(13); N.Y.C. Admin. Code § 8-107(18).

Nor does plaintiff allege that defendants directly discriminated against him on account of his race or were even aware of his race. Although he alleges that defendants had the means to learn his race had they chosen to investigate, Sandak Aff. Ex. A (V. Compl.) ¶ 70, he nowhere alleges facts to suggest that defendants ever undertook such an investigation. See Fuentes v. New York City Com'n on Human Rights, 26 A.D.3d 198, 199 (1st Dep't 2006); Priore v. New York Yankees, 307 A.D.2d 67, 72 (1st Dep't 2003).

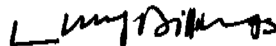
Finally, plaintiff fails to allege facts to demonstrate racially disparate treatment or a racially disparate impact through defendants' referral requirement. He alleges that blacks constitute a far smaller proportion of the movie industry than of the United States as a whole, but does not allege any comparison regarding the proportion of blacks who attempt to submit

screenplays or even who write screenplays. To support disparate treatment or a disparate impact, plaintiff must show a statistically significant imbalance in the relevant pool of screenwriters. N.Y.C. Admin. Code § 8-107(17)(b); Mete v. New York State Off. of Mental Retardation & Dev. Disabilities, 21 A.D.3d 288, 296-97 (1st Dep't 2005). Defendants are entitled to impose selection criteria, such as a requirement for a referral or even a personal association, as long as they do not discriminate on an unlawful basis. See Berner v. Gay Men's Health Crisis, 295 A.D.2d 119, 120 (1st Dep't 2002); Stallings v. U.S. Electronics Inc., 270 A.D.2d 188 (1st Dep't 2000).

IV. CONCLUSION

For the above reasons, the court grants defendants' motion to dismiss the complaint. C.P.L.R. §3211(a)(7). This decision constitutes the court's order and judgment of dismissal.

DATED: January 14, 2013



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
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