

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. DAVID B. COHEN
J.S.C.

PRESENT: Justice

PART 5F

PIATEY
-v-
THE HAPPIEST HOUR NYC et al.

INDEX NO. 152578/17
MOTION DATE
MOTION SEQ. NO. 2

The following papers, numbered 1 to DISMISS, were read on this motion to/for
Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).
Answering Affidavits — Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is GRANTED FOR THE
REASONS STATED ON THE RECORD.
ACTION DISMISSED.

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

Dated: 4-25-2018

HON. DAVID B. COHEN S.C.
J.S.C.

- 1. CHECK ONE: CASE DISPOSED
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

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PT. 58

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GREGORY PIATEK, Index: 152578/2017E

Plaintiff.

-against-

THE HAPPIEST HOUR NYC and JON NEIDICH,

Defendants.

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April 25, 2018
111 Centre Street
New York, New York 10013

B E F O R E:

HONORABLE DAVID B. COHEN
Justice of the Supreme Court

A P P E A R A N C E S:

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BY: ELIZABETH C. CONWAY, ESQ.

Monica A. Martinez
Senior Court Reporter

1 Proceedings

2 your Honor.

3 THE COURT: Okay. All right. Thank you,
4 counsel.

5 MR. LIGGIERI: Thank you, your Honor.

6 THE COURT: I'm going to recall this case in
7 about 15 minutes, okay.

8 MR. LIGGIERI: Yes, your Honor.

9 THE COURT: You can step out.
10 Thank you, counsel.

11 (Whereupon, a short recess is taken.)

12 (Case recalled.)

13 THE COURT: Back on the record in Piatek v.
14 The Happiest Hour New York City.

15 At this point, I'm going to render my
16 decision on the record.

17 Plaintiff's complaint states that on
18 January 28, 2017, he was refused service at The
19 Happiest Hour New York City Bar and Restaurant for
20 wearing a Make America Great Again Hat.

21 According to plaintiff's allegations, he wore
22 the Make America Great Again Hat as a symbol of freedom
23 of speech and as a symbol of his creed.

24 Specifically, plaintiff alleges that the hat
25 is an essential component of plaintiff's overall
26 personal and spiritual expression.

1 Proceedings

2 The major crux of this matter is that
3 plaintiff alleges that the refusal of service was in
4 violation of New York State Executive Law Article 15,
5 Section 296 (2) (a), and New York City Administrative
6 Code 8-107 which relate to unlawful discriminatory
7 practices relating to creed.

8 Plaintiff also makes several other
9 allegations that I will discuss further.

10 In deciding motion to dismiss for failure to
11 state a cause of action, the court must view all the
12 allegations in the complaint as true.

13 The complaint alleges that in refusing to
14 serve plaintiff, defendant stated that anyone who
15 supports Trump or believes what you believe is not
16 welcome here, and in other similar statements.

17 The cause of action against the owner relates
18 to an alleged statement by the manager that quote, "I
19 spoke directly to the owner and the owner told me that
20 anyone who supports Trump or believes what you believe
21 is not welcome here, and you need to leave right now
22 because we won't serve you." And in addition a
23 statement by the bouncers quote, "we are just doing
24 exactly what the owner told us to do, and the only
25 reason you have to get thrown out is because of what
26 you believe and who you support."

1 Proceedings

2 Thus, taking the complaint as true,
3 plaintiff acknowledges that he was removed because of
4 his perceived support for President Donald Trump.

5 Plaintiff does not allege that statements
6 were a pretext for some other reason to remove him from
7 the bar.

8 The second and fourth cause of action for
9 discrimination based on creed accordingly are
10 dismissed.

11 To successfully maintain an action under
12 these antidiscrimination statutes, one must be part of
13 a protected class.

14 Here, plaintiff claims that he is part of
15 such a class based upon his creed.

16 Generally, creed has been held to mean
17 religion. However, not being a formal religion or
18 well-known religion is not necessarily a bar to such a
19 claim. Creed is broad enough to include certain
20 faith-based principles that are not part of a formal
21 religion.

22 Plaintiff in his opposition states that it is
23 plaintiff's sincere belief that the hat is
24 representative of a set of closely held spiritual
25 aspirations and convictions that entirely transcend the
26 political realm.

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2 For plaintiff, the hat is a tangible
3 expression of his personal commitment to achieving
4 those spiritual aspirations.

5 However, the complaint is completely devoid
6 of any discussion as to what those spiritual
7 aspirations and convictions are.

8 Similarly, other than a conclusory statement
9 that the hat is quote, "an essential component of
10 plaintiff's overall personal and spiritual expression"
11 end quote, plaintiff does not state any faith-based
12 principle to which the hat relates.

13 Additionally, nowhere in the facts of the
14 complaint does plaintiff allege that the refusal to
15 serve him had to do with anything more than his
16 perceived support for President Donald Trump.

17 Taking that as true, creed does not extend to
18 political affiliations under New York State Law. See
19 Keady, K E A D Y, v. Nike, 116 F.Supp.2d 428 (2000).

20 Since plaintiff has not stated how the hat is
21 part of his sincerely held beliefs, has not been able
22 to articulate what those beliefs are, and since the
23 refusal to serve was based upon it's perceived
24 political support for President Donald Trump,
25 defendants did not discriminate against plaintiff based
26 upon his creed and, therefore, did not violate New York

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2 State Human Rights Law 296 (2) (a), and New York City
3 Administrative Code 8-107.

4 As for the third cause of action, since the
5 causes of action for discrimination are being
6 dismissed, this cause of action for aiding and abetting
7 the discrimination likewise must be dismissed.

8 Similarly, the fifth cause of action for
9 negligent hiring or supervision is based upon the
10 non-discriminatory act of refusing to serve plaintiff,
11 this cause of action is likewise dismissed.

12 Finally, the first cause of action must also
13 be dismissed.

14 A cause of action for intentional infliction
15 of emotional distress must be supported by allegations
16 of conduct quote, "so outrageous in character and so
17 extreme in degree as to go beyond all possible bounds
18 of decency and to be regarded as atrocious and utterly
19 intolerable in a civilized community." Dillon v. City
20 of New York, 261 A.D.2d 34, 44, [1st Dept 1999]. In
21 writing on this particular cause of action, the Court
22 of Appeals once recognized that quote, "of the
23 intentional infliction of emotional distress claims
24 considered by this Court, everyone has failed because
25 the alleged conduct was not sufficiently outrageous."
26 Howell v. New York Post Co., 81 N.Y.2d 115, 122 (1993).

1 Proceedings

2 The outrageousness element, the element most
3 susceptible to a determination as a matter of law is
4 designed to filter out petty complaints and assure that
5 the emotional distress is genuine. Chanko v. AM
6 Broadcasting Companies, Inc., 27 N.Y.3d 46 (2016).
7 Here the claim that plaintiff was not served and
8 eventually escorted out of the bar because of his
9 perceived support of President Trump is not outrageous
10 conduct. It did not go beyond all possible bounds of
11 decency as to be regarded as atrocious and utterly
12 intolerable in a civilized community. Said actions are
13 not remotely close to reaching the threshold required
14 to state a cause of action for intentional infliction
15 of emotional distress.

16 Accordingly, for all the reasons stated, this
17 action is dismissed in its entirety.

18 I'll prepare a short form order that says
19 that the motion is granted for the reasons stated on
20 the record.

21 Thank you, counsel.

22 MR. LIGGIERI: Thank you, your Honor.

23 MS. CONWAY: Thank you.

24 I, Monica A. Martinez, do hereby certify the
25 foregoing to be a true and accurate verbatim
transcription of the original stenographic record.

26 _____
Monica A. Martinez
Senior Court Reporter