

166 F.3d 1200 (Table), 1998 WL 907901 (2nd Cir.(N.Y.))

Unpublished Disposition

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United States Court of Appeals, Second Circuit.
Benjamin GERSHFELD, Plaintiff-Counter-Defendant-Appellant,

v.

MIDBORO MANAGEMENT, Defendant-Cross-Claimant-Counter-Claimant-Appellee,
and
35 WEST 90 OWNERS CORP., Defendant-Cross-Defendant-Counter-Claimant-Appellee.
No. 98-7022.
Dec. 23, 1998.

Appeal from the United States District Court for the Eastern District of New York (Trager, J.).
Benjamin Gershfeld, *pro se* New York, New York, for appellant.
Geoffrey R. Mazel, Esq., Ross, Suchoff, Egert, Hankin, Maidenbaum & Mazel, New York, New York and
Beatrice Lesser, Esq., Gallet, Dreyer & Berkey, New York, New York, for appellees.

Before OAKES, WALKER, Jr., MCLAUGHLIN, Circuit Judges.

SUMMARY ORDER

****1** UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of said District Court be and it hereby is affirmed.

Benjamin Gershfeld ("Gershfeld"), *pro se*, appeals from the December 1, 1997, judgment of the district court granting summary judgment to the defendants, **Midboro Management ("Midboro")** and 35 West 90 Owners Corp. ("Owners Corp."). Gershfeld alleged that he was terminated from employment by the defendants because of his heart condition and in violation of the Americans with Disabilities Act and the New York Human Rights Law. He also alleged damages from the intentional infliction of emotional distress.

The materials submitted by the parties in support of, and opposition to, summary judgment revealed the following undisputed relevant facts. In June 1990, Gershfeld underwent heart surgery. Starting in May 1993, Gershfeld was employed by the Owners Corp. in the building it owned at 35 West 90th Street, New York, New York. **Midboro** was the **managing** agent of that building. The defendants terminated Gershfeld in January 1995. In February 1995, the defendants learned of this heart condition.

We find that Gershfeld has failed to sustain his burden of proof in demonstrating a claim of wrongful termination under the ADA or the NYHRL. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973); *Reeves v. Johnson Controls World Servs., Inc.*, 140 F.3d 144, 149-50 (2d Cir.1998); *Ferrante v. American Lung Ass'n*, 90 N.Y.2d 623, 629, 665 N.Y.S.2d 25, 28-29, 687 N.E.2d 1308 (1997). Gershfeld failed to demonstrate that either defendant had knowledge of his disability at the requisite time to establish that he was fired because of his disability. Moreover, the Owners Corp. has fewer than 15 employees and does not qualify as an "employer" under the ADA. See 42 U.S.C. § 12111(5)(A). Because Gershfeld has failed to make a showing sufficient to establish the existence of an element essential to his case and on which he will bear the burden of proof at trial, summary judgment was properly granted. See *Reeves*, 140 F.3d at 149. In the absence of a federal question claim, Gershfeld's pendent state law tort claim is dismissed. See *Gron Dahl v. Merritt & Harris, Inc.*, 964 F.2d 1290, 1294 (2d Cir.1992).

We have carefully considered Gershfeld's contentions regarding venue and appointment of counsel and find them to be without merit.

For the reasons set forth above, the judgment of the district court is hereby AFFIRMED.

C.A.2 (N.Y.), 1998.

Gershfeld v. **Midboro Management**

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Briefs and Other Related Documents (Back to top)

- 1998 WL 34091820 (Appellate Brief) Brief of Defendant-Appellee Midboro Management (Jun. 01, 1998) [Original Image of this Document \(PDF\)](#)
- 1998 WL 34091821 (Appellate Brief) Brief of Defendant-Appellee 35 West 90 Owners Corporation (May. 18, 1998) [Original Image of this Document \(PDF\)](#)
- 1998 WL 34091819 (Appellate Brief) Brief for Pro-Se Plaintiff (Apr. 16, 1998) [Original Image of this Document with Appendix \(PDF\)](#)
- 98-7022 (Docket) (Jan. 08, 1998)

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