

93 A.D.3d 550

(Cite as: 93 A.D.3d 550, 940 N.Y.S.2d 600)

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Stalker v Stewart Tenants Corp.
93 A.D.3d 550, 940 N.Y.S.2d 600
NY,2012.

93 A.D.3d 550, 940 N.Y.S.2d 600, 2012 WL
952410, 2012 N.Y. Slip Op. 02156

Tamara Stalker et al., Respondents-Appellants
v

Stewart Tenants Corporation, Appellant-
Respondent, et al., Defendants.
Supreme Court, Appellate Division, First
Department, New York

March 22, 2012

CITE TITLE AS: Stalker v Stewart Tenants Corp.

HEADNOTES

Condominiums and Cooperatives

Board of Directors

Business Judgment Rule

Civil Rights

Discrimination in Housing

Age and National Origin—Human Rights

Law—Punitive Damages

Civil Rights

Discrimination in Housing

Age and National Origin—Federal Fair Housing
Act

D'Amato & Lynch, LLP, New York (Stephen F.
Willig of counsel), for appellant-respondent.

Adam Leitman Bailey, P.C., New York (Jeffrey R.
Metz of counsel), for respondents-appellants.

Order, Supreme Court, New York County (Judith J.
Gische, J.), entered November 30, 2010, which,
insofar as appealed from as limited by the briefs,
granted defendants' motion to dismiss the second
cause of action and all claims against defendant
board members in their individual capacities, and

denied the motion to dismiss the first and third
causes of action and the claims for punitive
damages thereon, unanimously modified, on *551
the law, to deny the motion as to the second cause
of action, and to grant the motion as to the third
cause of action as against defendant Stewart
Tenants Corporation, and otherwise affirmed,
without costs.

Plaintiff Stalker is married to plaintiff Maia, who is
of Brazilian origin. Plaintiffs allege that, in
September 2008, they entered into a contract to sell
their cooperative unit to Herman and Barbara
Lederberg, senior citizens residing primarily in
Florida. Plaintiffs claim that defendants denied the
Lederbergs' application for approval of the contract
on the stated ground that the Lederbergs did not
meet a requirement in the bylaws that purchasers
use their units as their primary residences. Plaintiffs
further contend that the bylaws have never
contained any primary residence requirement and
that defendants' ground for rejecting the application
was a pretext for discriminating against the
Lederbergs on account of their age and against
Maia on account of his national origin.

The complaint states a cause of action for housing
discrimination under New York State's Human
Rights Law ([Executive Law § 296 \[5\]](#)), which
makes it an unlawful discriminatory practice to
refuse to sell a housing accommodation to any
person on the basis of, inter alia, national origin or
age (*see* [§ 296 \[5\] \[a\] \[1\]](#)). Defendants argue that
plaintiffs lack standing to assert the claim, because
they are the sellers, not the purchasers, and they are
not members of the class allegedly being
discriminated against (the elderly). However, in
contrast to [Executive Law § 296 \(5\) \(a\) \(1\)](#), [section
296 \(5\) \(a\) \(2\)](#) makes it an unlawful discriminatory
practice to “discriminate against *any person*”
(emphasis added) on the basis of, inter alia, national
origin or age in the sale of a housing
accommodation. We find **2 that this more
expansive language provides a remedy for any

93 A.D.3d 550

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person “adversely affected by reason of discrimination” in the provision of housing in New York (*Axelrod v 400 Owners Corp.*, 189 Misc 2d 461, 465, 466 [2001], citing *Bernstein v 1995 Assoc.*, 185 AD2d 160, 163 [1992] [alleged refusal to grant the plaintiffs a lease because of the medical services they provided “state(s) a valid cause of action (for discrimination against women, ethnic minorities and the disabled) despite the fact that (the plaintiff doctor) was not the actual victim of discrimination”]). This construction is appropriate in light of the remedial purpose of the Human Rights Law, which embodies “the strong antidiscrimination policy of this State” (*National Org. for Women v State Div. of Human Rights*, 34 NY2d 416, 419 n 2 [1974]).

Given the substantial identity between the language and purposes of Executive Law § 296 (5) and those of the federal *552 Fair Housing Act (42 USC § 3601 *et seq.*; see *Sayeh v 66 Madison Ave. Apt. Corp.*, 73 AD3d 459, 461 [2010]; *Mitchell v Shane*, 350 F3d 39, 47 n 4 [2d Cir 2003]), plaintiffs have also stated a claim for housing discrimination under the Fair Housing Act (see *Morton v 303 W. 122nd St. H.D.F.C.*, 2011 NY Slip Op 31888 [U], *12 and n 3 [2011]). Indeed, the Fair Housing Act defines an “[a]grieved person” as “any person who . . . (1) claims to have been injured by a discriminatory housing practice; or (2) believes that such person will be injured by a discriminatory housing practice that is about to occur” (42 USC § 3602 [i]; see § 3613 [a]).

It is black letter law that “a corporation does not owe fiduciary duties to its members or shareholders” (*Hyman v New York Stock Exch., Inc.*, 46 AD3d 335, 337 [2007]). Thus, plaintiffs' third cause of action alleging breach of fiduciary duty should be dismissed as against defendant corporation (see *Peacock v Herald Sq. Loft Corp.*, 67 AD3d 442, 443 [2009]). Plaintiffs' allegations that not every board member convened to review the application of the prospective purchases, and that the board improperly rejected the application,

do not allege that the directors acted outside their official capacities, and are insufficient to state claims against the directors in their individual capacities (see *Peacock*, 67 AD3d at 442). Although allegations of unequal treatment of shareholders may be sufficient to overcome the protection afforded directors under the business judgment rule, individual directors may not be subject to liability absent allegations that they committed separate tortious acts (see *Konrad v 136 E. 64th St. Corp.*, 246 AD2d 324, 326 [1998]).

We reject defendants' argument that plaintiffs have not alleged sufficiently reprehensible behavior on defendants' part to support an award of punitive damages (see *U.S. Trust Corp. v Newbridge Partners*, 278 AD2d 172 [2000]; *Swersky v Dreyer & Traub*, 219 AD2d 321, 328 [1996]). They were not required to allege behavior directed at the public generally (see *Sherry Assoc. v Sherry-Netherland, Inc.*, 273 AD2d 14, 15 [2000]). We note, however, that any punitive **3 damages award to plaintiffs for violation of Executive Law § 296 is statutorily limited to \$10,000 (see Executive Law § 297 [4] [c] [iv]; [9]; *Thoreson v Penthouse Intl.*, 80 NY2d 490, 498 [1992]). Concur—Tom, J.P., Catterson, DeGrasse, Richter and Manzanet-Daniels, JJ.

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NY,2012.

Stalker v Stewart Tenants Corp.

93 A.D.3d 550, 940 N.Y.S.2d 6006022012 WL 9524109992012 N.Y. Slip Op. 021564603, 940 N.Y.S.2d 6006022012 WL 9524109992012 N.Y. Slip Op. 021564603, 940 N.Y.S.2d 6006022012 WL 9524109992012 N.Y. Slip Op. 021564603

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