

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

PRESENT: HON. MARILYN SHAFER  
*Justice*

PART 36

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HISPANIC AIDS FORUM,

Plaintiff,

INDEX NO. 112428/01

-against-

MOTION SEQ. NO. 004

ESTATE OF JOSEPH BRUNO, et. al.,

Defendants.

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The following papers, numbered 1 to 4, were read on this motion:

PAPERS NUMBERED

Notice of Motion — Affidavits — Exhibits

1

Answering Affidavits — Exhibits

2,3

Replying Affidavits — Memorandum of Law

4

Cross-Motion:  Yes  No

Upon the foregoing papers it is hereby ordered that defendant's motion to dismiss is decided as set forth below.

Background

Plaintiff Hispanic Aids Forum ("HAF") is a non-profit organization whose treatment and education services seek to reduce HIV transmission and secure necessary support services for Latinos in New York City who are affected by HIV/AIDS. HAF operates three community-based offices in the City's largest Latino neighborhoods, including Lower Manhattan, Western Queens and the South Bronx. In March 1991, HAF entered into a two-year lease ("the lease") with the defendants for office space in the Bruson Building ("the building"), located at 74-09 37th Avenue in Jackson Heights. The defendants own, operate and manage the building. The

lease was subsequently renewed without dispute. By 1995, HAF needed more space and the parties entered into a lease on March 15, 1995 for suite 306 on the third floor of the building, and another lease on December 15, 1995 for suite 305. Both leases signed in 1995 expired April 30, 2000. In addition to HAF, there are two other social services agencies and several attorneys' offices located on the third floor that all share the common areas which include the bathrooms located in the main hallway. Although the bathrooms were often unlocked, each commercial tenant had keys to the women's and men's bathrooms. In 1996 or 1997, Carboni Travel leased office space down the hall from HAF.

In late 1999, HAF alleges that one of its transgendered<sup>1</sup> clients informed HAF staff member Blanca Carranza that an employee for Carboni Travel had approached her in the bathroom and asked why she was using the women's bathroom (Complaint ¶ 5). Shortly after that incident, HAF alleges that one of Carboni Travel's employees told Carranza that they did not like "those men that look like women using the bathroom" (Complaint ¶ 6) to which Carranza explained why transgendered Latinas use the women's bathroom (*Id.*).

Responding to the increasing need for HIV/AIDS services among transgendered Latinas, HAF initiated greater outreach and the number of transgendered clients being serviced at the Jackson Heights office increased. In 2000, a new support group for transgendered clients was formed at HAF and the bi-monthly meetings were regularly attended by approximately five or six transgendered clients. In Spring 2000, HAF and the defendants negotiated a new five-year lease

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<sup>1</sup>"Transgendered people are those who have a strong and persistent cross-gender identification and experience persistent discomfort about their assigned sex "(Diagnostic and Statistical Manual of Mental Disorders 532-33 [4<sup>th</sup> ed.]). "Transgendered individuals include people who present as the other sex but take no hormones and have no surgery, people who take hormones to change their secondary sex characteristics but have no surgery, and people who have a range of surgical procedures to alter their anatomical sex. Only a small percentage of transgendered people have surgery, and still a smaller percentage have all the surgery required to change all aspects of the anatomical sex" (*Id.*).