

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Moye v. Mount Sinai Hosp.

2026 NY Slip Op 02374 · No. Index No. 156584/21; Appeal No. 6424; Case No. 2025-03598 · Decided April 21, 2026

SUMMARY

The Appellate Division, First Department, modified and otherwise affirmed an order addressing claims by Muslim Mount Sinai employees who alleged religious discrimination, failure to accommodate, and failure to engage in a cooperative dialogue after refusing to shave their beards to pass N-95 respirator fit testing. The court upheld dismissal of the selective-enforcement discrimination claims but held that issues of fact precluded summary judgment on the failure-to-accommodate and cooperative-dialogue claims. The court also reinstated Brian Jones's corresponding claims, holding that temporarily accepting an offered transfer did not categorically bar those claims.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Renwick, P.J.; Friedman, J.; Gesmer, J.; Hagler, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	April 21, 2026
DOCKET	Index No. 156584/21; Appeal No. 6424; Case No. 2025-03598
DISPOSITION	other
PROCEDURAL POSTURE	Appeal and cross-appeal from an order granting defendants summary judgment dismissing the religious-discrimination claims and all claims by Brian Jones, denying defendants summary judgment on failure-to-accommodate and cooperative-dialogue claims, and denying plaintiffs' cross-motion for summary judgment.
STANDARD OF REVIEW	Summary judgment is appropriate only when the movant establishes entitlement to judgment as a matter of law; the court must deny summary judgment where genuine issues of material fact remain.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	The Mount Sinai Hospital, et al. v. Ronald Moye et al.

TOPICS

religious discrimination

employment law

appellate procedure

standard of review

PRACTICE AREAS

employment law

civil rights

QUESTIONS PRESENTED

1. Whether defendants were entitled to summary judgment dismissing plaintiffs' religious-discrimination claims based on selective enforcement of the N-95 fit-test policy.
2. Whether summary judgment was appropriate on plaintiffs' claims that defendants failed to reasonably accommodate their religious observance under the New York State Human Rights Law and New York City Human Rights Law.
3. Whether summary judgment was appropriate on plaintiffs' claims that defendants failed to engage in a cooperative dialogue under the New York City Human Rights Law.
4. Whether Jones's temporary acceptance of an alternative position categorically barred his failure-to-accommodate and cooperative-dialogue claims.

HOLDINGS

1. Defendants were entitled to summary judgment dismissing plaintiffs' claims that Mount Sinai selectively enforced the N-95 fit-test policy based on religion because all Building Services personnel were required to pass the fit test, defendants offered a legitimate nondiscriminatory safety reason, and plaintiffs failed to show pretext, discriminatory motivation, or disparate treatment of similarly situated non-Muslim employees.
2. Summary judgment was properly denied to all parties on Moye's and Shaw's failure-to-accommodate claims because factual issues remained regarding whether plaintiffs could remain in their existing jobs without N-95 respirators while avoiding COVID-positive areas or waiting before entering those areas, and whether accommodating them in their current positions would impose an undue hardship.
3. Summary judgment was properly denied on Moye's and Shaw's cooperative-dialogue claims because the record raised factual issues as to whether defendants cut the interactive process short and refused to consider accommodating plaintiffs in their existing positions.
4. An employee's acceptance of an accommodation offered as the only alternative to forced resignation does not categorically preclude the employee from claiming that the accommodation was unreasonable or that the employer failed to provide a cooperative dialogue.

KEY QUOTATIONS

"This knowledge "triggered a duty to engage" in the interactive process" (at 3)

"Acceptance of an accommodation as the only alternative to forced resignation does not categorically preclude an employee from claiming that the accommodation was not reasonable or that no cooperative dialogue was provided under the State and City HRLs." (at 4)

FACTUAL BACKGROUND

Plaintiffs were practicing Muslims who wore beards as part of their faith and worked as day-shift maintenance employees in Mount Sinai's Building Services Department. In February 2021, the hospital required Building Services personnel to pass fit tests for N-95 respirators and instructed plaintiffs to shave to obtain a proper seal; plaintiffs refused on religious grounds and were sent home, suspended, and threatened with termination. The hospital offered alternative positions in another department that did not require N-95 respirators; Moyer and Shaw declined evening-shift positions and were treated as having resigned, while Jones accepted a day-shift food-preparer position but later stopped reporting to work and was terminated for job abandonment.

PROCEDURAL HISTORY

Supreme Court, New York County, granted defendants summary judgment dismissing plaintiffs' claims that Mount Sinai discriminated against them based on religion and dismissed all claims by Brian Jones. It denied defendants summary judgment on the failure-to-accommodate and cooperative-dialogue claims and denied plaintiffs' cross-motion for summary judgment on those claims. The First Department modified the order to reinstate Jones's failure-to-accommodate and cooperative-dialogue claims and otherwise affirmed.

DISPOSITION

other

REMAND INSTRUCTIONS

Jones's failure-to-accommodate and cooperative-dialogue claims were reinstated; the order was otherwise affirmed.

CASES CITED

- *Hamburg v. New York Univ. Sch. of Medicine*, 155 A.D.3d 66, 73 & n. 7 (1st Dep't 2017)
- *Tihan v. Apollo Mgmt. Holdings, L.P.*, 201 A.D.3d 557, 558 (1st Dep't 2022), lv. denied, 38 N.Y.3d 913 (2022)
- *Godbolt v. Verizon N.Y. Inc.*, 115 A.D.3d 493, 494 (1st Dep't 2014), lv. denied, 24 N.Y.3d 901 (2014)
- *Friedman v. Bloomberg, L.P.*, 230 A.D.3d 1060, 1061 (1st Dep't 2024)
- *Matter of Lebowitz v. Board of Educ. of City Sch. Dist. of the City of N.Y.*, 220 A.D.3d 537, 537 (1st Dep't 2023), lv. denied, 41 N.Y.3d 987 (2024)
- *Gordon v. Consolidated Edison Inc.*, 190 A.D.3d 639, 640-641 (1st Dep't 2021)
- *Hosking v. Memorial Sloan-Kettering Cancer Ctr.*, 186 A.D.3d 58, 64 (1st Dep't 2020)

OPINION

PER CURIAM.

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In February 2021, the hospital required all Building Services personnel to pass a fit test for N-95 respirators and instructed plaintiffs to shave their beards in order to achieve a proper seal (<i>see</i> 29 CFR § 1910.134[g][1][i][A]). Plaintiffs refused, citing their religious beliefs, and were sent home, suspended, and threatened with termination. Defendants offered plaintiffs alternative positions that were in a different department in the hospital and did not require the use of N-95 respirators.

Plaintiffs Ronald Moye and Christopher Shaw declined evening shift positions, and the hospital treated their refusals to accept different positions as resignations. Jones accepted a day shift

position as a food preparer but stopped coming to work five months later and was terminated for job abandonment.

Supreme Court properly dismissed plaintiffs' claim that defendants selectively enforced the fit test policy against them based on their religion.

Defendants submitted evidence that plaintiffs were required to pass the fit test for the legitimate, nondiscriminatory reason that any Building Services employee could be called upon to clean a COVID-positive patient room, and, if they "were not able to safely wear an N-95, they would put themselves and others at risk."

In response, plaintiffs failed to raise a genuine issue of fact as to whether defendants' reason was pretextual or whether discrimination was a motivating factor for the fit tests (*see* *Hamburg v New York Univ. Sch. of Medicine*, 155 AD3d 66, 73 & n 7 [1st Dept 2017]). Plaintiffs do not dispute that all Building Services personnel were required to pass the fit test.

Therefore, the record presents no evidence that plaintiffs were treated differently from similarly situated, non-Muslim employees (*see* *Tihan v Apollo Mgmt. Holdings, L.P.*, 201 AD3d 557, 558 [1st Dept 2022], *lv denied* 38 NY3d 913 [2022]). As proof of discriminatory animus, plaintiffs rely on statements made in the context of the accommodation discussion by defendant Jeffrey Cohen, Mount Sinai's Vice President of Labor Relations, in which he showed skepticism about plaintiffs' religious accommodation requests.

Those comments, however, do not show that the hospital's enforcement of the fit test policy was motivated by discriminatory animus, as Cohen did not play any role in deciding which employees were required to pass fit tests for N-95s. Plaintiffs therefore fail to establish a nexus between the remark and the challenged employment decision (*Godbolt v Verizon N.Y Inc.*, 115 AD3d 493, 494 [1st Dept 2014], *lv denied* 24 NY3d 901 [2014]). Supreme Court also properly denied summary judgment for all parties on Moye's and Shaw's claims for failure to accommodate plaintiffs' religious observance (*see* Executive Law § 296[10][a]; Administrative Code of City of NY § 8-107[3]).

Plaintiffs introduced sufficient evidence to create an issue of fact as to whether it would have been feasible for defendants to permit plaintiffs to stay in their existing jobs without N-95s while avoiding COVID-positive areas, or to permit them to wait 30 minutes to enter a COVID-positive area.

The evidence showed that plaintiffs only rarely were called upon to clean COVID-positive areas and carried out their responsibilities wearing only surgical masks until February 2021 (*see* *Friedman v Bloomberg, L.P.*, 230 AD3d 1060, 1061 [1st Dept 2024]).

Defendants further failed to satisfy their burden of showing that accommodating plaintiffs in their current positions would cause such "significant expense or difficulty[,] including a significant interference with the safe or efficient operation of the workplace" as to constitute an undue

hardship under the State and City HRLs (Executive Law § 296[10][d]; Administrative Code § 8-107[3][b] [internal punctuation omitted]).

The record suggests that only six Building Services employees requested relief from the fit-test requirement (*cf. Matter of Lebowitz v Board of Educ. of City Sch. Dist. of the City of N.Y.*, 220 AD3d 537, 537 [1st Dept 2023] [agency rationally concluded that employer showed undue hardship where "more than 3,300... employees had requested religious exemptions"], *lv denied* 41 NY3d 987 [2024]).

For their part, plaintiffs failed to foreclose all possible issues of fact as to whether it would have constituted an undue hardship to accommodate Moye and Shaw in any way other than transfer to another department.

Defendants submitted evidence showing that about 50 percent of the hospital was occupied by COVID-positive patients in February 2021, that Building Services had to be able to call upon any personnel to clean a COVID-positive area in the event that there were staff shortages, and that the hospital did not have enough powered air-purifying respirators (PAPRs) for everyone.

This evidence is sufficient to defeat summary judgment.

Similarly, Supreme Court properly concluded that issues of fact precluded summary judgment for any party on Moye's and Shaw's cooperative dialogue claims (*see* Administrative Code § 8-107[28][a][1]).

As of February 1, 2021, defendants were aware that plaintiffs refused to shave their beards because of their religious beliefs. This knowledge "triggered a duty to engage" in the interactive process (*Friedman*, 230 AD3d at 1061). Yet by February 7, defendants maintained that "anyone who doesn't work for one week for failing to shave will be terminated."

Defendants then suspended plaintiffs with instructions to "report back to work, shaved and able to pass a fit test, or you will be terminated." Cohen internally expressed skepticism about the sincerity of plaintiffs' need. When asked by plaintiffs' union representative whether accommodating a few employees in their current positions would be an undue hardship, Cohen stated, "No, no, no. Stop."

"We're not doing that...that's not how you run...a hospital." The record therefore presents issues of fact as to whether defendants cut the dialogue process short and refused to consider accommodating plaintiffs in their current positions (*Gordon v Consolidated Edison Inc.*, 190 AD3d 639, 640-641 [1st Dept 2021]).

Plaintiffs were given to understand that they could violate their religious tenets by shaving or accept one of at most two transfer options they were offered, and that if they rejected these options the hospital would "consider[] their non-acceptance of the positions offered... as their resignation."

A reasonable jury could find that this process, under the specter of forced resignation, did not amount to a cooperative dialogue (*see Hosking v Memorial Sloan-Kettering Cancer Ctr.*, 186 AD3d 58, 64 [1st Dept 2020]).

Defendants nevertheless submitted sufficient evidence

to defeat plaintiffs' motion for summary judgment. Defendants held a virtual meeting with plaintiffs and their union representative about the possibility of accommodation, discussed internally whether plaintiffs could be isolated to non-COVID areas or given PAPRs, and moved quickly to find plaintiffs alternative positions within the hospital.

The same issues of fact required denial of defendants' motion as to Jones's claims for failure to accommodate and failure to engage in a cooperative dialogue.

The only distinction between Jones and the other plaintiffs is that Jones temporarily accepted the transfer offer before abandoning his job. Acceptance of an accommodation as the only alternative to forced resignation does not categorically preclude an employee from claiming that the accommodation was not reasonable or that no cooperative dialogue was provided under the State and City HRLs.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 21, 2026

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PER CURIAM.

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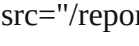
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