

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

VIC LOTAN,
Plaintiff,

Index No.: 157188/13

Motion Date: _____

- v -

Motion Seq. No.: 01

BEHZAD NEHMADI a/k/a BEN NEHMADI,
Defendant.

Motion Cal. No.: _____

The following papers, numbered 1 to 6 were read on this motion to dismiss.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

PAPERS NUMBERED	
_____	1, 2
_____	3, 4
_____	5, 6

Cross-Motion: Yes No

Upon the foregoing papers,

The court shall grant defendant's motion to dismiss the complaint.

The complaint alleges that on one instance on July 9, 2013, during a break in an arbitration proceeding between the parties defendant uttered hurtful racial and religious statements with the intent to inflict severe emotional distress upon plaintiff with knowledge that these statements would have such an effect because of defendant's knowledge of plaintiff's background.

Even accepting as true the content of the statements as

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SETTLE/SUBMIT ORDER/JUDG.

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

alleged in plaintiff's complaint, they are not actionable as set forth by plaintiff however objectionable and inappropriate they are. Ferguson v City of New York, 273 AD2d 103 (1st Dept 2000) ("anti-Semitic statements . . . , giving plaintiff's assertions every favorable inference, his captor-captive relationship with defendant was not so intimidating as to make defendant's conduct "extreme and outrageous" within the meaning of those words for purposes of a cause of action for intentional infliction of emotional distress"); Leibowitz v Bank Leumi Trust Co. of New York, 152 AD2d 169, 182 (2d Dept 1989) ("use of the religious and ethnic slurs . . . complained of in this case did not rise to such an extreme or outrageous level as to meet the threshold requirements for the tort").

Accordingly, it is

ORDERED and ADJUDGED that defendant's motion to dismiss the complaint is GRANTED and the Clerk is directed to enter judgment accordingly.

This is the decision and order of the court.

Dated: OCT 03 2014,

ENTER:


DEBRA A. JAMES J.S.C.