

Westlaw.

300 A.D.2d 137

Page 1

300 A.D.2d 137, 752 N.Y.S.2d 44, 2002 N.Y. Slip Op. 09367
(Cite as: 300 A.D.2d 137)

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James v. Pataki
N.Y.A.D. 1 Dept.,2002.

Supreme Court, Appellate Division, First
Department, New York.

Nathaniel JAMES, Plaintiff-Appellant,
v.

Governor George E. PATAKI,
Defendant-Respondent.

Dec. 17, 2002.

African-American who was Major General in New York National Guard brought action against state, alleging discrimination on basis of race and age. The Supreme Court, Bronx County, John Barone, J., granted state's motion for summary judgment. Plaintiff appealed. The Supreme Court, Appellate Division, held that area of discrimination in military employment was preempted by federal law.

Affirmed.

West Headnotes

Civil Rights 78 ⇨ 1703

78 Civil Rights

78V State and Local Remedies

78k1703 k. Federal Preemption. Most Cited

Cases

(Formerly 78k441)

States 360 ⇨ 18.49

360 States

360I Political Status and Relations

360I(B) Federal Supremacy; Preemption

360k18.45 Labor and Employment

360k18.49 k. Discrimination;

Retaliatory Discharge. Most Cited Cases

Claims, under state law, of discrimination in military employment, are preempted by federal law.

*44 Kevin T. Mintzer, for Plaintiff-Appellant.

Fredric S. Newman, for Defendant-Respondent.

MAZZARELLI, J.P., SAXE, SULLIVAN,
ROSENBERGER, and LERNER, JJ.

Order, Supreme Court, Bronx County (John Barone, J.), entered on or about June 11, 2001, which granted defendant's motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

Plaintiff, a 59-year-old African-American who obtained the rank of Major General in New York State's National Guard, alleges he was discriminated against on the basis of race and age, in contravention of State law, when defendant Governor appointed another individual, a General in New York's National Guard, Caucasian and five years plaintiff's junior, to the position Adjutant General, head of New York's Division of Military and Naval Affairs. Plaintiff, however, has no State law claim for discrimination in military employment, that area being governed by Federal law (*see Kolomick v. New York Air Natl. Guard*, 219 A.D.2d 367, 642 N.Y.S.2d 915, *appeal dismissed* 88 N.Y.2d 1064, 651 N.Y.S.2d 407, 674 N.E.2d 337).

N.Y.A.D. 1 Dept.,2002.

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Westlaw.

99 N.Y.2d 509 (Table)

Page 1

99 N.Y.2d 509 (Table), 790 N.E.2d 274, 760 N.Y.S.2d 100

(Cite as: 99 N.Y.2d 509)

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James v Pataki

Court of Appeals of New York

March 27, 2003

CITE TITLE AS: James v Pataki

(1st Dept: 300 AD2d 137)

MOTIONS FOR LEAVE TO APPEAL
GRANTED OR DENIED

denied

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York.

N.Y. 2003.

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