

--- N.Y.S.2d ----

--- N.Y.S.2d ----, 2007 WL 1703748 (N.Y.A.D. 2 Dept.), 2007 N.Y. Slip Op. 05254

**(Cite as: --- N.Y.S.2d ----)**

Schiano v. First Unum Life Ins. Co.  
N.Y.A.D. 2 Dept.,2007.  
Only the Westlaw citation is currently available.

Supreme Court, Appellate Division, Second  
Department, New York.  
Vincent SCHIANO, appellant,

v.

FIRST UNUM LIFE INSURANCE COMPANY, et  
al., respondents.  
June 12, 2007.

N.Y.A.D. 2 Dept.,2007.

Schiano v. First Unum Life Ins. Co.

--- N.Y.S.2d ----, 2007 WL 1703748 (N.Y.A.D. 2  
Dept.), 2007 N.Y. Slip Op. 05254

END OF DOCUMENT

Patton, Eakins, Lipsett, Holbrook & Savage, New York,  
N.Y. ([John G. Lipsett](#) of counsel), for appellant.

**Begos & Horgan**, LLP, Bronxville, N.Y. ([Patrick W. Begos](#) and [Christopher G. Brown](#) of counsel), for respondents.

[HOWARD MILLER](#), J.P., [DAVID S. RITTER](#), [FRED T. SANTUCCI](#), and [ANITA R. FLORIO](#), JJ.

\*1 In an action to recover benefits under certain disability insurance policies, the plaintiff appeals from an order of the Supreme Court, Kings County (Schmidt, J.), dated July 10, 2006, which granted the defendants' motion for summary judgment dismissing the complaint, and denied his cross motion for summary judgment.

ORDERED that the order is affirmed, with costs.

The defendants made a prima facie showing of entitlement to judgment as a matter of law by demonstrating that the plaintiff left his employment due to his planned retirement, as opposed to his hearing disability, and thus he was not totally disabled within the meaning of the subject policies (*see [Kunstenaar v. Connecticut Gen. Life Ins. Co.](#), 902 F.2d 181; [Voyatzis v. New England Mut. Life Ins. Co.](#), 80 A.D.2d 508; [Anthony v. Metropolitan Life Ins. Co.](#), 54 A.D.2d 866). In opposition, the plaintiff failed to raise a triable issue of fact (*see [Alvarez v. Prospect Hosp.](#), 68 N.Y.2d 320). Accordingly, the Supreme Court correctly granted the defendants' motion for summary judgment dismissing the complaint, and denied the plaintiff's cross motion for summary judgment.**

The plaintiff's remaining contentions are without merit.

--- N.Y.S.2d ----

Page 2

--- N.Y.S.2d ----, 2007 WL 1703748 (N.Y.A.D. 2 Dept.), 2007 N.Y. Slip Op. 05254  
**(Cite as: --- N.Y.S.2d ----)**