

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D35464
G/kmb

_____AD3d_____

Argued - May 21, 2012

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2011-07774

DECISION & JUDGMENT

In the Matter of Maher Mukattash, petitioner,
v Human Rights Commission of Westchester
County, et al., respondents.

(Index No. 3055/11)

Tilem & Campbell, P.C., White Plains, N.Y. (John E. Campbell of counsel), for petitioner.

Robert F. Meehan, County Attorney, White Plains, N.Y. (James Castro-Blanco, Thomas G. Gardiner, and Justin Adin of counsel), for respondents Human Rights Commission of Westchester County and Delores Scott Brathwaite.

Carabba Locke LLP, New York, N.Y. (Anthony Carabba, Jr., of counsel), for respondents Joseph Lovallo, Sr., and Barbara Mayo.

Proceeding pursuant to CPLR article 78 to review a determination of the Westchester County Human Rights Commission Fair Housing Board dated September 20, 2010, which adopted the recommendation of an administrative law judge, made after a hearing, finding that the petitioner was guilty of disability discrimination and directing the petitioner to pay compensatory damages in the sum of \$9,500, punitive damages in the sum of \$5,000, a civil penalty in the sum of \$10,000, and attorney's fees in the sum of \$12,709.35.

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

July 5, 2012

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OF WESTCHESTER COUNTY

The petitioner rented an apartment to the respondents Joseph Lovallo, Sr., and Barbara Mayo, both of whom are individuals with disabilities. Lovallo and Mayo filed a complaint with the Westchester County Human Rights Commission (hereinafter the Commission), alleging that the petitioner had refused to accommodate their disabilities and had repeatedly stated that he would not have rented to them had he known that Lovallo used a wheelchair and that he would evict them if they continued to complain.

After a hearing, the Administrative Law Judge (hereinafter ALJ) found that the petitioner had engaged in disability discrimination. After a separate hearing on the issue of damages, the ALJ recommended that the petitioner be required to pay to Lovallo and Mayo compensatory damages in the sum of \$9,500, punitive damages in the sum of \$5,000, a civil penalty to the Commission in the sum of \$10,000, and attorney's fees in the sum of \$12,709.35. The Commission's Fair Housing Board adopted the ALJ's findings and recommendations.

Contrary to the petitioner's assertions, Joshua Levin, the Commission's Director of Fair Housing, did not testify as to the petitioner's general veracity or offer an opinion as to the truthfulness of the petitioner's testimony at the administrative hearing. Rather, Levin provided his opinion, based on his observations, perceptions, and investigation of the credibility of the petitioner's claim that Lovallo did not complain to the petitioner, yet continually called the Yonkers Police Department to complain about problems with the subject apartment (*see* Westchester County Fair Housing Board Rules and Regulations § 2-14[a]; Fed Rules Evidence rule 704[a]). In any event, at an administrative hearing, the ALJ need not observe the rules of evidence observed by courts (*see Matter of Anthony Grace & Sons v New York State Dept. of Motor Vehs.*, 266 AD2d 284, 285). The ALJ did not improvidently exercise her discretion in admitting Levin's testimony.

Additionally, the petitioner's contention that the ALJ was not authorized to impose punitive damages unless the petitioner's conduct was quasi-criminal in nature is belied by the Westchester County Fair Housing Law, which specifically authorizes imposition of punitive damages for willful, wanton, or malicious conduct (*see* Westchester County Fair Housing Law § 700.29[B][1][d]). Similarly, the ALJ was authorized to impose a civil penalty for willful and wanton conduct like that exhibited by the petitioner (*see* Westchester County Fair Housing Law § 700.29[B][1][f]).

In addition, the ALJ's award of compensatory damages was supported by substantial evidence. Indeed, Lovallo testified that the petitioner's refusal to install an adequate ramp resulted in irreparable damage to Lovallo's wheelchair, which had to be replaced at a cost of \$7,000. Moreover, Lovallo and Mayo both testified in detail about the inconvenience and stress they suffered as a result of the petitioner's conduct. The circumstances surrounding the petitioner's discriminatory conduct support a finding that the compensatory damages award was not punitive in nature or an improvident exercise of discretion (*see Matter of New York City Tr. Auth. v State Div. of Human Rights*, 78 NY2d 207, 216; *Matter of Argyle Realty Assoc. v New York State Div. of Human Rights*, 65 AD3d 273, 284).

The petitioner waived any challenge to the award of attorney's fees by failing to

challenge the amount of attorney's fees in his petition for review by the Fair Housing Board (*see Matter of Yarbough v Franco*, 95 NY2d 342, 347; *Watergate II Apts. v Buffalo Sewer Auth.*, 46 NY2d 52, 57).

The petitioner's remaining contentions are without merit.

RIVERA, J.P., DICKERSON, HALL and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court