

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

D57378
G/htr

_____AD3d_____

Argued - September 17, 2018

ALAN D. SCHEINKMAN, P.J.
RUTH C. BALKIN
SYLVIA O. HINDS-RADIX
HECTOR D. LASALLE, JJ.

2015-09723

DECISION & ORDER

Emily Berger, etc., et al., respondents, v Prospect Park Residence, LLC, et al., defendants, New York State Department of Health, et al., appellants.

(Index No. 6639/14)

Clarick Gueron Reisbaum LLP, New York, NY (Emily Reisbaum, Nicole Gueron, and Melissa C. Holsinger of counsel), for appellants.

Fitzpatrick, Cella, Harper & Scinto, New York, NY (Frederick C. Millett and Michael P. McGraw of counsel), for respondents.

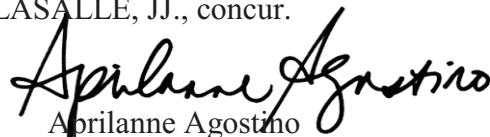
In a hybrid action, inter alia, for declaratory and injunctive relief, and proceeding pursuant to CPLR article 78, the New York State Department of Health, Nirav R. Shah, M.D., MPH, as Commissioner of the New York State Department of Health, and Howard Zucker, M.D., as Commissioner of the New York State Department of Health, appeal from an order of the Supreme Court, Kings County (Wayne P. Saitta, J.), dated July 1, 2015. The order, insofar as appealed from, denied those branches of their motion which were to dismiss the causes of action alleging violations of the Americans with Disabilities Act and the Rehabilitation Act insofar as asserted against them.

ORDERED that the appeal is dismissed as academic, without costs or disbursements.

In light of our determination on the related appeal (*see Berger v Prospect Park Residence, LLC*, ___ AD3d ___ [Appellate Division Docket No. 2017-09743; decided herewith]), this appeal has been rendered academic (*see Ahmed Elkoulily, M.D., P.C. v New York State Catholic Healthplan, Inc.*, 153 AD3d 772, 773; *Rosedale Lend, LLC v Kanterakis*, 151 AD3d 991).

SCHEINKMAN, P.J., BALKIN, HINDS-RADIX and LASALLE, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

November 28, 2018

BERGER v PROSPECT PARK RESIDENCE, LLC