

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1194

CA 14-00215

PRESENT: SCUDDER, P.J., SMITH, PERADOTTO, CARNI, AND SCONIERS, JJ.

DAWUD H., CLAIMANT-APPELLANT,

V

MEMORANDUM AND ORDER

STATE OF NEW YORK, DEFENDANT-RESPONDENT.
(CLAIM NO. 117862.)

KAREN MURTAGH, EXECUTIVE DIRECTOR, PRISONERS' LEGAL SERVICES OF NEW YORK, ALBANY (JAMES BOGIN OF COUNSEL), FOR CLAIMANT-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (ROBERT M. GOLDFARB OF COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Court of Claims (Christopher J. McCarthy, J.), entered November 26, 2013. The order denied the motion of claimant for summary judgment.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Claimant commenced this action seeking a civil penalty and compensatory damages for the allegedly unauthorized disclosure of his "confidential HIV related information" by employees of the Department of Corrections and Community Supervision at Mid-State Correctional Facility (Public Health Law § 2780 [7]; see § 2783 [1] [b]). The Court of Claims properly denied claimant's motion for summary judgment inasmuch as claimant failed to establish as a matter of law that the information disclosed satisfies the definition of "confidential HIV related information" (*cf. Tatta v State of New York*, 20 AD3d 825, 826, *lv denied* 5 NY3d 716; *Doe v Roe*, 190 AD2d 463, 468, *lv dismissed* 82 NY2d 846).

We decline defendant's request to search the record and grant summary judgment dismissing the claim inasmuch as defendant failed to establish that the disclosure was authorized by statute or regulation (see Public Health Law § 2782 [1], [2]; 7 NYCRR 7.5 [b] [6]), or that it was otherwise entitled to judgment as a matter of law (see *generally Village of Ilion v County of Herkimer*, 63 AD3d 1546, 1547).

Entered: November 21, 2014

Frances E. Cafarell
Clerk of the Court