

Matter of Thibodeau v New York State Div. of Human Rights
2001 NY Slip Op 30101(U)
September 26, 2001
Supreme Court, New York County
Docket Number: 404681/00
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JOAN A. MADDEN
Justice

PART 11

INDEX NO.: 404681/00

The bodeau Plaintiffs,

- v -

NYS DHR, et al
Defendants.

MOTION DATE:

MOTION SEQ. NO.: 001

MOTION CAL. NO.:

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____	
Answering Affidavits — Exhibits _____	
Replying Affidavits _____	

Cross-Motion: [] Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~ proceeding is decided pursuant to the annexed decision and judgment.

Dated: September 1

[Signature]
J.S.C.

Check one: FINAL DISPOSITION

[] NON-FINAL DISPOSITION

SUPREME COLJRT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 11

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In the Matter of the Application of
PERLEY J. THIBODEAU,

Index No. 404681/00

Petitioner,

- against -

NEW YORK STATE DIVISION OF HUMAN RIGHTS
and LESBIAN AND GAY COMMUNITY SERVICES
CENTER,

Respondents.

-----x

JOAN A. MADDEN, J.:

Petitioner, Perley J. Thibodeau, brings this Article 78 proceeding to review a determination of respondent New York State Division of Human Rights ("State DHR"), dated August 24, 2000, finding no probable cause with respect to petitioner's claim that respondent The Lesbian & Gay Community Services Center, Inc. (the "Center") unlawfully discriminated against him based on a disability, and retaliated against him for filing a prior discrimination complaint.

BACKGROUND

On June 22, 1999, petitioner filed a complaint with the State DHR charging respondent Center, a not-for-profit corporation that provides a variety of programs and services to the lesbian, gay, bisexual and transgender community in New York City, with unlawful discriminatory practices relating to public accommodations in violation of Article 15 of the Human Rights Law. Petitioner alleged certain disabilities, including bipolar disorder, nerve damage, and hypothyroidism, and claimed that

respondent Center failed to provide the necessary accommodations to allow him access to its facilities. Specifically, petitioner claimed that due to nerve damage, he had difficulty walking up steps, that respondent Center's facility had no handicap ramp, and that the rest rooms were inaccessible. In addition, petitioner claimed that respondent Center denied his application to volunteer at a Garden Party held on June 21, 1999 because he had filed a discrimination complaint against the Fashion Institute of Technology ("FIT").¹

Respondent Center answered, denying petitioner's allegations, and requesting that the State DHR issue a no probable cause determination and dismiss the complaint since petitioner failed to establish that it had denied him access to the Center because of a disability, or banned him from volunteering at its dances because he had filed a charge against FIT. Respondent essentially maintained that its facility accommodated all disabled persons, that petitioner never complained about the accommodations at the facility or sought assistance prior to commencing this proceeding, and that it banned petitioner from volunteering at its dances because of his

¹ Petitioner filed the discrimination complaint after FIT banned him from its facility for copying to FIT's President inappropriate correspondence complaining about respondent Center and its other volunteers, discussing sex acts, making false allegations of prostitution, and falsely disparaging the Center, its volunteers and employees.

disruptive behavior and frequent altercations with other volunteers.

After an investigation, and upon review of the evidence and related materials, respondent State DHR issued a Determination and Order After Investigation, dated and mailed August 24, 2000, dismissing the complaint and closing the file, finding no probable cause to believe that respondent unlawfully discriminated against petitioner. DHR further informed the parties of their right to appeal the determination to this Court within 60 days after service of said determination.

On November 17, 2000, petitioner commenced this proceeding to review the determination of respondent State DHR. Respondents oppose, and argue, *inter alia*, that the petition should be dismissed as untimely.

DISCUSSION

The petition must be dismissed on the ground that it was not timely filed with this Court, pursuant to Executive Law §298, which required that the proceeding be instituted within 60 days of service of the Determination and Order After Investigation dismissing the discrimination complaint (see, *Simmons v New York State Div. Of Human Rights*, 188 AD2d 475 [2d Dept. 19921]). The Determination and Order After Investigation of respondent State DHR dismissing the discrimination complaint was dated and mailed August 24, 2000, and the instant petition was not filed with this Court until November 17, 2000, approximately 85 days later. Although petitioner argues his disability effected his ability to

timely file this petition, he fails to attach any evidence to substantiate this claim.

Even if this court were to review this petition on its merits, it would have to be dismissed. When a determination of no probable cause is rendered without holding a public hearing, pursuant to Executive Law §297 (4)(a), the appropriate standard of review is whether the determination was arbitrary, capricious or lacking a rational basis (McFarland v State Div. Of Human Rights, 241 AD2d 108 (1st Dept. 1998)).

Petitioner bore the burden of showing probable cause as to the discriminatory acts charged (id. at 113). His conclusory assertion that the facility lacks a handicap ramp is belied by the submissions, and his claims that the rest rooms are difficult to access and that he has been denied access to respondent Center's facility is patently unsubstantiated. Absent any proof of unlawful discrimination, respondent State DHR properly concluded that there was no probable cause to believe that respondent Center had engaged in discriminatory practices in its dealing with petitioner.

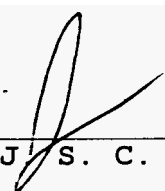
Likewise, the Court concludes that the submissions amply support the determination that respondent Center articulated legitimate, nonretaliatory reasons for terminating petitioner's services as a volunteer at its fund-raising parties.

Accordingly, it is

ADJUDGED that the petition is denied and the proceeding is dismissed, with costs and disbursement to respondents.

The foregoing constitutes the decision and judgment of this Court.

Dated: September 26, 2001

ENTER :


J. S. C.