

**Matter of Rodriguez v New York City Commission on  
Human Rights**

2003 NY Slip Op 30126(U)

May 19, 2003

Supreme Court, New York County

Docket Number: 0400790/2002

Judge: Joan Madden

Republished from New York State Unified Court  
System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

**SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY**

**PRESENT: HON. JOAN A. MADDEN**  
*Justice*

**PART 11**

In the Matter of the Application of ADA RODRIGUEZ,  
MARLENE BETANCOURT, RAFAEL FUERTES VARGAS,  
ALBERTO BETANCOURT,

INDEX NO. : 400790/02

**Petitioners,**

MOTION DATE:

**- v -**

MOTIONSEQ. NO.:012

NEW YORK CITY COMMISSION ON HUMAN  
RIGHTS, et al

MOTION CAL. NO.:

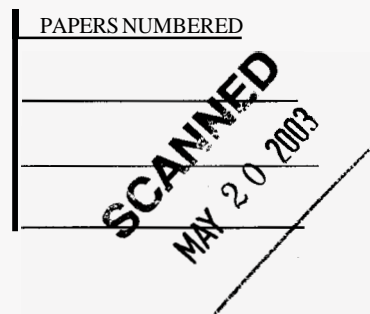
**Respondents.**

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for recusal

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_



Cross-Motion: [ ] Yes [X] No

This court declines to sign petitioners’ order to show cause (motion seq. No. 012) requesting that this court recuse itself.

At the outset, this court notes that this application duplicates a previously denied oral application made by petitioners on December 19,2002, and is a reiteration of many of the allegations made by petitioners in their petition to remove this action to federal court, which was denied by Chief Judge Mukasey. Furthermore, it is noted that petitioners sought the recusal of the judge previously assigned to this proceeding.

As a threshold issue, there is no basis for this court’s recusal on the ground of Judiciary Law § 14 as neither this court, nor any family member, has an interest or connection with respondents so as to justify recusal. Thus, as to petitioners’ remaining allegations of prejudice and bias and other purported conduct described in petitioners’ papers, this court is the sole arbiter of whether recusal is warranted.

Schwartz v Schwartz & Schlacter, 188 AD2d 285 (1<sup>st</sup> Dept 1992); see also, EECP Centers of America, Inc. v Vasomedical Inc., 277 AD2d 349 (2d Dept 2000). For the reasons below, there are no grounds for recusal, and this court declines to sign the Order to Show Cause.

Petitioners' allegation that this court failed to sufficiently consider the evidence and petitioners' motions fairly and in accordance with the law is belied by the record in this proceeding. Petitioners have submitted detailed submissions in connection with their numerous requests for relief, and this court has written decisions addressing such requests.<sup>1</sup> Moreover, this court has directed oral argument on the record on all of the motions, while imposing reasonable time limits on each side for such argument.

Petitioners' allegation that this court has shown favoritism toward the respondents by granting respondents' request for adjournments is also without merit and unsupported by the record. Petitioners contend that, in the motion submissions part, respondents were unfairly given an extension of time for submitting opposition papers to petitioners' first motion for a default judgment (motion seq. No. 002). However, as explained in this court's decision dated September 19, 2002, the adjournment was granted in accordance with court procedures.\*

Petitioners also assert that this court unfairly granted respondents' letter request dated October 3, 2002 to extend its time to answer the petition until the end of November. With respect to petitioners' allegation that the adjournment of the answering date was the result of ex parte communications with

---

<sup>1</sup> The following is a list of prior motions by petitioners: 1) motion seq. 001- underlying petition for relief; 2) motion seq. no. 002- motion to disqualify the judge previously assigned to this proceeding and for a default judgment 3) motion seq. no. 003- motion seeking to have the City and State pay the cost of providing a transcript of proceedings; 4) motion seq. 004- motion to resettle or renew motion for assignment of counsel; 5) motion seq. 005- motion for reargument/reconsideration of the court's order granting the City an extension of time in which to answer; 6) motion seq. no. 006- motion seeking leave to intervene by Rafael Fuertes Vargas and Alberto Betancourt; 7) motion seq. no. 007- motion for a default judgment; 8) motion seq. no. 008- motion to reject City's opposition to motion for a default judgment (007) ; 9) motion seq. no. 009- motion for reargument/reconsideration of court's order limiting intervenors' to the original 168 paragraph petition; 10) motion seq. no. 010- motion for a stay of proceedings until determination of petition for removal to federal court ; 11) motion seq. no. 011- application for a stay pending resolution of petitioners' appeal of the federal court decision denying its application to remove this proceeding to federal court.

<sup>2</sup> Under these circumstances, the motion for a default judgment against respondent Verela was also properly denied.

this court, this court notes that respondents' letter requesting the adjournment was sent to petitioners, and that communications with my law secretaries regarding scheduling matters are permitted . See **22** NYCRR § 100.3(6)(b). In addition, in view of petitioners' written opposition to the respondents' request for additional time to answer the petition, oral argument on this issue was heard on October **24, 2002** on the record, followed by a written decision dated October **25, 2002**. Petitioners moved for reargument of this court's October **24, 2002** decision (motion seq. no. 005) and this court denied the motion for the reasons stated on the record on December 5, 2002 and by written order dated December **5, 2002**.

With respect to this court's denial of petitioners' second motion for a default judgment based on the ground that respondents did not submit a certified transcript (motion seq. no. **007**), such denial was warranted. As detailed in this court's decision and order dated February **14, 2003**, since no hearing was held no transcript existed, and, in any event, the section of the City Administrative Code which controls proceedings against the New York City Human Rights Commission, requires petitioners, not respondents, to file such transcript. As to petitioners' request that respondents' opposition to petitioners' second motion for a default judgment be rejected as untimely, for allegedly being several days beyond the proper date, this court accepted respondents' papers and stated the reasons on the record on December **19, 2002**. Subsequently, petitioners moved, by order to show cause, to reargue this court's December **19, 2002** decision (motion seq. **008**), and in a written decision this court reiterated the basis for the decision.

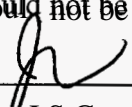
Petitioners also argue that this court unfairly denied their requests for a stay of this proceeding pending the resolution of their appeal of the denial of their removal petition by Chief Judge Mukasey's in an order dated March **27, 2003**. At the outset, it is noted that these proceedings were stayed pending resolution by Chief Judge Mukasey of the removal petition. However, as indicated in this court's written order dated May **8, 2003** in which it declined to sign petitioners' Order to Show Cause for a stay pending resolution of their federal appeal (motion seq. **011**), there was no basis for granting such stay since Chief Judge Mukasey found that removal was clearly improper as the federal removal statute permits only defendants, and not petitioners, to remove a proceeding to federal court.

Next, as stated on the record on December 19,2002, there is no ground for disqualification based on any conversations between this court and another judge. Furthermore, petitioners' assertion that this court would not permit petitioner Ada Rodriguez to speak during oral argument is without basis. As noted above, this court gave each side, rather than each petitioner or respondent, a reasonable time to speak on the record. Moreover, an official Spanish court interpreter was present to translate for petitioner Ada Rodriguez at each oral argument.

As noted above, this application is a reiteration of a previously denied oral application by petitioners on the record during oral argument on December 19,2002, during which petitioner Alberto Bentancourt stated that petitioners would file a complaint against this court if it did not grant their disqualification request. Furthermore, as indicated above, many of petitioners' allegations duplicate their allegations in connection with their petition seeking removal of this action to federal court which Chief Judge Mukasey denied.

After careful consideration of the allegations for disqualification, this court finds that not only are they without merit but, under the circumstances here, the integrity of the judicial process dictates that the Order to Show Cause seeking disqualification should not be signed.

DATED: May 19, 2003

  
\_\_\_\_\_  
J.S.C.

**Check one:**     **FINAL DISPOSITION**     **NON-FINAL DISPOSITION**