Matter of Rodriguez v New York City Commission on Human Rights
2003 NY Slip Op 30127(U)
September 16, 2003
Supreme Court, New York County
Docket Number: 0400790/2002
Judge: Joan Madden

[* 1]

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

PRESENT: **HON.** JOAN A. MADDEN **PART** 11

Justice

Rodriguez, et al Petitioners,

- v -

New York City Commission Human Rights, et al Respondents.

INDEX NO.: 400790/02

MOTION DATE: 5-22-03

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~~ Petition: [X] Yes [ ] No

Upon the foregoing papers, it is ordered that this ~~motion~~ petition and cross-petition are decided in accordance with the annexed memorandum Decision, Order + Judgment.

Dated: Sept. 16, 03

J.S.C.

Check one: [X] **FINAL DISPOSITION** [ ] **NON-FINAL DISPOSITION**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 11
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In the Matter of the Application of
ADA RODRIGUEZ, MARLENE BETANCOURT,
RAFAEL FUERTAS VARGAS, and
ALBERT0 BETANCOURT,

Index No. 400790/02

Petitioners,

-against-
NEW YORK CITY COMMISSION ON HUMAN
RIGHTS, MARTA B. VARELA, personally
an in her official capacity as Chair/
Commissioner, RAYMOND WAYNE, General
Counsel, RANDOLPH E. WILLS, personally
and in his official capacity as Deputy
Commissioner for the Law Enforcement
Bureau, JOAN SIMON FAULKNER, personally
and in her official capacity as Supervising
Attorney for the Law Enforcement Bureau, and
all other members and employees of the NEW
YORK CITY COMMISSION ON HUMAN RIGHTS,
individually and collectively,

Respondents.
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Joan A. Madden, J.

In this proceeding, petitioners seek an order and judgment **(1)** setting aside and annulling the order of respondent New York City Commission on Human Rights ("Commission") dated November 29, 2001 as arbitrary and capricious, lacking rational basis and as not predicated on substantial evidence; (2) relieving petitioners of said order and allowing them to withdraw their claims under the City Human Rights Law at the administrative agency so that they prosecute them in court; **(3)** awarding petitioners damages, costs and attorneys' fees arising from the prosecution of this proceeding; and (4) terminating the individual respondents and all other agency members and employees involved in the

investigation and prosecution of the underlying matter. Respondents filed a verified answer in opposition to the petition and cross-petition for relief on the grounds of collateral estoppel.[1]

Background

Petitioners[2] reside at 601 West 112th Street ("the Building"), Apt 5B, New York, NY ("the Apartment"). The Apartment is subject to rent control based on the tenancy of petitioner Rafael Fuertas Vargas ('Vargas"), who moved into the Apartment in 1964. The Trustees of Columbia University ("Columbia" purchased the Building in 1981. Subsequently, the petitioners moved into the Apartment with Vargas. Petitioners allege that Ada Rodriguez ("Rodriguez") moved into the Apartment in 1989 and Rodriguez's daughter Marlene Betancourt ("M. Betancourt") and Rodriguez's son, petitioner Alberto Betancourt ("A. Betancourt"), moved into the Apartment in or about 1993.

In 1995, based an alleged incident of domestic violence,

'Respondents also allege that petitioners have failed to serve Raymond V. Wayne, Randolph E. Wills, Joan Simon Faulkner, Petros Solomon and all unnamed members of the Commission on Human Rights. Petitioners do not respond to this allegation.

[2]Petitioners Rafael Fuertas Vargas and Alberto Betancourt, who did not file a complaint with the respondent Commission, were not initially petitioners in this proceeding. However, by decision and order dated January 27, 2003, this court granted the motion by these petitioners for leave to intervene, added them as petitioners and provided them an opportunity to submit papers in support of the petition by February 20, 2003. The newly added petitioners did not submit any additional papers.

Rodriguez obtained an order of protection against Vargas which prohibited him from occupying the Apartment. Vargas informed Columbia that he was temporarily restrained from the Apartment due to the court order. In October 1995, Vargas commenced a holdover proceeding against Rodriguez and her children which was subsequently dismissed. In February 1996, Columbia commenced a nonpayment proceeding against Vargas and, in the course of the proceeding, ascertained that Vargas was no longer residing at the Apartment. Columbia then abandoned the non-payment proceeding in favor of commencing a holdover proceeding on the grounds that Vargas, who was the "legal tenant," no longer resided in the Apartment on a "regular and consistent" basis for the purposes of the Rent Control Law.

According to Columbia, in 1998, the holdover proceeding was marked off the calendar. The proceeding apparently was never pursued as Vargas moved back into the Apartment. Columbia commenced a non-payment proceeding alleging that Vargas has not timely made his rent payments, which apparently is still pending. Petitioners are currently residing in the Apartment.

As to the underlying complaint filed with the Commission, on or about May 17, 1999, Rodriguez and M. Betancourt each filled out the Commission's initial intake form. Rodriguez filled out the intake form in Spanish and marked the boxes indicating that she was complaining of discrimination based on race but did not

provide a description of the alleged acts of discrimination. M. Betancourt checked the boxes indicating that she was complaining of discrimination based on race and retaliation. In the description portion of the form, M. Betancourt alleged that an "[e]viction holdover proceeding was commenced by [Columbia] in retaliation for tenants having filed extremely hazardous conditions complaints with City Agencies to which landlord received violations from several agencies." She also claimed that Columbia "evicted [members of the] community to facilitate rooms for students," and that Columbia was only making repairs to student housing.

After receiving the intake form, the Commission's staff proceeded to draft an initial complaint. In the October 18, 1999 complaint, verified by Rodriguez and M. Betancourt, it was alleged that Mark Kerman ("Kerman"), the managing agent of the Building, and Columbia, violated § 8-107(5) of the Administrative Code of the City of New York by denying the petitioners terms, conditions and privileges of a housing accommodation due to their national origin. The complaint also alleged that Rodriguez and Betancourt were **subjected to disparate treatment which** included **a** failure to make repairs, tampering with mail, inciting a physical assault of Rodriguez, and commencing eviction proceedings. The assault was allegedly committed by Jesus Ramos, a porter and handyman in the Building in August 1998.

On December 9, 1999, Kerman and Columbia answered the Verified Complaint and submitted a letter denying petitioners' allegations and stating that their conduct was not based on the complainants' age or national origin, and noted that about half of the rent-regulated tenants in the Building had Hispanic surnames. Kerman and Columbia asserted that they has the right to attempt to recover the Apartment after Vargas, the legal tenant, had vacated it.

Kerman and Columbia also asserted that repairs had been made to the Apartment and submitted invoices to support this assertion. Kerman and Columbia maintained, however, that the complainants often refused to cooperate with efforts to repair the Apartment by refusing to permit repair contractors to enter it. Columbia further denied that Mr. Ramos assaulted Rodriguez and that Mr. Ramos encountered Rodriguez after an alarm went off on the roof of the Building and informed Rodriguez and her children that they were not permitted on the roof under the Building's rules. Columbia noted that the criminal charges filed against Mr. Ramos by Rodriguez were subsequently dismissed.

Kerman and Columbia further asserted that many of the charges filed by the complainants in October 1999 were untimely as more than one year had elapsed since the alleged acts of discrimination. See Administrative Code § 8-108(e).

On August 16, 2000, petitioners submitted an 83-page reply,

an affidavit from Vargas and a 15-page verified amended complaint, which, inter alia, added other employees of Columbia as defendants.

In September 2000, Rodriguez commenced an action in the Supreme Court, New York County against Columbia, Kerman and other Columbia employees alleging discriminatory practices against her family, including the commencement of eviction holdover proceedings to remove her and her family from the building. On January 3, 2001, Rodriguez notified the Commission that she had commenced the Supreme Court action by sending it a copy of the summons and complaint. She requested that the Commission permit her to withdraw the discrimination complaint, or that the complaint be dismissed for administrative convenience so that she could adjudicate her claims in State court. She further stated that M. Betancourt would continue as a complainant before the Commission.

On March 28, 2001, the Commission Law Enforcement Bureau ("LEB") issued a Determination and Order After Investigation finding that there was no probable cause to believe that Columbia or Kerman engaged in discriminatory practices ("the Determination"). The LEB wrote that "the investigation reveals no evidence to substantiate the allegations that [Kerman and Columbia] refused to make necessary repairs because of their national origin and/or age. [Kerman and Columbia] have made

numerous repairs to the apartment, including installing a new kitchen faucet, replacing the apartment's refrigerator, removing and replacing sheetrock and plaster, and providing extermination services." The LEB also noted that the investigation did not reveal any evidence to support complainants' allegations that [Kerman and Columbia] tampered with their mail. In addition, the LEB found that allegations that Mr. Ramos, a Hispanic handyman, physically assaulted Rodriguez based of her national origin lacked credence.

LEB also rejected complainants' arguments raised in rebuttal as "unrelated to this discrimination complaint, time-barred or unsubstantiated" and wrote that "nearly all the allegations in the instant complaint pertain to landlord-tenant problems and not discrimination." The LEB concluded that "complainants have failed to establish any nexus between ... actions [by Kerman and Columbia] and their national origin and/or age."

On May 23, 2001, petitioners appealed the Determination and submitted a 57-page brief in support of their appeal. Petitioners raised numerous arguments including that LEB did not consider their amended complaint and ignored that Rodriguez had withdrawn her petition. Columbia submitted an 11-page opposition brief. LEB also submitted comments stating that it appropriately exercised its discretion in refusing to dismiss Rodriguez'

complaint for administrative convenience, and noted that Rodriguez' interests would not have been served by withdrawing her complaint based on case law precluding the filing a state court action where the same grievance was filed before the Commission and then withdrawn. Petitioners submitted a 37-page reply brief.

On November 29, 2001, respondent Marta Varela the Chair/Commissioner issued a Determination and Order After Review affirming the finding that probable cause does not exist supporting the allegations that Kerman and Columbia discriminated against petitioners in violation of the Administrative Code.

The Proceeding

On February 19, 2002, petitioners commenced this proceeding.[3] Respondents filed a verified answer and cross-

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

petition on November 19, 2002. Oral argument was held on the petition on May 22, 2003.[4]

In challenging the Commission's determination of no probable cause, petitioners assert that the Commission made numerous procedural and substantive errors. Petitioners contend that the Commission did not immediately grant complainants' request to add M. Betancourt as a complainant in the complaint, and initially ignored complainants' attempts to amend the complaint. Petitioners also contend that the Commission "deliberately overlooked" Rodriguez' request to withdraw the

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application to remove this proceeding to federal court, 11) motion seq. no. 012-order to show cause seeking this court's disqualification.

[4]After oral argument was held and the underlying proceeding was submitted, petitioners moved: 1) to reargue and renew petitioners' prior motions seeking disqualification and other relief (motion seq. no. 013), 2) to vacate, renew and reargue the court's decision partially granting petitioners' request that the City of New York pay the cost of certain stenographic transcripts (motion seq. no. 014). By interim order dated June 26, 2003, this court directed that "any additional motions be made by order to show cause." After the issuance of the interim order, petitioners filed a motion seeking to strike respondent's answer and cross-petition and summary judgment and to impose sanctions and award costs and refer the case to the District Attorney and Disciplinary Agency (motion seq. no. 015). The motion was filed in the motion support office by notice of motion rather than order to show cause; however petitioners asserted that they did not receive the interim decision mailed to them by the court until after motion seq. no. 015 was submitted. Accordingly, by interim order dated July 24, 2003, this court did not required petitioners to resubmit the motion as an order to show cause, but rather deemed petitioners' motion as an application to be permitted to make a motion.

complaint, lacked jurisdiction to dismiss the case with respect to Rodriguez, and that the Commission referred their case for mediation even though M. Betancourt advised the counsel for the Commission that their case "was too important" to be resolved in this manner.

Petitioners next assert that the Commission's investigation of the complainants' allegations was premature and insufficient as it was based solely on the factual allegations in October 1999 complaint drafted by the Commission, instead of the amended version. Petitioners also claim that Commission did not conduct an adequate investigation of complainants' allegations as it failed to subpoena records, hold hearings, conduct investigative studies, write reports and gather data regarding the alleged discriminatory conduct. Petitioners further assert that the investigation and prosecution of the claims was negligently conducted and ignored various relevant statutory provisions governing housing standards.

Petitioners argue that in finding no probable cause the Commission erred in not considering the Columbia was unlawfully converting the Building for dormitory use which had a disparate impact on minority tenants, and ignored facts showing that Hispanic families like the complainants were provided poor services and facilities while constituents of the university who were generally white and affluent were afforded more favorable

conditions and services.

Petitioners also contend that the Commissioner failed to consider alleged racial statements by Columbia employees threatening petitioners with eviction. Specifically, petitioners claim that on October 1, 1996, four months after Columbia commenced its holdover litigation, Columbia's manager Michael Casey told Rodriguez "I want this Hispanic woman put outside on the street" and "these Hispanic people will be evicted." Moreover, petitioners allege that on the same occasion, Malick Nawaz, the Building's superintendent, told Rodriguez and M. Betancourt that "[t]he reason why you people are treated differently and the apartment not repaired is that students and faculty pay higher rents than you do, and Columbia cannot invest in repairing an apartment under that rent; you have to provide your own repairs."

Respondents deny the allegations in the petition and contend that the Commission acted rationally in finding no probable cause and dismissing the complaint. Respondents also assert that the Commission properly exercised its discretion in not granting an administrative convenience dismissal, asserting that Rodriguez had failed to meet the criteria contained in Administrative Code § 8-113(a)(6) as the matter had already been actively investigated and that Columbia would have been unduly prejudiced by the dismissal.

Respondents also cross-petition to dismiss the petition arguing that the action is barred under the doctrine of collateral estoppel. This argument is based on the decision and order of Justice Louis York dated May **18, 2001,** in which he dismissed a number of Rodriguez' claims in the Supreme Court action for failure to set forth a prima facie case, including her claim alleging discriminatory practices. Justice York subsequently dismissed the remaining claims in the complaint based on Rodriguez' failure to comply with discovery.

Discussion

Title 8 of the New York City Administrative Code provides the sole mechanism for judicial review of decisions made by the Commission. See, Maloff v City Commission on Human Rights, **45** AD2d **834** (1st Dept 1974)(exclusive procedure for reviewing a determination of the City commission on Human Rights is provided in the administrative code). Section **8-123** (b) of the Administrative Code gives this court exclusive jurisdiction to hear proceedings commenced by persons aggrieved by a final order of the Human Rights Commission, subject only to review by the Appellate Division and the Court of Appeals. See, **City** of New York Commission on Human Rights v Salinas Realty Corp., **183** Misc2d **897 (Sup** Ct. **New** York Co. 2000).

The complainants have the initial burden of establishing a prima facie case of discrimination before the Commission.

Sukhnanan v New York City Human Rights Commission, 189 AD2d 684 (1st Dept), lv denied 81 NY2d 709 (1993); Burlington Industries, Inc. v New York City Human Riahts Commission, 82 AD2d 415, 417 (1st Dept 1981), aff'd 58 NY2d 983 (1983). If such a case is made, the burden shifts to the opposing party to show that its conduct was for a legitimate purpose and not due to discrimination, based on evidence presented at a hearing. Id.; see Administrative Code § 8-116 ©).

In this case, however, no hearing was held as after its investigation, the Commission found no probable cause to believe that Kerman, Columbia or its employees engaged in discriminatory practices and dismissed petitioners' complaint in accordance with Administrative Code § 8-113 (d), and this Determination was upheld by Commissioner Varela. As set forth below, the record supports a finding of no probable cause and there is no other ground for annulling the decision of the Commissioner to uphold the Determination.

First, contrary to petitioners' allegations, the investigation conducted by the Commission was sufficient. When the complainants are provided "a full opportunity to present their claims, [i]t is within the discretion of [the Commission] to decide how to conduct its investigation" See, Sukhnanan v New York City Commission on Human Riahts, 189 AD2d at 684 (citation omitted); see also, McFarland v New York State Division of Human

Rights, 241 AD2d 108 (1st Dept 1998).

Here, petitioners were given ample opportunity make written submissions presenting their claims of discrimination. Thus, the Commission had discretion to determine the means and methods of its investigation and was not required to hold hearings or subpoena records or make written reports in connection with the investigation of petitioners' claims. See Chirsotis v Mobil Oil Corp., 128 AD2d 400 (1st Dept 1987), appeal denied 69 NY2d 612 (1987)(holding that a sufficient investigation was made by the State Commission on Human Rights when the investigation was based on written submissions only and the Commission did not conduct interviews or hold hearings); Goston v American Airlines, 295 AD2d 932 (4th Dept 2002)(holding that the State Division of Human Rights "properly investigated" a complaint without holding a hearing"); Evans v Varela, 5-23-96 NYLJ at 32, col. 1 (Sup Ct. Queens Co.) (determination of the Commission would not be set aside based on Commission's refusal to interview witnesses as requested by petitioner).

Nor can it be said that the Commission's investigation was inadequate on the grounds that it was based on the initial complaint and not the amended version. In fact, the LEB found that the allegations in the amended complaint were unsubstantiated and/or time-barred, and this court's review of the amended pleading does not provide a basis for concluding

otherwise.

With respect to the Commission's determination of "no probable cause," the court notes that due to its expertise in evaluating discrimination claims, considerable deference is accorded to the Commission. Sidoti v New York Division of Human Rights, 212 AD2d 537 (2d Dept 1995). Section 8-123(e) provides that "[t]he findings of the commission as to the facts shall be conclusive if supported by substantial evidence on the record considered as a whole." In determining whether probable cause exists, the LEB determines whether "a reasonable person, looking at the evidence as a whole, could reach the conclusion that it is more likely than not that the unlawful discriminatory practice was committed." 47 Rules of the City of New York § 1-51.

In this case, the factual conclusions reached by the Commission are supported by the record as a whole. The gravamen of petitioners' claims is that Columbia, Kerman and Columbia's employees commenced eviction proceedings against them based on their race and to meet the needs of housing its predominately-white academic community. Although, if true, the remark attributed to Columbia's manager Mr. Casey regarding the eviction of Hispanic people would lend some credence petitioners' claims, the evidence as a whole does not support a finding of discrimination. To the contrary, the record shows that Columbia sought to evict petitioners for non-discriminatory reasons,

including the non-payment of rent and the failure of the legal tenant to reside in the Apartment.

In addition, petitioners' assertions of disparate treatment of tenants based on race are contradicted by the record which reveals that in 1996 numerous repairs were made to the Apartment, and that Columbia installed a new kitchen sink, replaced the bathroom floor and provided extermination services. And, there is no evidence that Columbia tampered with petitioners' mail or that the Mr. Ramos assaulted Rodriguez based on her national origin or age.

Furthermore, the alleged procedural errors committed by the Commission do not provide a basis for overturning the Commission's determination of no probable cause for finding discrimination. First, the referral of petitioners' case to mediation was within the Commission's authority. See Administrative Code § 8-115(a). Next, despite petitioners' complaint that the Commission ignored their requests, there is no dispute that the Commission permitted the addition of M. Betancourt as a party and the amendment of complaint.

Moreover, the Commission properly considered Rodriguez' claims despite her request to dismiss them for administrative convenience or to voluntarily withdraw them. Administrative Code § 8-113(a)(6) permits dismissal for administrative convenience upon the request of a complainant when "the commission finds (a)

the complaint has not been actively investigate, and (b) that the respondent will not be unduly prejudiced thereby." In this case, Rodriguez' request to dismiss for administrative convenience was made after the investigation was completed and both sides had submitted their papers to the Commission, and only Rodriguez was withdrawing her claims. Under these circumstances, it cannot be said that the Commission improperly exercised its discretion in not granting Rodriguez' request to dismiss her claims for administrative convenience.

In addition, as there was no dismissal for administrative convenience, the voluntary withdrawal of her administrative claims might have prevented Rodriguez from seeking relief in either forum. See Emil v Dewey, 49 NY2d 968, 969 (1980)(state court claims should be dismissed where plaintiff withdrew her claims before State Division of Human Rights and there was no showing that the withdrawal was for administrative convenience). In any event, despite her pending administrative claims, Rodriguez was able to pursue her discrimination claims, albeit unsuccessfully, in State court, and has thus shown no harm resulting from the Commission's conduct. The court has considered petitioners' remaining allegations and has found them to be without merit.

In sum, as the determination of the Commission is supported by substantial evidence and the finding of no probable cause was

reasonable and not arbitrary and capricious (see e.g. Chirgotis v Mobil Oil Corp., 128 AD2d at 403) there are no grounds on which to grant the relief sought in the petition. Accordingly, the court need not decide whether petitioners' discrimination claims would be barred under the doctrine of collateral estoppel.

Conclusion

In view of the above, it is

ORDERED and ADJUDGED that the petition is denied and dismissed; and is further

ORDERED and ADJUDGED that the cross-petition is denied as moot.

DATED: September 6, 2003

J.S.C.