

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

2003 NY Slip Op 30128(U)

September 15, 2003

Supreme Court, New York County

Docket Number: 0400790/2002

Judge: Joan Madden

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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 and MARLENE RODRIGUEZ, BETANCOURT, RAFAEL FUERTES VARGAS, AND ALBERTO BETANCOURT

INDEX NO. : 400790/02

Petitioners,

- v -

NEW YORK CITY COMMISSION ON HUMAN RIGHTS,

Respondents.

MOTION DATE: 7-1-03

SCANNED

OCT 02 2003

MOTION SEQ. NO.: 014

MOTION CAL. NO.:

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to vacate, reargue and/or renew and resettle \_\_\_\_\_

PAPERS NUMBERED

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

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

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

Cross-Motion: [ 3 Yes [x] No

Petitioners, who are pro se, move to vacate, reargue, renew and resettle this court's decision and order dated October 28, 2002 ("the original decision"), which denied petitioners request for an order authorizing the New York State ("the State") and/or the City of New York ("the City") to pay the costs for the production of any transcripts arising in connection with this

proceeding, except to the extent of requiring the City to pay for a certain portion of the transcript of oral argument held in this proceeding on September 5, 2002. Respondents oppose the motion, which is denied.

The pro se petitioners were given permission to proceed with the prosecution of this action as poor persons by order of Justice Lucindo Suarez entered on February 19, 2002. As to the transcript, CPLR 1102 (b) provides that “[a] poor person may be furnished with a stenographic transcript without fee by order of the court in proceedings other than appeal, the fee therefor to be paid by the county or, in the counties within the city of New York by the city, as the case may be, in the same manner as is paid for transcripts on appeal.” However, where the underlying proceeding falls within the preview of Judiciary Law § 35(1)(a), the transcript is required to be paid by the State.

A motion for reargument is addressed to the discretion of the court, and is intended to give a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts, or misapplied a controlling principle of law. See, Foley v Roche, 68 AD2d 558, 567 (1st Dept 1979). However, “[r]eargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided.” William P. Pahl Equipment Corp. v. Kassis, 182 AD2d 22, appeal denied in part dismissed in part 80 NY2d 1005 (1992).

Here, there is no basis for granting reargument. As the court noted in its original decision, as this proceeding does not fall within the six types of proceeding listed under Judiciary Law § 35(1)(a), there is no basis for requiring the State to pay for the transcript, and petitioners’ arguments to the contrary are unavailing. The court also correctly determined that the City, with the exception of a specific portion of the transcript of the September 5, 2002 proceedings, was not required to pay for the transcripts in connection with this proceeding, since the underlying issues in this proceedings involve questions of law, and the court is bound by the administrative record below. Thus, there were no factual hearings in this proceeding but only oral argument on motions in which extensive written submissions were made by both sides. At petitioners’ request a court reporter transcribed each of these oral arguments. Nonetheless, as noted in the original decision, in view of the nature of these proceedings and, in particular, the limits on the court’s

review of the record below, it would be inappropriate to require the City to pay for all of the transcripts.

The court also correctly denied petitioners' request that the City pay for the transcript of the extensive oral argument on September 5, 2002, which addressed petitioners' motion for a default judgment and respondents' cross motion to dismiss on statute of limitations grounds. As the court noted, the cross motion to dismiss was denied and extensive papers were submitted by both sides.

However, in view of the court's denial of petitioners' motion for a default judgment, the court granted petitioners' request to the extent of requiring the City to pay for that portion of the transcript of the September 5, 2002 argument which contains factual statements by Assistant Corporation Counsel Mr. Edward Shin regarding his efforts to obtain an adjournment in the motion submissions part, which were not included in the respondents' papers. (This aspect of the argument related to petitioners' motion for a default judgment based on allegations that the respondents did not timely answer the petition or obtain an adjournment from motion submissions part.) Petitioners now inform the court that they have been unable to obtain this portion of the transcript as they had difficulty executing the order.<sup>1</sup> Accordingly, the decretal paragraphs of the original order have been clarified to enable petitioners to obtain a copy of the relevant portion of the transcript.

#### Conclusion

In view of the above it is

ORDERED that petitioners' motion to reargue is denied; and it is further

ORDERED that the official court stenographer, Delores Hilliard, is hereby directed to furnish to petitioner a copy of the transcript of the portion of the September 5, 2002 argument which concern Mr. Shin's statements regarding his efforts to obtain an adjournment from the motion submissions part; and it is further

ORDERED that upon receipt by the court from Delores Hilliard of a receipt reflecting the


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<sup>1</sup> Notably, this motion was not made until approximately eight months after the date of the original decision, and petitioners do not explain the delay in informing the court that they were unable to obtain the transcript.

cost of providing the transcript, the court shall issue a certificate to Delores Hilliard, as the official court stenographer, showing that she is entitled to the cost of providing such transcript which is to be paid by the Treasurer of the City of New **York**; and is further

ORDERED that this court shall furnish a copy of this decision and order to Delores Hilliard.

DATED: September 15, 2003

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