

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

2003 NY Slip Op 30135(U)

January 27, 2003

Supreme Court, New York County

Docket Number:

Judge: Joan Madden

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

PRESENT:HON. JOAN A. MADDEN

PART 11

Justice

SCANNED

FEB 05 2003

In the Matter of the Application of ADA RODRIGUEZ and MARLENE RODRIGUEZ

INDEX NO. : 400790/02

Petitioners,

MOTION DATE: 12-19-02

- v -

MOTION SEQ. NO.: 006

NEW YORK CITY COMMISSION ON HUMAN RIGHTS, et al

MOTION CAL. NO.:

Respondents.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for intervention.

PAPERS NUMBERED

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

Answering Affidavits — Exhibits

Replying Affidavits

Cross-Motion: [ ] Yes [x] No

Rafael Fuertes Vargas (“Vargas”) and Alberto Betancourt (“Betancourt”), who are pro se, seek leave to intervene in this proceeding as petitioner pursuant to CPLR 7802(d). Respondents oppose the motion, which is granted to the extent set forth below.

This proceeding challenges a final order of the respondent New York City Human Rights Commission (“Human Rights Commission”) finding no probable cause for petitioners’

complaints of unlawful and discriminatory housing practices by Columbia University in connection with the premises located at 601 West 112<sup>th</sup> Street, Apartment 5-B (“the Apartment”). Although the instant proceeding is similar to an Article 78 proceeding, it differs insofar as title 8 of the New York City Administrative Code provides an exclusive mechanism for judicial review of decisions made by Human Rights Commission.’ See, Maloff v City Commission on Human Rights, 45 AD2d 834 (1<sup>st</sup> Dept 1974)(exclusive procedure for reviewing a determination of the City Commission on Human Rights is provided in the administrative code); but see. Pace University v. City Commission on Human Rights, 200 AD2d 173 (1<sup>st</sup> Dept 1994)(applying the substantial evidence standard of CPLR 7803(4) to determination of City Commission on Human Rights).

Thus, for example, 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). In addition, under section 8-123(h), “a proceeding must be instituted within thirty days after the service of the order of the commission” as opposed to the four-month period provided for Article 78 proceedings. See, CPLR 217. At the same time, however, the relevant administrative code provision does not provide a procedure governing motions for intervention.

Thus, it is unclear whether the standard for intervention is provided by CPLR 7802(d), under which a court “may allow other interested persons to intervene in a special proceeding” against a body or an officer, or in accordance with CPLR 1013, which provides for intervention by “permission” when, inter alia, “the person’s claim or defense and the main action have a common question of law or fact.” However, the court need not resolve the issue as under either provision, leave to intervene should be granted to the extent set forth below.

Here, as each of the proposed intervenors reside in the Apartment it cannot be denied that

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‘Although, this court initially referred to this matter as an Article 78 proceeding, it is more properly referred to as a proceeding brought under section 8-123 of the New York City Administrative Code.

they are persons interested in the proceeding. Moreover, the claims of the proposed intervenors arise out of the same allegedly unlawful and discriminatory housing practices in connection with the Apartment. Indeed, the original petition included allegations related to the proposed intervenors.

Respondents oppose the motion to intervene on the grounds that it was made outside the statute of limitations period and would unduly delay the determination of the underlying proceeding. While respondents are correct that a motion to intervene cannot be made after the expiration of the limitations period, that rule does not apply when, as in this case, the proposed intervenors' claims "may properly be related back to the filing date of the petition." Greater New York Health Care Facilities Association v. DeBuono, 91 NY2d 716, 720 (1998). Here, the proposed intervenors' claims, which challenge the same determination as those contained in the original petition, relate back to the filing date of the petition.

That being said, however, the court agrees with respondents' position that as they have already filed a comprehensive answer and cross-petition, it would be unduly burdensome to require them to respond again to a lengthy pleading, and that the proceeding would be unnecessarily delayed as a result. See, Administrative Code section 8-123 (providing that proceedings seeking review of an order of the Commission on Human Rights "shall be heard and determined ... as expeditiously as possible with lawful precedence over other matters.").

Although the amended version of the petition that the intervenors seek to file has 192 paragraphs, and the petition contains 168 paragraphs, the court notes that the essence of the two pleadings is the same. Accordingly, while the court will not allow petitioners to file an amended petition at this advanced stage of the proceeding, the motion is granted to the extent of permitting proposed intervenors, who have an obvious interest in this matter, to intervene. See, Town of Huntington v New York State Drug Abuse Control Commission, 84 Misc2d 138 (Sup Ct. Suffolk Co. 1975). Moreover, the intervenors will not be prejudiced by relying on the original petition, particularly as the court will permit the intervenors, if they chose to do so, to submit papers in support of the petition.

Accordingly, in view of the above, it is

ORDERED that the motion for leave to intervene is granted to the extent set forth above;

and it is further

ORDERED that Rafael Fuertes Vargas and Alberto Betancourt be permitted to intervene in the above-entitled action as petitioners; and it is further

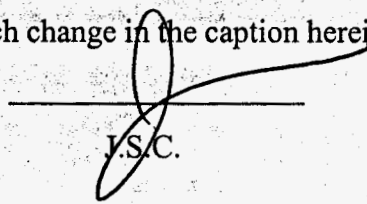
ORDERED that the notice of petition and petition be amended by adding Rafael Fuertes Vargas and Alberto Betancourt as petitioners; and it is further

ORDERED that the intervenors shall be permitted to submit papers in support of the petition to Part 11, room 351, 60 Centre Street, on or before February 20, 2003, and such papers shall be served on respondents' counsel so as to be received on or before February 20, 2003; and it is further

ORDERED that oral argument on the underlying petition shall be held on February 27, 2003 at noon; and it is further

ORDERED that the intervenors shall serve a copy of this order with notice of entry upon the Clerk of the Court and upon the Clerk of the Trial Support Office (Room 158), who are directed to amend their records to reflect such change in the caption herein.

DATED: January 27, 2003

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

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION