

<b>Johnson v Scholastic</b>
2007 NY Slip Op 30687(U)
April 10, 2007
Supreme Court, New York County
Docket Number: 0102338/2007
Judge: Jane S. Solomon
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JANE S. SOLOMON

PART 35

Index Number : 102338/2007

JOHNSON, JAMES M.

vs  
SCHOLASTIC

Sequence Number : 001

RENEWAL

INDEX NO. \_\_\_\_\_

MOTION DATE 4/6/07

MOTION SEQ. NO. \_\_\_\_\_

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	<u>1-3</u>
Answering Affidavits — Exhibits	<u>4-6</u>
Replying Affidavits	<u>7-9</u>

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered <sup>and adjudge</sup> that this <sup>petition</sup> motion is decided as \_\_\_\_\_

*Handwritten note:* All notices of entry to obtain entry of exhibits appear in person at the Judgment Clerk's Desk (Room 41B)

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Petitioner challenges the determination of the City of New York Commission on Human Rights ("Commission"), which dismissed his discrimination claim filed under Section 8-107 of the Administrative Code of the City of New York ("Administrative Code"). Respondent Scholastic, Inc. was petitioner's former employer; the individual respondents were petitioner's co-workers and supervisors. The Commission is not a party.

The Commission determined that there was no probable cause to petitioner's complaint before it, and dismissed the complaint. Petitioner requested a review of that determination, and upon further review, the Commission issued a Determination and Order After Review ("Order"), dated January 17, 2007. See Exhibit B to the Petition. The Order affirmed the original determination dismissing the complaint. It also stated that "[p]ursuant to Section 8-123(h) of Title 8 of the [Administrative Code], complainant has thirty (30) days after service of this Order to seek review in the New York State Supreme Court."

Petitioner commenced this action by filing on February 16, 2007. The petition seeks review of the Order, and upon such review, that this Court reverse the Order and remit it back to

Dated: \_\_\_\_\_ J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE Page 1 of 3

the Commission to investigate and conduct hearings. Petitioner argues that further investigation is warranted because he recently identified an eyewitness who is willing to testify that defendants treated petitioner badly. Defendants' cross-move to dismiss the petition for failure to join a necessary party, i.e., the Commission. CPLR 3211(10).

In opposing the cross-motion, petitioner contends that the Commission is not a necessary party to this proceeding because he is appealing its final decision. Since one does not add a lower court as a party when one appeals to a higher court, he argues, it follows that one does not need to include an administrative agency as a party when appealing its final determination. However one feels about the logic of this argument, petitions seeking to review final administrative determinations in New York State generally are required to name the agency as a respondent. See Jeanty v New York State Department of Correctional Services, 36 AD3d 811 (2d Dept. 2007) (petition brought under Executive Law Section 298 dismissed for failure to join New York State Division of Human Rights as a necessary party). This case is no different.

Necessary parties are those who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action. CPLR 1001(a). In this case, the petition is made pursuant to Administrative Code Section 8-123, which permits the Supreme Court to review final orders of the Commission. The relief sought is substantially identical to that sought in a petition to review a final administrative order under Article 78 of the CPLR. If the petition were granted, the Commission would be compelled to re-open an investigation into a matter it has already deemed unfounded, and it has been denied the opportunity to defend its action. Although the petition is commenced under a provision of the Administrative Code, rather than citing Article 78, the government agency that performed the challenged action must be joined as a party. Jeanty, 36 AD3d at 811; and see Solid Waste Services, Inc. v New York City Dept of Environmental Protection, 29 AD3d 318 (1<sup>st</sup> Dept. 2006).


Moreover, the proposed eyewitness testimony would have no impact on the Commission's findings that: petitioner did not notify his employer that he had a medical disability requiring an accommodation; that the accommodation he claims to have requested was unreasonable; and that the alleged retaliation- he was discharged from his employment approximately two months after he filed a complaint occurred only after petitioner failed to show up for work for nearly a year. Determination and Order After

Investigation, dated August 16, 2006, annexed to petition under Exhibit B. Accordingly, it hereby is

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed.

Dated: April 10, 2007

ENTER:

  
\_\_\_\_\_  
J.S.C.  
APR 11 2007

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).