

<b>Matter of Armstrong v Jackson</b>
2007 NY Slip Op 31832(U)
June 25, 2007
Supreme Court, New York County
Docket Number: 0400447/2007
Judge: Alice Schlesinger
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER

Justice

PART 16 **Part 16**

*Armstrong*

- v -

*JACKSON*

INDEX NO. 400447/07  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

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

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

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

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

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.**

**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 41B)

Dated: JUN 25 2007

*Alice Schlesinger*  
ALICE SCHLESINGER v.s.c.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK            IA PART 16

-----X  
IN THE MATTER OF

RHAMED ARMSTRONG,

Petitioner,

Index No. 400447/07  
Motion Seq. No. 001

-against-

CURTIS JACKSON  
C.E.O. OF G-UNIT RECORDS, LLC,

Respondent.

**UNFILED JUDGMENT**

**his 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 41B) --X**

-----X  
**SCHLESINGER, J.**

Petitioner Rhamed Armstrong, an incarcerated person representing himself, commenced this proceeding against respondent Curtis Jackson as the Chief Executive Officer of G-Unit Records, LLC (G-Unit). G-Unit is in the business of making and selling music recordings. Tony Yayo is a hip-hop artist with G-Unit whose album "Thoughts of a Predicate Felon" Mr. Armstrong purchased from M&P Sales, a mail order music company.

Petitioner Armstrong contends that G-Unit violated the law by allowing Mr. Yayo's music to be listed in M&P's mail order music catalogue with a retail distribution number related to Rockafella Records, instead of G-Unit Records. According to Armstrong, this incorrect listing wrongfully directed profits away from G-Unit and Mr. Yayo. Armstrong also contends that G-Unit wrongfully failed to respond to his consumer complaint about this matter. Armstrong now seeks a writ of mandamus pursuant to state and federal law to compel G-Unit to respond to his complaint, investigate the matter, and correct the distribution number.<sup>1</sup>

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<sup>1</sup>Armstrong also asks the Court to appoint counsel at the City's expense. The request is denied. The City has opposed it, and Armstrong has failed to establish any statutory or regulatory entitlement to such relief.

G-Unit has moved to dismiss on various grounds. First, G-Unit asserts that Armstrong lacks standing to compel a writ of mandamus because, among other things, he has not alleged or incurred any injury in fact. Also, G-Unit asserts that Armstrong's claim is barred by the four-month statute of limitations for Article 78 proceedings. It appears undisputed that Armstrong filed a consumer complaint with the New York State Department of Law in February 2006 and complained to G-Unit in January 2006 and again in February and June of that year. The Department of Law declined to pursue the matter by letter dated March 24, 2006. G-Unit took no action to investigate the matter, and never responded to Armstrong's January 2006 complaint, despite the two follow-up requests from Armstrong.

In opposition, Armstrong maintains his position and adds that a cause of action for deceptive practice also exists under General Business Law (GBL) §349. G-Unit responds that Armstrong's GBL claim also fails due to a lack of actual injury to him caused by the allegedly deceptive practice.<sup>2</sup>

#### Discussion

This Court agrees with respondent G-Unit Records that this action must be dismissed because Mr. Armstrong has not incurred any injury as a result of the alleged wrongful conduct by G-Unit. To have standing to sue, petitioners in an Article 78 proceeding "must show that they have suffered an injury in fact, distinct from that of the general public." *Transactive Corp. v. NYS Dept. of Social Services*, 92 NY2d 579, 587 (1998) (petitioner had no standing to commence Article 78 proceeding to challenge bidding process, due to failure

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<sup>2</sup>After this matter was fully submitted, Mr. Armstrong mailed directly to Chambers a motion seeking the same relief as the petition. The Court declines to accept any further papers in support of the petition, as the matter was fully briefed and marked submitted some time ago.

to demonstrate an injury in fact directly related to the outcome of the process). Similarly here, petitioner Armstrong has failed to allege that he himself suffered any injury due to the listing in the M&P catalog of Tony Yayo's album under a purportedly incorrect music retail distribution number. At most, Armstrong alleges that Yayo and respondent G-Unit lost profits from album sales. Armstrong does not contend that he was unable to purchase the album or that he was compelled to pay an excessive price or to otherwise incur money damages. He alleges only concern as a music fan, but that concern does not rise to the level of an injury.

Similarly, Armstrong's request for a writ of mandamus pursuant to 28 USC §1651(a) must be dismissed. Armstrong has not demonstrated "a clear right... to the relief sought," nor that G-Unit had a "plainly defined" duty to investigate Armstrong's complaints or respond to his letters. See, *Owens v. US Parole Commission*, 2004 U.S. Dist. Lexis 19 315 (SDNY 2004). What is more, that federal statute, which empowers courts to issue writs, may only be enforced in the federal courts. See, *Owens, supra*.

In his opposition to the cross-motion, Armstrong sought to correct any defects in his petition by citing to General Business Law §349. However, no violation of the statute exists here. To establish a violation of GBL §349, a plaintiff must plead and prove that the defendant committed a deceptive act or practice that: (1) was consumer-oriented; (2) was misleading in a material way; and (3) caused plaintiff to suffer actual injury. See, *Stutman v Chemical Bank*, 95 NY2d 24, 29 (2000). Even if Armstrong were able to establish the first two criteria, he has not alleged that the actions complained of caused him any injury, as discussed above. Therefore, no claim under the statute has been asserted.

In sum, this Court finds that petitioner has failed to state a valid cause of action under any of the statutes, laws or regulations cited. Respondent is therefore entitled to the dismissal of this proceeding on that ground. In light of this conclusion, no reason exists to address respondent's assertion that this proceeding is time-barred.

Accordingly, it is hereby  
ADJUDGED that the petition is denied, the cross-motion to dismiss is granted, and the proceeding is dismissed, without costs or disbursements.

This constitutes the decision and judgment of this Court.

Dated: June 25, 2007

**JUN 25 2007**

  
\_\_\_\_\_  
J.S.C.  
**ALICE SCHLESINGER**

**UNFILED JUDGMENT**  
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