

Marks-Ellis v New York City Commn. on Human Rights
2007 NY Slip Op 33880(U)
December 3, 2007
Supreme Court, Richmond County
Docket Number: 0080265/2007
Judge: Joseph J. Maltese
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ANNETTE MARKS-ELLIS,

Plaintiffs

against

DECISION & ORDER

HON. JOSEPH J. MALTESE

**NEW YORK CITY COMMISSION ON HUMAN
RIGHTS, STATEN ISLAND HISTORICAL SOCIETY
AND JOHN GUILD,**

Defendants.

The following items were considered in the review of this motion for miscellaneous relief

<u>Papers</u>	<u>Numbered</u>
Notice of Petition and Affidavits Annexed	1
Notice of Cross-Motion	2
Answering Affidavits	3
Replying Papers	4
Exhibits	Attached to Papers
Memorandum of Law	

Upon the foregoing cited papers, the Decision and Order on this Motion for Summary Judgment is as follows:

The petitioner, Annette Marks-Ellis, seeks judicial review and reversal of a determination made by the New York City Commission on Human Rights [“Commission”] which found that there was no probable cause to believe that the respondents, Staten Island Historical Society [“Historical Society”] and John Guild [“Guild”], engaged in discriminatory practices against the petitioner. The Historical Society makes a cross-motion seeking dismissal of the petition because it was filed beyond the time provided by the Commission. For the foregoing reasons, petitioner’s motion is denied, and the defendant’s cross-motion is granted.

Facts

On April 30, 2003 the Petitioner, Annette Marks-Ellis, *pro se*, filed a verified administrative complaint with the Commission alleging that the Historical Society and her supervisor, John Guild, discriminated against her because of her race. The discriminatory practices, if true, would violate Title 8 of the Administrative Code of the City of New York.

Upon receiving the complaint, the Commission conducted an investigation, and determined that there is “no probable cause” to believe that the respondents engaged in the unlawful discriminatory practices alleged in the complaint. The Commission’s initial decision detailed a summary of the incidents which the petitioner claims to be discriminatory. Notably, the petitioner states that she was discriminated against when she applied for a promotion in May 2002. The Historical Society denies having any issue with petitioner’s race and in fact, petitioner received the promotion. However, after she obtained this new position with its new duties and accompanying change in schedule, she began to have conflicts with her supervisor, Guild, which caused the deterioration of the parties’ relationship. The Commission found that there was ample evidence demonstrating that Respondent, Guild, believed that the petitioner, who had represented that she was getting her Ph.D., was already enrolled in a Ph.D. program by the beginning of 2003. In fact, petitioner was not in a Ph.D. program. Instead, she was auditing graduate courses, but was not enrolled in them.

The Commission noted that the Complainant was terminated by the Historical Society based upon “her misrepresentation of her school enrollment as well as her persistent refusal to accept the work schedule demanded of her.” The Commission found no evidence to support the allegation that Respondents ever took issue with petitioner’s race. The Commission then dismissed the complaint on March 20, 2007.

Upon receipt of the Commission’s order stating that there was “no probable cause,” the Complainant requested an appeal to the Chair of the Commission on Human Rights. The Commission Chair accepted the appeal and affirmed the Commission’s decision. Petitioner was mailed a copy of the decision, dated July 6, 2007, on July 10, 2007. On August 16, 2007, petitioner appealed the Commission’s final order. Petitioner now seeks judicial review of the Commission’s final order claiming that the Commission’s decision is “based on information that is incomplete, skewed and marred by clerical errors.” In opposition, the Historical Society and Guild claim that the petitioner’s request, although filed merely two days late, is barred by the statute of limitations. In other words, petitioner failed to commence the Order to Show Cause by August 14, 2007.

Discussion

Recently, in *Okoumou v. Community Agency for Senior Citizens, Inc.*,¹ this court faced a similar situation where the petitioner failed to file the petition within the applicable thirty day statute of limitations. Unfortunately, this court does not have the inherent power, even in the interest of justice, as the petitioner suggests, to extend a statute of limitations.² Since the petition was not filed within the thirty-five day period that CPLR § 2103(b)(2) grants when documents are served by mail, the petition must be dismissed.³ Accordingly, the motion seeking judicial review of the Commission determination must be denied.

Notwithstanding the petitioner's statute of limitations bar from bringing this proceeding against the respondents, this court has reviewed the facts and circumstances surrounding the request for judicial review. Judicial review of administrative determinations made by the Commission are based upon whether the order or decision was supported by sufficient evidence.⁴ The petitioner's complaint filed with the Commission charges that the Respondents discriminated against her because of her race in violation of Title 8 of the Administrative Code of the City of New York. Here, petitioner claims that respondent Guild was aware of her academic obligations. Therefore, petitioner believes that the respondents' reason for her discharge must have been pretextual, and that race was the actual reason for her termination.

¹ *Okoumou v. Community Agency for Senior Citizens, Inc.*, 842 NYS2d 881 [Sup Ct, Richmond County, Maltese, J. (2007)].

² *Dioguardi v. Glassey*, 5 AD3d 430 [2d Dept 2006].

³ *Jeanty v. New York State Dept. of Correctional Services*, 36 A.D.3d 811 [2d Dept 2007]; *In re Solid Waste Services, Inc. v. New York City Department of Environmental Protection*, 29 AD3d 318 [1st Dept 2006].

⁴ *State Div. of Human Rights v. 1368 East 94th Street Corp.*, 293 A.D.2d 752 [2d Dept 2002].

Ultimately, the petitioner was terminated from her employment with the Historical Society on March 11, 2003.

This Court may not substitute its judgment for that of the Commission and it must confirm the determination so long as it is based on substantial evidence.⁵ Moreover, the Commission has broad discretion in determining the method to be employed in investigating a claim, and its determination will not be overturned unless the record demonstrates that its investigation was abbreviated or one-sided.⁶

The petitioner claims that the determination of no probable cause had been made without all the evidence because the investigative process had failed to consider all the documentary evidence and witnesses. Furthermore, she claims that she had trouble receiving correspondence from the Commission which she alleged had her wrong phone number and address. Even if the court accepted petitioner's allegations as true, it is undisputed that she was given an opportunity. This is evidenced by the letter dated May 1, 2007 to the Office of the Chair where petitioner repeated her allegations and submitted documents that she alleged would substantiate her allegation and claims.

While a court may have viewed the facts differently, this court is bound by the standards of judicial review of whether the order was supported by sufficient evidence. Here, the court finds that there is no evidence warranting a judicial determination overriding the Commission's decision. This court must uphold the initial decision of the Commission finding "no probable cause" regarding the claim of wrongful and retaliatory termination and the appeal to the Chair of the Commission on Human Rights that affirmed that decision.

⁵ *New Venture Gear, Inc. v. New York State Div. of Human Rights*, 41 AD3d 1265 [4th Dept 2007].

⁶ *Pascual v. New York State Div. of Human Rights*, 37 AD3d 215 [1st Dept 2007].

Accordingly, it is hereby:

ORDERED, that the petitioner's order to show cause seeking to reverse the decision of the New York City Commission on Human Rights is denied and this proceeding is dismissed.

ENTER,

DATED: December 3, 2007

Joseph J. Maltese
Justice of the Supreme Court