

**Nixon-Tinkelman v New York City Dept. of  
Health & Mental Hygiene**

2008 NY Slip Op 30029(U)

January 2, 2008

Supreme Court, New York County

Docket Number: 0113339/2007

Judge: Karen Smith

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

PRESENT: SMITH  
Justice

PART 62

BARBARA NIXON-TACKELMAN

INDEX NO. 113339/07

MOTION DATE 11/27/07

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

NYC DEPT OF HEALTH MENTAL HYGIENE

The following papers, numbered 1 to 8 were read on this motion ~~for~~ a preliminary injunction

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

PAPERS NUMBERED	
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1-3</u>
Answering Affidavits — Exhibits	<u>4-5</u>
Repeating Affidavits	<u>6-8</u>

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion is denied in accordance with the attached memorandum decision and order

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

**FILED**  
JAN 10 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 1/2/08 K.S.S.  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 62

-----X  
BARBARA K. NIXON-TINKELMAN,

Plaintiff,  
-against-

Index No.: 113339/2007  
Motion Seq.: 001  
Motion Date: 11/27/2007

NEW YORK CITY DEPARTMENT OF HEALTH  
AND MENTAL HYGIENE,  
Defendant.

**DECISION AND ORDER**

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**PRESENT: KAREN S. SMITH, J.S.C.:**

**FILED**  
JAN 10 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

Plaintiff's motion for a temporary restraining order and preliminary injunction is denied.

Plaintiff ("Tinkelman") brought the instant action alleging that her employer, New York City Department of Health and Mental Hygiene ("DOH") was discriminating against Tinkelman based upon her physical disabilities because DOH refused to grant Tinkelman the accommodation of being allowed to work at location close to her home in Queens as opposed to her assigned work location in Manhattan. Tinkelman further alleges that the requested accommodation is reasonable, DOH's refusal to grant the request is in violation of the American's with Disabilities Act and discriminates against Tinkelman in violation of both the New York State Human Rights Law and the New York City Administrative Code. In addition to monetary damages, Tinkelman's complaint demands a judgment; "Enjoining Defendant from failing to respect the rights of those with disabilities and restoring Plaintiff to a position suitable to her and in a location that reasonably accommodates her."

Contemporaneously with the institution of Tinkelman's litigation, she also brought this motion seeking a Temporary Restraining Order and a Preliminary Injunction during the pendency of the action. The Temporary Restraining Order was denied upon the initial hearing on the Order

to Show Cause instituting this motion. Tinkelman's requested Preliminary Injunction seeks a mandatory injunction; "...ordering Defendant New York City Department of Health and Mental Hygiene to grant Plaintiff the reasonable accommodation of assigning her to a work site situated near her home together with a telephone for the hearing impaired and a computer..."(See Tinkelman's Order to Show Cause herein).

The purpose of a preliminary injunction is to maintain the status quo during the pendency of an action where the failure to do so might ultimately impair the value of any final judgment in the action. "A mandatory injunction should not be granted, absent extraordinary circumstances, where the status quo would be disturbed and the plaintiff would receive the ultimate relief sought, pendente lite" (*St. Paul Fire and Marine Insurance Company v York Claims Service, Inc.*, 308 AD2d 347 [1<sup>st</sup> Dept, 2003] [internal citations omitted]). Additionally, it has long been settled that, in order to prevail on a motion for a preliminary injunction, the movant bears the burden of establishing a likelihood of success in the underlying action on its merits, irreparable injury and that the balance of the equities tips in the movant's favor (see Weinstein, Korn and Miller, 1 New York Civil Practice: CPLR P 6312.01). The failure to establish any of the three elements results in the denial of the requested injunction.

The instant motion papers offer no indication of any circumstances which are any different from those encountered by any employee who suffers serious illness during their working career or from a party who is injured by another's negligence. Our system of litigation views those injuries as being compensable with money damages (as witnessed by Tinkelman's demand for a money judgment up to ten million dollars). Tinkelman has made no showing of how any injuries she will allegedly suffer during the pendency of this action are so different that

they are unable to be compensated with the monetary judgment she is demanding or that the value of that judgment will be impaired if no preliminary injunction is granted. Therefore, Tinkelman has not established that her injuries are irreparable in the absence of a preliminary injunction. On the other hand, the extraordinary direction Tinkelman seeks in her preliminary injunction would alter the status quo by removing her employer's discretion to assign and manage Tinkelman's employment duties long before she has been put to the test of proving her claims. Absent any showing of an irreparable injury or an impairment to any potential judgment, Tinkelman may not obtain a mandatory injunction while her action is pending.

Furthermore, in connection with the instant motion, DOH assumes *arguendo* that Tinkelman is an individual effected by physical disabilities. DOH then argues that the accommodation requested by Tinkelman does not qualify as a "reasonable accommodation". Tinkelman has not addressed this issue. Although Tinkelman offers a memo from the Regional Director of Pest Control Services<sup>1</sup> in Jamaica wherein the Director advises that there is an, essentially, empty office in Jamaica from which Tinkelman could work and that she would be welcome to work from that office, the mere fact of the existence of an empty office is not the only issue to be considered. DOH points out that Tinkelman's working from Queens on an ongoing basis while remaining in her current position isolates her from her supervisors, the other staff members and the clients of the bureau in which Tinkelman is employed and that DOH has offered some solutions which have been temporary and others which have been unacceptable to Tinkelman.

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<sup>1</sup> Tinkelman does not work for the Bureau of Veterinary and Pest Control Services. She is employed as an associate staff analyst for the Bureau of Transitional Health Care Coordination and her assigned work location is within that bureau's offices in Manhattan.

[\*5]


The instant litigation and motion are entirely premised upon Tinkelman's contention that DOH has refused to grant Tinkelman a specific accommodation (to wit: that she be allowed to establish her work location in Queens rather than Manhattan). However, DOH is not necessarily required to do so by any of the Federal, State or Local statutes, rules and codes relied upon by Tinkelman. Because Tinkelman has focused this litigation on this narrow issue, in order to prevail, she will need to prove that the only reasonable accommodation for her condition is the one she desires. Even Tinkelman's own doctor acknowledges Tinkelman suffers from; "...many medical maladies...", her health continues to deteriorate and; "...the contribution of her work place to this dismal process must be considered" (Exhibit B to Tinkelman's Exhibits in Support of her Motion). In the face of these statements, it cannot be concluded that the duration and stress of Tinkelman's commute to her job location (as opposed to other stressors and factors involved in Tinkelman's work place and/or her other activities of daily living) so substantially contributes to her frail and deteriorating health that granting the accommodation she is demanding is the only reasonable solution under the circumstances. Thus, Tinkelman has not met her burden of showing a likelihood of success on the merits herein or that the equities tip in her favor. Accordingly, it is;

ORDERED that Tinkelman's motion for a preliminary injunction herein is denied.

The foregoing constitutes the decision and order of this court.

Dated: January 2, 2008

ENTER:

  
Hon. Karen S. Smith, J.S.C.

**FILED**

JAN 10 2008

NEW YORK  
COUNTY CLERK'S OFFICE