

Stillman v New York State Div. of Human Rights
2008 NY Slip Op 33115(U)
November 19, 2008
Supreme Court, New York County
Docket Number: 109586/08
Judge: Jane S. Solomon
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SUPREME COURT OF THE STATE OF NEW YORK / NEW YORK COUNTY

PRESENT: Solomon
Justice

PART 55

Stillman, B

INDEX NO. 109586108

MOTION DATE _____

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

- v -

NYS Div of HR

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

*is decided in accordance with
Deason Order & Judgment.*

UNFILED JUDGMENT
This judgment has not been filed with the County Clerk
and notice of entry of judgment has not been given hereon. To
obtain entry, counsel for the party whose representative must
appear in person at the Judgment Clerk's Desk (Room
1412).

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

Dated: 11/19/08


JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check If appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 55

-----x
GEORGE STILLMAN,

Petitioner,

Index No.: 109986/08

-against-

DECISION, ORDER and
JUDGMENT

NEW YORK STATE DIVISION OF HUMAN RIGHTS
& BARNES AND NOBLE COLLEGE BOOKSTORES,
INC.,

Respondents

-----x
JANE S. SOLOMON, J.:

BACKGROUND

Petitioner, acc 1479 pro se, is challenging a determination of respondent New York State Division of Human Rights (DHR), pursuant to CPLR Article 78, that he was not unlawfully discriminated against in public accommodation and credit based on his age and race by respondent Barnes and Noble College Bookstores, Inc. (Barnes & Noble). Barnes & Noble asserts that it is incorrectly referred to as Barnes and Noble College Bookstores, Inc., and says that its actual name is Barnes & Noble College Booksellers, Inc.

Petitioner alleges that he was denied the opportunity to purchase books at Barnes & Noble when he was not permitted to pay by personal check. The check proffered by petitioner had his name and a post office box imprinted on its face, and, for proof of identification, he presented a military ID, indicating that he

NEW YORK STATE JUDGMENT
This judgment has been entered by the County Clerk and notice of entry, together with a copy of this judgment, has been mailed to the parties. To appear in person at the Judgment Clerk's Desk (Room 1479).

had served in the military during the Korean War. Petitioner further states that he had been able to make purchases with similar checks and identification in the past at Barnes & Noble, but that on this occasion he was not permitted to do so and was ridiculed by the staff.

DHR conducted an investigation by submission, and determined that Barnes & Noble has a universal policy with respect to payment by personal check. This policy states that personal checks must contain the name, address and telephone number of the payor pre-printed on the face of the check, and that customers present either one form of acceptable picture ID or two forms of acceptable non-picture ID. According to Barnes & Noble's policy, acceptable forms of identification include a student ID, a driver's license, a passport, a social security card, a bursar's receipt, or a current student registration form. In addition, the policy also permits acceptance of bank starter checks without the above-referenced pre-printed information, provided that the customer presents the identification stated above.

Petitioner concedes that the check he presented had a post office box printed on its face, not an address or telephone number. He further indicates that the only identification he attempted to present was the military ID, which is not included in Barnes & Noble's list of acceptable identification.

Petitioner maintains that, in addition to ridiculing him, the Barnes & Noble employees refused to check their records to ascertain that petitioner had made previous purchases with similar checks and identification. Barnes & Noble denies that any employee ridiculed petitioner, and asserts that it does not maintain records that would indicate prior purchases by customer check.

In response to the instant petition, Barnes & Noble asserts that it was not properly served, because service was made at 2 West 18th Street in Manhattan, a location maintained not by respondent Barnes & Noble, but by Barnes and Noble, Inc., an affiliated but separate corporate entity, and because service was not effectuated within the time limitations imposed by CPLR 306-b. Additionally, Barnes & Noble maintains that the DHR determination was correct.

As part of his argument, petitioner states that he was denied his rights because DHR should have had an evidentiary hearing and not made its determination based only on written submissions.

DISCUSSION

It is well settled that "a court may not substitute its judgment for that of the board or body it reviews unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion [internal quotation marks and

citation omitted] [emphasis in original]." *Matter of Pell v Board of Education of Union Free School District No. 1 of Towns of Scarsdale & Mamaronack, Westchester County*, 34 NY2d 222, 232 (1974). The test is whether the action taken is justified or without foundation in fact. *Id.* at 231. "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." *Id.* If the agency's action is founded on a rational basis, that action should be affirmed, even if the court would have come to a different conclusion. *Mid-City Management Corp. v New York Conciliation and Appeals Board*, 112 AD2d 72 (1st Dept), *affd* 66 NY2d 1032 (1985).

Based on the facts presented, it cannot be concluded that DHR's determination was arbitrary and capricious, or that it lacked a rational basis on the record. *Maltsey v New York State Division of Human Rights*, 31 AD3d 641 (2d Dept 2006).

"The information supplied by the parties was sufficient for the Human Rights Division to make its determination The Human Rights Division 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."

Pascual v New York State Division of Human Rights, 37 AD3d 215, 216 (1st Dept 2007).

Petitioner was afforded a full opportunity to present his written arguments to DHR, and, based on the administrative

record, there is nothing that would lead a cautious person to believe that discrimination had been practiced. *Levin v New York City Commission on Human Rights*, 12 AD3d 328 (1st Dept 2004). The policy enunciated by Barnes & Noble is not discriminatory on its face, and has a rational basis.

Petitioner's argument that the DHR determination should be remanded for a hearing is without merit. "There is no requirement that a hearing be held simply because there is some issue of fact created by conflicting evidence before the [agency]. ... Rather, 'there must be a *factual* basis in the evidence sufficient to warrant a cautious [person] to believe that discrimination ha[s] been practiced [internal citation omitted].'" *Ramasar v State Division of Human Rights*, 294 AD2d 249, 249 (1st Dept 2002).

Since petitioner has been afforded a full and fair opportunity to present his case, there is no need to remand the matter for further consideration. *McFarland v New York State Division of Human Rights*, 241 AD2d 108 (1st Dept 1998).

Based on the foregoing, the petition is denied.

Barnes & Noble's argument that it was improperly served is rendered moot by this decision.

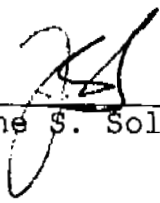
CONCLUSION

Based on the foregoing, it hereby is

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

Dated: November 19, 2008

ENTER:



Jane S. Solomon, J.S.C.

JANE S. SOLOMON

UNFILED JUDGMENT
This judgment has not been filed with the County Clerk and notice of entry of judgment has not been given. To obtain entry, counsel or the party must appear in person at the Judgment Clerk's Desk (Room 1415).