

**Matter of Reeves v City of N.Y. Dept. of
Homeless Servs./NYS Div. of Human Rights**

2010 NY Slip Op 31230(U)

May 13, 2010

Supreme Court, New York County

Docket Number: 402630/09

Judge: Joan A. Madden

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

PRESENT: Hon Joan A. Madden

JOAN A. MADDEN

PART 11

Index Number : 402630/2009
EEVES, ANTHONY H.
 vs.
 CITY OF NEW YORK
 SEQUENCE NUMBER : 001
 ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

in this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ^{cross-motion} motion Article 78 proceeding is decided
 in accordance with the attached Memorandum Decision Order +
 Judgment

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).

Dated: May 13, 2010.

 J.S.C.
JOAN A. MADDEN

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X

In the Matter of the Application of
ANTHONY H. REEVES,

Petitioner,

-against-

Index No. 402630/09

CITY OF NEW YORK DEPARTMENT OF HOMELESS
SERVICES/NYS DIVISION OF HUMAN RIGHTS,

JOAN A. MADDEN, J.:

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

In this CPLR article 78 petition, petitioner, Anthony H. Reeves, seeks
determination of the New York State Division of Human Rights (SDHR) dismissing his
complaint of discrimination against the Department of Homeless Services of the City of New
York (DHS). Petitioner further seeks \$25,000 in damages. Respondents move, pursuant to
CPLR article 78 and Rule 3211 (a) (7), to dismiss the proceeding.

Petitioner filed a complaint with SDHR, on or about November 12, 2008, in which he
alleged that DHS had discriminated against him, based on age, race, color and national origin
(DHS Complaint). Specifically, in the DHS Complaint, plaintiff identified himself as 65 years of
age and black and alleged that he had been discriminated against for complaining about being
beaten by DHS police, some of whom were white. Petitioner also complained that white males
were treated better than black males in DHS's homeless shelters, and that a DHS investigator
withheld information in two federal civil rights cases that petitioner had filed.

Responding to the DHS Complaint, DHS contended that petitioner had not provided

proof or facts suggesting discriminatory or retaliatory animus on the part of DHS. Also with its response, DHS provided a document that demonstrated that petitioner had not been in DHS's shelter system since June 26, 2006, over two years before he filed the DHS Complaint. In rebuttal, petitioner asserted that he had been grabbed, beaten and involuntarily removed from a DHS shelter, by DHS police, on August 26, 2005, and rejected or turned away by DHS security in November 2008, when he attempted to determine the name of the investigator handing his federal court complaints.

On September 30, 2009, SDHR issued its determination. In short, SDHR found that there was no probable cause to believe that DHS was engaging, or had engaged in, the discriminatory conduct alleged by plaintiff. SDHR noted that it had analyzed certain data from DHS's website, which revealed that each of the protected classes cited as the basis for plaintiff's DHS Complaint was very well represented. SDHR also found that petitioner had not indicated that he had applied for housing services from DHS during the one-year period prior to the filing date of his DHS Complaint, and also had not disputed DHS's assertion that he had not been in the DHS shelter system since June 2006.¹ Consequently, SDHR determined that the only timely allegations in petitioner's complaint were those concerning the November 2008 incident.

Regarding that incident, SDHR found that petitioner's claim that he had been ejected from the building at which DHS's legal offices are located, while trying to determine the name of the investigator assigned to his federal cases, was not part of an effort to obtain housing

¹SDHR noted that petitioner's charge was also filed under the federal Fair Housing Act, the enforcement of which is responsibility of the U.S. Department of Housing and Urban Development (HUD), and that petitioner would be notified by HUD upon its review of the SDHR determination (*see Resp. Mov. Aff., Exh. D, at 4*).

assistance from DHS. Based on this determination, SDHR concluded that the claim was not within its jurisdiction.

On its dismissal motion, SDHR contends that petitioner does not point to any specific errors by SDHR in reviewing his complaint and conducting its investigation. SDHR also contends that its determination was not arbitrary and capricious because petitioner's claims were all either time-barred or outside its jurisdiction. SDHR also maintains that petitioner's conclusion that DHS treated whites better than blacks was not supported by demographic data concerning the population served by DHS.

For the purposes of this proceeding, petitioner's allegations concerning the beating and the retaliation against him are assumed to be true. Of course, conduct of this nature is reprehensible and extremely troubling to this court. Under the law, however, this court's role in its review of agency determinations, such as that which was done by SDHR in this matter, is quite limited. In addition, individuals such as petitioner, who seek to overturn an agency determination, face a difficult task in that they must demonstrate that the agency's determination was arbitrary and capricious, or affected by an error of law (CPLR 7804; *see Matter of McFarland v New York State Div. of Human Rights*, 241 AD2d 108, 112 [1st Dept 1998] ["a determination of no probable cause will not be set aside unless it is found to be arbitrary and capricious [citation and quotation marks omitted]").

Here, the statute of limitations to file a claim with SDHR under the New York State Human Rights Law for housing and other types of discrimination is only one year long (Executive Law § 297 [5] ["Any complaint filed pursuant to this section must be so filed within one year after the alleged unlawful discriminatory practice"]). While this is not a long time to

bring a claim, it is all that the law allows. In this case, petitioner filed his case with SDHR in on November 2008, and he does not contend, and the record does not demonstrate, that he used or sought to use the DHS shelter system in the one-year period prior to November 2008. In fact, the documents that DHS submitted to SDHR demonstrated that petitioner had not used the DHS shelter system in the year prior to his filing of the DHS Complaint.² Therefore, while the conduct about which petitioner complains could never be condoned, petitioner filed his claim with SDHR after the expiration of the statute of limitations. As a result, SDHR's determination that petitioner's DHS Complaint was not timely, except for his allegations concerning the November 2008 incident, is not arbitrary and capricious, and cannot be annulled by a court. Accordingly, to the extent that the petition is based on these allegations, it must be dismissed as a matter of law.

While the court itself makes no determination concerning plaintiff's discrimination claim, it notes that, regarding plaintiff's claim that DHS affords white men preferential treatment over black men in homeless services, SDHR reviewed and analyzed demographic information concerning those who use DHS's shelter services. SDHR has broad discretion in determining the method to be employed in investigating a claim (*McFarland*, 241 AD2d at 111), and concerning a determination of "no probable cause," such findings should be overturned as capricious only where the record demonstrates that SDHR's investigation was "abbreviated or one-sided" (*see Matter of Levin v New York City Commn. on Human Rights*, 12 AD3d 328, 329 [1st Dept 2004]; *see e.g. Flinker v State Div. of Human Rights*, 123 AD2d 578, 579 [1st Dept 1986] [investigation

²Mr. Reeves did not contend that he sought, but was denied shelter services during the one-year statutory period that preceded the filing of the DHS Complaint, and also did not otherwise provide a concrete basis for his claim that, during that time period, he has been the victim of discriminatory practices by shelter staff.

on age discrimination complaint was inadequate where respondent landlord denied allegations without detail, and failed to submit a requested roster detailing the number of senior citizens occupying apartments, and SDHR found no probable cause without further investigation]). While SDHR's investigation was not exhaustive, the record does not suggest that it was unduly abbreviated, or one-sided.

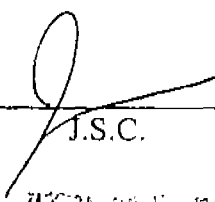
Petitioner's claim concerning the November 2008 incident, although timely, must also be dismissed. Petitioner's contention, that he was ejected from SDHR's legal offices while attempting to obtain information for use in his federal court cases, is not a claim based on housing services or accommodations at all, but is about obtaining information. Because the claim is not about housing services or accommodations, it does not speak to discrimination in the provision of housing services or accommodations. Therefore, SDHR's determination that the allegation was not within its housing discrimination jurisdiction is supportable under the law, and is not arbitrary and capricious.

In light of the determinations above, the petition must be dismissed in its entirety, and it is hereby

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

Dated: May 13, 2010

ENTER:



J.S.C.

4/20/10 11:00 AM

UNFILED JUDGMENT
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