

**Matter of Reeves v City of N.Y. Dept. of Homeless
Servs.**

2011 NY Slip Op 30087(U)

January 12, 2011

Sup Ct, New York County

Docket Number: 402630/09

Judge: Joan A. Madden

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

PRESENT: MADDEN
Justice

PART 11

REEVES, ANTHONY H.

INDEX NO. 402630/09

MOTION DATE _____

- v -
DEPT. OF HOMELESS SERVICES

MOTION SEQ. NO. 03

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 *is decided in accordance with the annexed Memorandum Decision to order*

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

FILED

JAN 14 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated: January 10, 2011

[Signature]
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 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,

Respondents.

-----X

JOAN A. MADDEN, J.:

FILED

JAN 14 2011

NEW YORK
COUNTY CLERK'S OFFICE

Petitioner Anthony H. Reeves, who is pro se, moves for "reconsideration" of the court's decision, order and judgment dated May 13, 2010 ("the original decision"), which dismissed his Article 78 proceeding challenging a determination of the New York State Division of Human Rights (SDHR) dismissing his complaint of discrimination. Respondent City of New York Department of Homeless Services (DHS) opposes the motion, which is denied for the reasons below.

Mr. Reeves filed a complaint with SDHR, on or about November 12, 2008, in which he alleged that DHS had discriminated against him, based on age,¹ race, color and national origin (DHS Complaint). Specifically, in the DHS Complaint, Mr. Reeves states that he identified himself as black and alleged that he had been discriminated against for complaining about being beaten by DHS police, some of whom were white. Mr. Reeves also complained that white males

¹Mr. Reeves was born in 1965 and is not 65 years-old as erroneously stated in the original decision.

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 Mr. Reeves had filed.

Responding to the DHS Complaint, DHS contended that Mr. Reeves 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 Mr. Reeves had not been in DHS's shelter system since June 26, 2006, over two years before he filed the DHS Complaint. In rebuttal, Mr. Reeves 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 handling his federal court complaints.²

On September 30, 2009, SDHR issued its determination. 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 his DHS Complaint was well represented. SDHR also found that Mr. Reeves 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 2006.³ Consequently, SDHR determined that the only timely allegations in Mr. Reeves's

²It appears from the record shows that at the time of the November 3, 2008 incident, Mr. Reeve's actions in Federal Court had been dismissed.

³SDHR noted that Mr. Reeves'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 Mr. Reeves would be notified by HUD upon its review of the SDHR determination (*see* Resp. Mov. Aff., Exh. D, at 4).

complaint were those concerning the November 2008 incident.

Regarding that incident, SDHR found that Mr. Reeves’s claim that he had been ejected from the building in Manhattan at which DHS’s legal offices are located, while trying to determine the name of the investigator assigned to his federal cases, did not relate to “a benefit or service of his housing accommodation.” Based on this determination, SDHR concluded that the claim was not within its jurisdiction.

In the original decision, the court noted that while Mr. Reeves’s allegations were “troubling,” to overturn an agency determination it must be demonstrated that such 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]”). Furthermore, the court pointed out that a claim under the New York State Human Rights Law for housing and other types of discrimination must be filed with SDHR within one year of the alleged discrimination. See Executive Law § 297 [5] [“Any complaint filed pursuant to this section must be so filed within one year after the alleged unlawful discriminatory practice”]).

The court found that SDHR’s determination that Mr. Reeves had not used or sought to use the shelter system during the one-year prior to his complaint was supported by the record, and as a result, SDHR’s determination that Mr. Reeves’s DHS Complaint was not timely, except for his allegations concerning the November 2008 incident, was not arbitrary and capricious.⁴

⁴The court further noted that while it makes no determination concerning plaintiff’s discrimination claim regarding plaintiff’s claim that DHS affords white men preferential treatment over black men in homeless services, the record showed that SDHR reviewed and

With respect to Mr. Reeves's claim concerning the November 3, 2008 incident, the court found that SDHR's determination that the claim related to the incident was not within its housing jurisdiction was not arbitrary or capricious. Specifically, the court found it was not irrational for SDHR to find that Mr. Reeves's contention that he was ejected from SDHR's legal offices while attempting to obtain information for use in his federal court cases, was not a claim related to a benefit or service of a housing accommodation.

Mr. Reeves now moves for "reconsideration" of the original decision and "relief in the form of [an] apartment not shelter and some monetary compensation." The motion does not provide a legal or factual basis supporting Mr. Reeves's request but rather states that he is still homeless and needs assistance.

In response to the court's inquiry on July 1, 2010, on the return date of the motion, counsel for DHS discussed the options available for Mr. Reeves for finding housing. However, Mr. Reeves indicated he wanted money, presumably for a voucher for an apartment, and that the shelters discriminate against black men and he would not accept shelter assistance nor was he interested in obtaining assistance from a case manager from Single Adult Services. Mr. Reeves complained he had a long work history prior to losing his job several years ago and that he complied with all shelter requirements for a voucher program for an apartment when the incident

analyzed demographic information concerning those who use DHS's shelter services, and that its investigation was not unduly abbreviated such that its determination of no probable cause for finding discrimination could be overturned as arbitrary and capricious. (*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 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]).

occurred in November 2008 when as security guard at the shelter in Brooklyn⁵ told him he was going to make sure he got a bad psychological evaluation required for a voucher.

While Mr. Reeves moves for reconsideration, it appears that he is seeking reargument. A motion for reargument is left to the discretion of the court, and is intended to give a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts, or misapplied a controlling principle of law (*Foley v. Roche*, 68 AD2d 558, 567 [1st Dept 1979]). However, “[r]eargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided” (*William P. Pahl Equipment Corp. v. Kassis*, 182 AD2d 22 [1st Dept], *appeal denied in part dismissed in part*, 80 NY2d 1005 [1992]).

Here, while the court recognizes that Mr. Reeves believes he was wronged and that he is frustrated by his inability to obtain a voucher for housing outside the shelter system, there is no basis for granting reargument. First, as indicated above with respect to Mr. Reeves’ claim regarding the November 3, 2008 incident, the SDHR found that it did not have jurisdiction over this claim as it did not relate to “a benefit or service of his housing accommodation.⁶” In any event, Mr. Reeves does not appear to allege that the security guard ejected him on November 3, 2008 based on his status as a black male or based on any other illegal discriminatory reasons. Next, Mr. Reeves does not claim, nor does the record show, that the court overlooked any relevant facts or misapplied the law.

⁵The court notes that the record shows that the incident in November 2008 occurred at DHS’s legal offices in Manhattan and not in Brooklyn, as apparently asserted by Mr. Reeves.

⁶The SDHR’s Final Investigation Report and Basis for Determination indicates that Mr. Reeves was informed by the SDHR that if his housing complaint was dismissed with respect to the November 3, 2008 incident that it might be more appropriate to proceed with the investigation under the SDHR’s public accommodations jurisdiction.

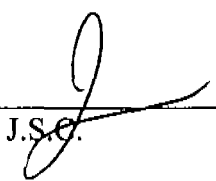
In addition, the issue raised by Mr. Reeves for the first time at oral argument regarding the alleged statement by a security guard in November 2008 regarding a negative psychological evaluation and its impact on his ability to obtain a housing voucher does not provide a basis for granting reargument. Mr. Reeves did not raise the issue in his petition seeking Article 78 relief. More significantly, the issue was not part of his complaint with the SDHR and or otherwise raised in connection with the administrative proceeding, and therefore is not properly before this court (*see Myles v. Doar*, 24 AD3d 677, [2d Dept 2005][noting that “[a] petitioner may not raise a new claim in a proceeding pursuant to CPLR article 78 that was not raised in the administrative hearing under review”). In fact, the issue is not directly related to his discrimination claim, the denial of which is the subject of this proceeding.

Finally, to the extent Mr. Reeves seeks documents in connection with his assertion that he received a negative psychological evaluation, his remedy lies in making a request pursuant to the Freedom of Information Law.

In view of the above, it is

ORDERED that the motion for reconsideration/reargument is denied.

Dated: January/A, 2011



 J.S.C.
FILED
 JAN 14 2011
 NEW YORK
 COUNTY CLERK'S OFFICE