

**Seemer v New York State Div. of Human Rights**

2011 NY Slip Op 32317(U)

August 29, 2011

Supreme Court, New York County

Docket Number: 108512-10

Judge: Judith J. Gische

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: HON. JUDITH J. GISCHE

PART 0

Index Number : 108512/2010  
**SEEMER, ANTHONY**  
 vs.  
**NYS DIV OF HUMAN RIGHTS**  
 SEQUENCE NUMBER : 001  
 ARTICLE 78

INDEX NO. \_\_\_\_\_  
 MOTION DATE \_\_\_\_\_  
 MOTION SEQ. NO. 001  
 MOTION CAL. NO. \_\_\_\_\_

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 motion

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

MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION.

*order + judgment*

**FILED**

AUG 31 2011

NEW YORK COUNTY CLERK'S OFFICE

**SO ORDERED**

AUG 29 2011

Dated: \_\_\_\_\_

JUDITH J. GISCHE, J.S.C. *J.S.C.*

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 10**

-----x

Anthony Seemer,  
Petitioner,

**-against-**

New York State Division of Human Rts.,  
Respondent.

-----x

**DECISION, ORDER AND  
JUDGMENT**  
Index No.: 108512-10  
Seq. No.: 001

**PRESENT:**  
Hon. Judith J. Gische  
J.S.C.

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

<b>Papers</b>	<b>Numbered</b>
Notice of Pet and Pet w/AJS affid, exhs . . . . .	1
Respondent's answer . . . . .	2
Administrative Record . . . . .	3
Interim Order 2/18/11 . . . . .	4
Steno Minutes 1/13/2011 . . . . .	5

-----

*Upon the foregoing papers, the decision and order of the court is as follows:*

**GISCHE J.:**

This is a summary proceeding brought by petitioner Anthony J. Seemer ("Seemer") against respondent, the New York State Division of Human Rights ("DHR") pursuant to Article 15 of the Executive Law. Although DHR has answered the petition and provided its administrative record, DHR takes no position on the relief sought by petitioner and states that it "will not actively participate in this matter and is submitting on the record." DHR does contend, however, that Seemer has failed to name a necessary party.

**Facts Considered and Arguments Presented**

Seemer, who is self represented in this proceeding, seeks a judgment from this court reversing the decision by DHR made April 26, 2010 that "there is no probable cause to believe [Seemer's employer] has engaged in or is engaging in the unlawful discriminatory practice complained of." Seemer's employer is the City of New York Human Rights Administration, Department of Social Services ("HRA"). HRA is not a named respondent in this proceeding.

On October 1, 2009, Seemer filed a complaint against HRA [Complaint No. 10136823] stating that his employer had discriminated against him by subjecting him to a hostile work environment, denying him reasonable work accommodations and violating his civil rights. According to Seemer, he is disabled, suffering from conditions such as carpal tunnel syndrome, herniated discs and plantar fasciitis. He alleged in the complaint filed with DHR that when he approached his employer obtaining such things as a wrist brace, splint or ergonomic work station those requests were summarily denied. Seemer also asked HRA for a parking permit and that request was denied as well.

In August 2009, Seemer filed a complaint against HRA with DHR's Equal Employment Opportunity Commission ("EEOC") (EEOC Case No. 16GB000004) under the Americans with Disabilities Act ("ADA"). After he filed that complaint, Seemer was suspended from work without pay for 30 days. Seemer alleged that his suspension was in retaliation for having file the EEOC complaint. He also claimed that following a car accident his supervisor refused to accept his medical documentation and he was informed he could not return to work.

HRA responded to Seemer's DHR allegations with documentary evidence that

Seemer had, in fact, been granted and received a parking permit. Later it was recalled because of a Mayoral order (003-08) requiring that non-essential and HRA employees surrender these permits. Although Seemer returned the permit, he then started to display an official looking placard, thereby creating the false impression that he had an official parking permit with privileges. Disciplinary action was taken against him by the employer for that reason. HRA also stated that Seemer was insubordinate by, among other things, giving his supervisor a "Nazi salute." According to HRA, Seemer refused to follow set procedures for returning to work after the car accident and that this was the reason he had not been allowed to resume his duties.

HRA's claims against Seemer regarding the placard, salute, etc. and his claims about retaliation, wrongful suspension, etc. were referred to the New York City Office of Administrative Hearings ("OATH") pursuant to section 75 of the Civil Service Law and a hearing was held before ALJ Richard.

In her report and recommendation on February 25, 2010, the ALJ found that HRA "established the charged misconduct and recommended a penalty of 30 days' suspension" although HRA had sought to terminate Seemer's employment. The ALJ specifically dealt with Seemer's claims of retaliation, determining that "[all] of complainant's allegations are unsubstantiated, conclusory and self-serving. Complainant utterly fails to make a showing that he was subject to discrimination and/or retaliation. Respondent, on the other hand, successfully showed that all the actions it took in relation to Complainant were legitimate employment actions. Accordingly, this complaint should be dismissed in its entirety."

Thereafter, DHR completed its investigation of Seemer's claims and issued the

determination that Seemer now seeks to have vacated. In its determination dated April 26, 2010 ("determination"), DHR recited the steps it took in addressing Seemer's complaint. This included an investigation, a two party conference and a review of the information and evidence provided by each side. In the report, DHR's regional director indicated that "many of [Seemer's] claims against [HRA] raise issues of bureaucracy, rather than illegal discrimination. In fact, in conference, [Seemer] retracted his accusation that [HRA] had discriminatorily barred his return to work after an automobile accident. He called it a misunderstanding." He also acknowledged that his request for a parking placard was not disability based, but based upon arguments that he had senior status.

#### Discussion

At the outset, the court finds that this petition should be dismissed because Seemer has failed to name his employer as a respondent. HRA is a "necessary party" within the meaning of CPLR 1001 because were the court to enter judgment in Seemer's favor, reversing DHR's determination that there was no probable cause to believe his employer had engaged or was engaging in illegal discriminatory practices, this would affect HRA (see, CPLR § 1001; Jeanty v. New York State Dept. of Correctional Services, 36 A.D.3d 811 [2<sup>nd</sup> Dept 2007]; Edinboro v. New York State Div. of Human Rights, 289 A.D.2d 123 [1<sup>st</sup> Dept 2001]). Therefore, this defect alone is a reason to deny the petition.

Looking beyond that defect and proceeding to the merits of the petition, Seemer has failed to meet his burden of showing that DHR did only a perfunctory investigation of, and/or failed to fully consider, his claims of discrimination. Executive Law § 297

empowers the Commissioner of Human Rights to order relief “as in the judgment of the division will effectuate the purposes of this article (Executive Law § 297[4][c][iii]). In any subsequent judicial review of the Commissioner's order, the “findings of facts on which such order is based shall be conclusive if supported by sufficient evidence on the record considered as a whole” (Executive Law § 298.) Although the statute does not specify any particular standard for judicial review of the relief awarded by the Commissioner, it is well established law that such a determination must either be supported by substantial evidence or set aside (Delta Air Lines, Inc. v. New York State Div. of Human Rights, 229 A.D.2d 132 [1<sup>st</sup> Dept 1996]).

Substantial evidence “is less than a preponderance of the evidence, overwhelming evidence or evidence beyond a reasonable doubt” (Delta Airlines, Inc., supra at 137 *citing* Matter of 300 Gramatan Ave. Assocs. v. New York State Div. of Human Rights, 45 N.Y.2d 176, 180-181 [1978]). Where there is substantial evidence to support the determination, the court cannot substitute its own judgment.

When Seemer filed his DHR claim he was already experiencing a number of conflicts with his employer which DHR found had nothing to do with his alleged disabilities. Seemer was insubordinate, he falsified a parking placard and he was later disciplined for these actions. The DHR's determination took into consideration all his claims and the evidence he provided but found them baseless. There is, therefore, no merit to Seemer's petition to have the determination vacated or annulled on the basis that it is incomplete or that DHR did not fully appreciate his arguments. Since the determination is supported by the record, it must be denied and this summary proceeding dismissed for that reason as well.

**Conclusion**

*It is hereby*

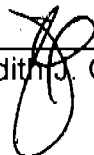
**ORDERED, DECREED AND ADJUDGED**, that the petition is denied and this summary proceeding is dismissed in its entirety; and it is further

**ORDERED** that any relief requested but not directly addressed is hereby denied; and it is further

**ORDERED** that this constitutes the decision, order and Judgment of the court.

Dated: New York, New York  
August 29, 2011

**ENTER:**

  
\_\_\_\_\_  
Hon. Judith J. Gische, JSC

**FILED**  
AUG 31 2011  
NEW YORK  
COUNTY CLERK'S OFFICE