

Ahmed v City of New York

2011 NY Slip Op 32769(U)

October 20, 2011

Sup Ct, NY County

Docket Number: 116276/10

Judge: Cynthia S. Kern

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: CYNTHIA S. KERN
J.S.C. Justice

PART 52

Index Number : 116276/2010
AHMED, SYED
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 001
COMPEL DISCLOSURE

INDEX NO. 116 276/10
MOTION DATE _____
MOTION SEQ. NO. 01

Motion to/for _____
_____ | No(s). _____
_____ | No(s). _____
_____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

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

FILED

OCT 24 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 10/20/11

CYNTHIA S. KERN J.S.C.
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
 - 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
 - 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52

-----X
SYED AHMED,

Plaintiff,

Index No. 116276/10

-against-

DECISION/ORDER

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT, POLICE OFFICER
CHRISTOPHER MCGUIRE, Shield No. 14273, 493
REST. INC. d/b/a MERCURY BAR and DARIN
SERGENT,

Defendants.
-----X

FILED

OCT 24 2011

NEW YORK
COUNTY CLERK'S OFFICE

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits.....	<u>2</u>
Cross-Motion and Affidavits Annexed.....	<u>3</u>
Answering Affidavits to Cross-Motion.....	_____
Replying Affidavits.....	_____
Exhibits.....	<u>4</u>

Plaintiff commenced the instant action to recover damages for personal injuries he allegedly sustained stemming from an arrest that took place at Mercury Bar, located at 493 Third Avenuc, New York, New York on March 17, 2010. Plaintiff now moves to strike defendants' answers for failure to provide discovery or, in the alternative, precluding said defendants from offering evidence at trial pertaining to the information contained in the requested discovery or, in the alternative, compelling said defendants to provide the outstanding discovery. For the reasons set forth below, plaintiff's motion is granted to the extent described below.

Plaintiff is entitled to further discovery to the extent described as follows. That part of plaintiff's motion which requests an order striking defendants' answers is denied. Defendants' failure to disclose the requested documents does not amount to willful and contumacious behavior as they have not at this point disregarded numerous court orders. *See Henderson-Jones v. City of New York*, 2011 WL 3715415 (N.Y.A.D. 1 Dept).

The City of New York and the New York City Police Department (hereinafter the "City") are required to provide a response to plaintiff's Bill of Particulars along with the criminal court file, to the extent not already provided, as plaintiff asserts he has provided the City with all documents required for unsealing said file. Additionally, the City is required to provide the sprint reports (the 9-1-1 call transcript) to the extent such reports exist. The City must also provide the memo books for the named officer in this action to the extent not already provided as well as the name of the officer's partner or other officer involved in plaintiff's arrest and that officer's memo books. Finally, the City is required to provide the District Attorney's file regarding this case, to the extent the City has access to said file. The City is required to provide the above discovery within 45 days of the filing of this Decision or, in the alternative, provide an affidavit stating said discovery does not exist and describing the City's attempt to obtain it.

Additionally, defendants 493 Rest. Inc. d/b/a Mercury Bar and Darin Sergent (hereinafter "Mercury Bar") are required to provide the following discovery. Mercury Bar must provide a copy of its lease for the premises it occupies. However, the Mercury Bar does not need to provide plaintiff with documents evidencing its corporate structure as these documents can readily be obtained by plaintiff and they are not in Mercury Bar's possession. Additionally, Mercury Bar must provide its corporate liquor license as well as any complaints made involving

Mercury Bar prior to March 17, 2010. Mercury Bar must also provide plaintiff with a signed and notarized authorization allowing plaintiff's counsel to inspect and copy Mercury Bar's records from the New York State Liquor Authority and the New York State Department of Alcoholic Beverage Control for the last five years. Mercury Bar is also required to provide the employee sign-in sheet for those employees who were present at Mercury Bar on the night of March 17, 2010, to the extent that such a sign-in sheet exists. Further, Mercury Bar must provide to plaintiff the personnel file for Darin Sergent, to the extent one exists. Mercury Bar must also provide to plaintiff each and every credit card and debit transaction for the purchase and/or sale of goods and services at the premises limited to the time plaintiff was at the premises on the evening of March 17, 2010 with the names of the patrons and credit and debit card numbers redacted.

Mercury Bar must also provide each and every police report, arrest report, complaint report and sworn deposition as completed by defendant Darin Sergent for purposes of prosecution of others, while employed at the premises and made within the scope of his employment, to the extent these records exist. Mercury Bar must also provide to plaintiff each and every police report, arrest report, complaint report and sworn deposition as completed by each and every agent, servant and employee of Mercury Bar for purposes of the arrest and prosecution of the plaintiff on March 17, 2010 to the extent that such documents exist. Further, plaintiff is entitled to all statements given by Mercury Bar and Mr. Sergent to the New York City Police Department or the New York County District Attorney's Office, with respect to the arrest and prosecution of plaintiff, to the extent such written statements exist.

The plaintiff is also entitled to all e-mails, letters, reports, correspondence or any other

