

Matter of Crea v Bloomberg

2011 NY Slip Op 33544(U)

January 9, 2011

Supreme Court, New York County

Docket Number: 114121/11

Judge: Donna M. Mills

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

PRESENT : DONNA M. MILLS
Justice

PART 58

In the Matter of Application of
MICHAEL VINCENT CREA,
Petitioner,

INDEX NO. 114121/11

MOTION DATE _____

-v-

MOTION SEQ. NO. 001

MICHAEL BLOOMBERG, Mayor of the City of New York,
et al.,

Respondents.

MOTION CAL NO. _____

The following papers, numbered 1 to _____ were read on this motion for _____.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1 + 2

Answering Affidavits- Exhibits _____

UNFILED JUDGMENT

Replying Affidavits _____


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).

CROSS-MOTION: YES NO

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

DECIDED IN ACCORDANCE WITH THE ATTACHED ORDER.

Dated: 1/9/11


DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

INDEX NO.
114121/11

In the matter of the Application of
MICHAEL VINCENT CREA, pro se
Petitioner,

- against -

DECISION/ORDER
UNFILED JUDGMENT

MICHAEL BLOOMBERG, Mayor of the City of New York, et al.,
Respondents.

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DONNA MILLS, J.:

Petitioner, Michael Vincent Crea brings this pro-se action seeking relief in the nature of mandamus compelling the City of New York Human Resources and Adult Protective Services ("City Respondents"), to comply with a Decision After Fair Hearing ("DAFH") dated October 31, 2011, and a general complaint about the administration of Petitioner's case.

Petitioner qualified for Adult Protective Services ("APS"), effective December 14, 2010. However, in or around January 20, 2011, APS reversed course and decided to discontinue APS for Petitioner because it determined that he had sufficient mental capacity and/or physical ability to manage his own affairs. Petitioner timely requested a fair hearing to review APS's determination.

On April 6, 2011, the New York State Office of Temporary and Disability Assistance ("OTDA") began an administrative fair hearing to address Petitioner's challenge. Over the course of a couple of months and a few appearances, The OTDA's Office of Administrative Hearings ("OAH") issued a DAFH on October 31, 2011 ordering City Respondents to: 1) immediately provide services to the Petitioner; 2) assist the Petitioner in the location of social services, and other resources in the community who would appropriately assist the Petitioner in finding appropriate, permanent housing, and make

inquiries to determine whether Petitioner needs assistance with financial management; 3) immediately arrange for appropriate alternative living arrangements in the community or in an institution providing room and board, if the Petitioner currently requires housing, and to continue to insure appropriate alternative living arrangements are received at least until it is advised that Petitioner has found appropriate, permanent housing and he has been relocated thereto; 4) provide advocacy and assistance in arranging for legal services; 5) conduct a complete evaluation of Petitioner's need for additional adult protected services, including, but not limited to, appropriate inquiries to determine whether Petitioner needs assistance with financial management and provide any and all such services forthwith; 6) notify the Petitioner and his Representative, in writing, of its determination(s).

In opposition to the Order to Show Cause, City Respondents contend that they have fully complied with the DAFH decision. City Respondents claim that Petitioner at times has been uncooperative and other times refused the available housing options that were found for him. They also maintain that Petitioner refused a list of available community resources that were provided to him. During this period of time, Petitioner was and is temporarily living in the home of his fair hearing attorney.

City Respondents met with Petitioner at his temporary residence on December 28, 2011 and provided him with a Notice of Intent to Discontinue Protective Services, which indicated that APS was terminating his case because he did not meet APS's eligibility requirements. The notice indicated that the termination of services was effective January 11, 2012. The notice also indicated that Petitioner had the right to request a fair hearing to challenge APS' determination.

Now Petitioner asks this Court to compel City Respondents to provide him with services, including arranging and providing for appropriate alternative living arrangements in the community or appropriate accommodation in an institution with room and board. In

opposition to Petitioner's request, City Respondents seek dismissal of the proceeding because: 1) City Respondents have complied with the DAFH decision; 2) Petitioner seeks improper mandamus relief as Petitioner has not followed the procedures set forth under Article 78; 3) Petitioner's request for summary judgement, treble damages, and sanctions fails to state a cause of action; and 4) Petitioner fails to name or adequately serve a necessary party, the New York State Office of Temporary and Disability Assistance.

City Respondent's correctly argue that Petitioner should have exhausted his administrative remedies before commencing this action. Petitioner should have filed a complaint with the Commissioner of OTDA regarding the adequacy of City Respondent's compliance after the OTDA's Decision After Fair Hearing, pursuant to 18 NYCRR 358-6.4 (c), or should have sought an administrative hearing pursuant to 18 NYCRR 358-3.1, i.e., a fair hearing.

18 NYCRR 358-6.4 (c) appears to address the situation where a social services agency fails to comply with a fair hearing decision. It states, "Upon receipt of a complaint that a social services agency has not complied with a fair hearing decision, the commissioner, through action coordinated by OAH [Office of Administrative Hearings], will secure compliance by whatever means is deemed necessary and appropriate under the circumstances of the case." (18 NYCRR 358-6.4 [c].)

Requiring petitioner to file a complaint with the Commissioner of OTDA pursuant to 18 NYCRR 358-6.4 (c) furthers the goals of the exhaustion doctrine, i.e., to prevent "premature judicial interference with the administrators' efforts to develop, even by some trial and error, a co-ordinated, consistent and legally enforceable scheme of regulation." (Watergate II Apts. v Buffalo Sewer Auth., 46 NY2d 52, 57 [1978]).

In light of the dismissal on the aforementioned grounds, this Court declines to address City Respondent's other contentions for dismissal, and hold no opinion as to

whether the City Respondents have complied with the DAFH.

Accordingly, it is hereby

ORDERED that City Respondents cross-motion is granted; and it is further

ADJUDGED that the Article 78 petition is denied for petitioner's failure to exhaust administrative remedies; and the proceeding is dismissed, without prejudice to the filing of a complaint with the Commissioner of OTDA pursuant to 18 NYCRR 358-6.4(c).

This opinion constitutes the decision, order and judgment of the Court.

Dated:

1/9/11

ENTER:



J.S.C.

DONNA M. MILLS, J.S.C.

UNFILED JUDGMENT

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