

Alter v Audio-Rite Corp.
2011 NY Slip Op 33946(U)
November 15, 2011
Sup Ct, NY County
Docket Number: 150154/10
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHE

PART 10

Index Number : 150154/2010

ALTER, SIMA

INDEX NO. _____

vs

AUDIO-RITE CORPORATION

MOTION DATE _____

Sequence Number : 003

MOTION SEQ. NO. _____

REARGUE / RECONSIDER

MOTION CAL. NO. _____

_____ motion to/for _____

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

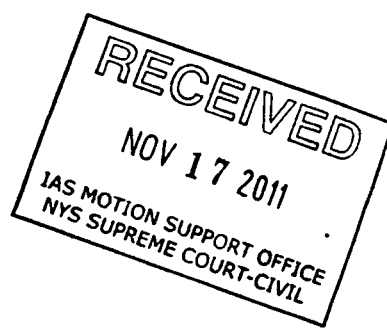
PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion



MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION.

and preliminary conference scheduled for 2/23/2012 at 9:30 a.m. Part 10

Dated: Nov 15, 2011
HON. JUDITH J. GISCHE

[Signature]
HON. JUDITH J. GISCHE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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 10**

-----x

SIMA ALTER, LIBA GELTZER, LINDA HARARI,
DANIEL HESS, NEIMA HOCHST ADTER, RACHAEL
ABROMOWITZ-BELLER, HANNAH KRAUSZ,
HENRY TRESS, SHIFRA KAHAN, PERRI KOBE,
SHERI FISHMAN, individually and on behalf of all
other similarly situated current and former students,

Plaintiff,

-against-

AUDIO-RITE CORPORATION, LEX REPORTING
SERVICE, INC., CLAIRE BLOCK, JERRY BLOCK,
GAIL HOCHMAN, and DOES 1 through 10, inclusive,

Defendants.

----- x

Decision/Order

Index No.: 150154/10
Seq. No.: 003

Present:
Hon. Judith J. Gische
J.S.C.

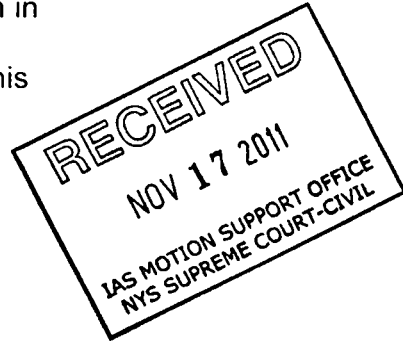
Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this
(these) motion(s):

PAPERS	NUMBERED
Notice of Motion, ABS affirm., exhibits.....	1
CG affirm.....	2
ABS Reply affirm.....	3

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

Defendants move to reargue the motion underlying this court's decision dated May
5, 2011. The underlying motion sought, pre-answer, to dismiss the complaint. In
connection with claims in the complaint made under GBL § 349, the court held:

"GBL §349 provides a remedy to consumers who have been
subject to deceptive or misleading acts or business practices.
The defendants have not specifically addressed this claim in
their motion to dismiss. Regardless, at this stage, the
plaintiffs have met their pleading burden with respect to this
claim." (*Citation omitted*).



Defendants claim that the court erred in stating that they did expressly make arguments about the efficacy of plaintiff's claims under GBL §349. The seek re-argument only on the issues raised regarding GBL § 349. Plaintiffs do not deny that the court erroneously stated in its decision that the issue had not been addressed by defendant. They argue, however, that the court, nonetheless, correctly held that they met their pleading burden.

A motion for leave to reargue may be granted on a showing that the court overlooked or misapprehended the facts or the law (CPLR 2221; Williams P. Pahl Equip. Corp. v. Kassis, 182 A.D.2d 22 [1st Dept. 1992]). At bar, it is uncontested that the court incorrectly stated that defendants had failed to raise arguments pertaining the section 349 of the GBL in the original motion. The court, therefore, grants reargument to the extent of considering those arguments.

The reader is presumed familiar with the May 5, 2011 decision/order, which is incorporated by reference herein. The only dispute between the parties about whether the claims made under GBL §349 may proceed is if the conduct complained of is based upon private contract disputes or consumer-oriented with a broad impact on the public at large. (Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, N.A., 85 NY2d 20 [1995]).

While plaintiffs entered into individual contracts with defendants, that alone is not determinative of whether the dispute is strictly private or consumer oriented. The court needs to look at whether the contracts are standard contracts, offered to any consumer of the services provided, or unique to the plaintiffs. (Ansari v. New York University, 1997 WL 257473 [SDNY 1997]). At bar, the allegations are based upon representation and

promotional materials utilized by defendant to induce all the plaintiffs' to contract for defendant's educational services. The contracts, as alleged, are substantially the same. These allegations, which at this stage in the proceeding must be accepted as true, provide a basis for claims under GBL §349 against an institution providing educational services. (Deen v. New School University, 2007 WL 1033395 [SDNY 2007][nor]; Alexson v. Hudson Valley Community College, 125 F. Supp.2d 27 [NDNY 2000]; Ansari v. New York University, *supra.*).

Thus, although the motion for re-argument is granted, upon re-argument the court adheres to its original decision to deny the motion to dismiss the claims asserted under GBL §349.

CONCLUSION

In accordance herewith, ti is hereby:

ORDERED that the motion for re-argument is granted , and it is further

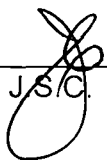
ORDERED that upon re-argument, the May 5, 2011 decision/order denying that part of the motion to dismiss the claims made under GBL §349 is adhered to, and it is further

ORDERED that the case is set for a **preliminary conference on February 23, 2012 at 9:30 am**, no further notices will be sent , and it is further

ORDERED that any requested relief not otherwise expressly granted herein is denied and that this constitutes the decision and order of the court.

Dated: New York, N.Y.
November 15, 2011

SO ORDERED:



J.G. J.S.C.