Riverbay Corp. v New York City Commn. on Human Rights
2011 NY Slip Op 34042(U)
September 9, 2011
Supreme Court, Bronx County
Docket Number: 260832/10
Judge: Mary Ann Brigantti-Hughes
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX TRIAL TERM - PART 15

Present: Hon. Mary Ann Brigantti-Hughes

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RIVERBAY CORPORATION and
VERNON COOPER.,

DECISION/ORDER

Petitioners,

-against-

Index No.: 260832/10

NEW YORK CITY COMMISSION ON
HUMAN RIGHTS and JOHN ROSE,

Respondents.

---X

The following papers numbered 1 to read on the below motions noticed on **March 25, 2011** and duly submitted on the Part IA15 Motion calendar of ________, 2011:

Papers Submitted	Numbered
Pet..'s Affirmation in support, memo of law, exhibits	1,2,3
Resp. Affirmation in Opposition, memo of law, exhibits	4,5,6
Pet.'s Affirmation in Reply, exhibits	7,8
Resp.'s Affirmation in Reply, exhibits	9,10

Upon the foregoing Notice of Petition pursuant to Article 78, Riverbay Corporation and Vernon Cooper (hereinafter collectively referred to as "Petitioners"), seek to annul and vacate a November 18, 2010 Decision and Order of respondent New York City Commission on Human Rights (hereinafter "NYCCHR", collectively with John Rose hereinafter referred to as "Respondents") in *Rose v. Riverbay Corp.*, Complaint No. 1020824, remanding proceedings to the Commission directing that it adopt the Administrative Law Judge's Report and Recommendation, and vacating the penalties, damages and fines imposed by the Commission or in the alternative, reducing the fines and penalties.

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I. Factual and Procedural History

Riverbay Corporation (hereinafter individually referred to as "Riverbay") is the owner of the real property known as "Co-op City". NYCCHR is a commission charged with, among other things, the enforcement of human rights law. Respondent John Rose is a disabled resident of Co-op City.

This matter concerns a disability access case entitled *Rose v. Co-Cop City of New York d/b/a Riverbay Corp.*, NYC HRC Compl. 1020824. On November 18, 2010, the NYCCHR rejected a Report and Recommendation of Hon. Ingrid A. Addison, ALJ, who, after an Office of Administrative Trials and Hearings proceeding, decided that Petitioners had not discriminated against complainant John Rose, but instead offered reasonable accommodation of his needs in response to Mr. Rose's request.

Rose is a disabled man who lived in Co-Op City. In 2008, he asked Riverbay to provide him with a means to independently enter and exit the front entryway of his high-rise building. Riverbay proposed installing remote-control operated automatic door openers on the lobby's side doors of Rose's building. The proposal was made after Riverbay determined that modifying the side door in such a way was more economical than reconstructing the building's older, heavier front doors. Rose rejected the offer, claiming that entering the side doors would make him feel like a "second-class citizen". He thereafter filed a complaint with the NYCCHR, which was referred to the Office of Administrative Trials and Hearings (OATH). Riverbay ultimately installed the side-door automatic openers.

After trial, Administrative Law Judge Addison's Report and Reccomendation found that Rose failed to establish that Riverbay discriminated against him. The report found that NYC Admin. Code. §8-107 did not require Riverbay to (i) provide access through a "main" building entrance or (ii) to provide the precise accommodation requested by a person with a disability. The NYCCHR, however, rejected this recommendation, and concluded that Riverbay discriminated against Rose. It ordered Riverbay to make the front doors accessible, and imposed $51,000 in compensatory damages in favor of Rose, and $50,000 in administrative fines for "outrageous conduct".

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II. Party Arguments

(A) Petitioners

Riverbay now argues that the NYCCHR's determination was contrary to its own precedent, to controlling state law, and First Department authority. New York City Human Rights Law ("HRL") §8-107(15) requires housing providers to make reasonable accommodation for the needs of persons with disabilities, without requiring any particular or specific accommodation for a particular purpose. They argue that the First Department has held a broad range of accommodations to be "reasonable", including access accommodations that do not pass through the main entrance door, citing *Phillips v. City of New York*, 66 A.D.3d 170 (1st Dept. 2009), and *Pelton v. 77 Park Ave. Condo*, 38 A.D.3d 1 (1st Dept. 2006).

Riverbay cites the NYCCHR's Decision and Order, which interprets HRL to require the *main* entrance, or "every entrance or exit available to an able-bodied person" be accessible for a disabled person absent undue hardship. Riverbay claims such an interpretation is wrong and contravenes NYC Administrative Code Title 27, Chapter 1, Subs. 4, Sec. 27-292.6, which allow for alternative means of access to a building that insure safe and efficient access. Further, Riverbay's architect examined the area upon Rose's initial request and determined that it was architecturally infeasible to install automatic doors in the front entrance based upon the structure of the entryway and the manner in which the doors were hung.

Riverbay argues that the NYCCHR's Decision did not include five of petitioner's exhibits, and did not recognize that Riverbay offered Rose a solution to his request that was refused. The Decision also found the Riverbay's proposed accommodation was unsafe, which Riverbay argues was not supported by substantial evidence on the record. Witness testimony established that the proposed side door entrance was a traditional building entrance, and not a "service door". At the hearing, Rose testified that he traveled alone, day and night, throughout Co-op City, and had never raised safety concerns in discussing the proposed accommodation in 2008. The Decision awarded compensatory damages in excess of that demanded by Rose. The Decision's statement that two-and-a-half years elapsed between the request and the

accommodation was without support in the record.

In the alternative, should the determination stand, Riverbay seeks vacatur of the penalties imposed by the Commission as they "shock the judicial conscience" and therefore constitute an abuse of discretion as a matter of law. Petitioners argue that the standard is whether the impact of the penalty is so severe that it is disproportionate to the misconduct, or the harm to the agency or the public in general. *Kelly v. Safir*, 96 N.Y.2d 32 (2001). Here, Commission imposed a $50,000 administrative fine and $1,000 in compensatory damages to Rose, and $50,000 to Rose for his "pain and suffering and mental anguish". This is improper, excessive, and not in keeping with awards in similar circumstances. *2132-38 Wallace Ave. Corp. v. Gibson*, 876 N.Y.S.2d 33 (1st Dept. 2009).

(B) Respondents

The Commission argues as follows. Rose had been living on the property for approximately thirty (30) years, and always used the main entrance. The main front-door entrance to the building had floor-to-ceiling glass doors that allow tenants to view who is at the front door vestibule, and whether or not the building security guard is at his station. The front door entrance vestibule has a push-button intercom system that allows individuals to contact tenant units within the building. In addition, the vestibule is monitored by a closed-circuit television feed that can be viewed in the tenant's individual units.

For years, Rose accessed his building via the front door entrance by waiting for someone to open the doors and allow him access. When he arrived home late or outside of peak hours, Rose would have to wait several minutes or even hours to access the building. In early 2008, Rose contacted individuals at Riverbay and requested an accommodation that would allow access through the main entrance to his building. In May 2008, Rose contacted the NYCCHR regarding his requests. In June 2008, Ted Finkelstein, the NYCCHR's Director of Disability Access, contacted individuals at Riverbay regarding the Rose requests. Riverbay, however, "preferred to contemplate a complex-wide renovation program" for the front entrances to the buildings to be completed at some unspecified future date.

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In 2008, Riverbay engaged an architect, Robert Stahl, to draft opinions for making the main entrance to the Rose building accessible. He presented two options on July 15, 2008. One involved replacing the front doors with "handicap use" doors that would cost approximately $19,965. He also considered installing automatic door openers on the existing doors, at a cost of $16,335. He estimated the pricing as "a little high" as it had not been set out for competitive bidding. Mr. Stahl did not testify that the doors could not be installed from an architectural standpoint. Mr. Stahl testified at trial that "if we replaced [the existing] doors with one I specified, I specified doors that would work, yes."

In September 2008, Riverbay suggested to Finkelstein the idea of providing Rose access through the side entrance. Rose declined, stating that he did not feel safe using the side entrance, and the idea "made him feel like a second-class citizen". Rose had filed his Verified Complaint against Riverbay and the other petitioners on August 25, 2008 for refusing to provide an accommodation and discrimination. The complaint was served in December 2008. After the petitioners failed to answer for nearly fifteen (15) months, the Commission referred the matter to OATH on June 10, 2009.

Respondents assert that no independent access to the building was provided to Rose between 2008 in February/March 2010 when Riverbay installed an automatic opener on the building's side door entrance. Rose described the side-door entrance as "isolated", as it was 30-50 feet from the main entrance with less foot traffic. It consists of a metal door with a small window that Rose could not reach to see through. From this door, Rose stated he could not been seen by security guards at the main entrance. There is no intercom system or video feed at this side entrance. Video surveillance that monitors the side entrance cannot capture all areas within the side hallway. For these reasons, the Commission disagreed with the ALJ report and recommendation and found the side entrance meaningfully different from the main entrance in accommodation, advantages, facilities, and privileges it afforded. The record was not clear as to whether security cameras adequately monitored the area or were monitored themselves by live individuals who would contact police in case of emergency.

The Commission decided that the side entrance provided "unequal and segregated access"

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to the building. In so holding, Respondents argue that the NYCCHR properly and reasonably interpreted the provisions of the NYC HRL, which it construed to accomplish the "uniquely broad and remedial purposes" of the law. §8-120(a)(5), and §8-130 of the NYC HRL. Local Law 85, the "Restoration Act of 2005", §8-130 of the NYC HRL, requires that "[t]he provisions of this title shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title have been so construed." The Statute further defines "purposes" as "including, but not limited to... the extension of full and equal and unsegregated accommodations, advantages, facilities and privileges." NYC HRL § 8-120(a)(5).

Respondent also argues that recent First Department decisions supported the expanded reading of the NYC HRL as provided by the Restoration Act. *Williams v. NYCHA, et als*, 61 A.D.3d 62 (1st Dept. 2009) determined that the text and legislative history of the Restoration Act represented the desire for the NYC HRL to 'meld the broadest vision of social justice with the strongest law enforcement deterrent."

III. Standard of Review

In evaluating an administrative decision by way of Article 78 proceeding, this court must determine whether the determination was rational, arbitrary and capricious, or an abuse of discretion. *CPLR* 7803, *Concourse Rehabilitation & Nursing Center, Inc. v. Novello*, 80 A.D.3d 507 (1st Dept. 2011). Stated another way, an administrative decision may be judicially reviewed as to whether "a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed." (*CPLR* 7803[3]). The appropriate standard of review is whether the administrative determination is supported by a rational basis. *Matter of Nehorayoff v. Mills*, 95 N.Y.2d 671 (2001). If the court determines that the administrative determination has such a rational basis, the court's inquiry is finished; it may not substitute its judgment for that of the administrative agency. *Paramount Communications, Inc. v. Gibraltar Cas. Co.*, 90 N.Y.2d 507 (1997).

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Moreover, where a determination is supported by a rational basis, "an administrative agency's construction and interpretation of its own regulations and of the statute under which it functions are entitled to great deference." *Garcia v. New York City Taxi and Limousine Com'n*, 28 Misc. 3d 1232(A), (Sup. Ct., N.Y. Cty., 2010), *Arif v. New York City Taxi and Limousine Commn., 3 AD3d 345* (1st Dept 2004). *See also Salvati v. Eimicke*, 72 N.Y.2d 784 (1988) (Division of Housing & Community Renewal's interpretation of the statutes it administers, if not unreasonable or irrational, is entitled to deference [internal citations omitted]). *Tommy and Tina Inc. v. Dep't of Consumer Affairs of City of New York*, 95 A.D.2d 724 (1st Dept. 1983)('an administrative agency's construction and interpretation of its own regulations and of the statute under which it functions is entitled to the greatest weight.' [internal citations omitted]).

In Article 78 proceedings, 'the courts have no right to review the facts generally as to weight of evidence, beyond seeing to it that there is 'substantial evidence. "' *Pell v. Board of Ed. of Union Free School Dist. No. 1 Towns of Scarsdale, et als.*, 34 N.Y.2d 222 (1974), see *Matter of Halloran v. Kirwan*, 28 N.Y.2d 689 (dissenting opn. of Breitel, J.)). The approach is the same when the issue concerns the exercise of discretion by the administrative tribunals . The courts cannot interfere unless there is no rational basis for the exercise of discretion or the action complained of is 'arbitrary and capricious." *See* 8 Weinstein-Korn-Miller, N.Y.Civ.Prac., par. 7803.04 *et seq.*; *Matter of Colton v. Berman*, 21 N.Y.2d 322,). A decision of an administrative agency which fails to adhere to its own prior precedent on essentially the same facts is arbitrary and capricious, unless the decision indicates its reason for reaching a different result. *Lantry v. State*, 6 N.Y.3d 49 (2005).

The "arbitrary or capricious" test chiefly "relates to whether a particular action should have been taken or is justified and whether the administrative action is without foundation in fact." (1 N.Y.Jur., Administrative Law, s 184, p. 609). Arbitrary action is without sound basis in reason and is generally taken without regard to the facts. Where a hearing has been held, the determination must be supported by substantial evidence (CPLR 7803[4]); and where a determination is made and the person acting has not acted in excess of his jurisdiction, in violation of lawful procedure, arbitrarily, or in abuse of his discretionary power, including

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discretion as to the penalty imposed, the courts have no alternative but to confirm his determination (*CPLR* 7803, subd. 3; *Matter of Procaccino v. Stewart*, 25 N.Y.2d 301, 304 N.Y.S.2d 433, 251 N.E.2d 802; *Pell v. Board of Ed, et als, supra.*

Section 8-110 of the Administrative Code provides that the "findings of the commission as to the facts shall be conclusive if supported by sufficient evidence on the record considered as a whole". *Matter of 119-121 E. 97th St. Corp. v. New York City Comm'n on Human Rights*, 220 A.D.2d 79 (1st Dept. 1996). In a subsequent judicial proceeding reviewing such findings, this court is constrained by that standard. *Id.*, citing *Matter of Pace Coll. v Commission on Human Rights*, 38 NY2d 28, 35 (1975). The First Department has determined that the "sufficient evidence" standard of review pursuant to Administrative Code § 8-110 is similar, if not identical, to the "substantial evidence" rule applied in CPLR 7803 (4) proceedings. *Id.*, citing *Burlington Indus. v New York City Human Rights Commn.*, 82 AD2d 415, 417, affd 58 NY2d 983 (1983). That latter standard is "related to the charge or controversy and involves a weighing of the quality and quantity of the proof ...; it means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact .... essential attributes are relevance and a probative character .... marked by its substance--its solid nature and ability to inspire confidence, substantial evidence does not rise from bare surmise, conjecture, speculation or rumor .... more than seeming or imaginary, it is less than a preponderance of the evidence, overwhelming evidence or evidence beyond a reasonable doubt". *Id.*, citing *300 Gramatan Ave. Assocs. v State Div. of Human Rights*, 45 NY2d 176, 180-181 (1978). The Commissioner certainly has a right to disagree and reject the recommendation of an Administrative Law Judge even on matters of credibility, as long as the Commissioner's action is supported by substantial evidence. See, *Mancini v. NYC Dept of Environmental Protection*, 26 AD3d 178 (1st Dep't 2006).

Accordingly, where there is substantial or sufficient evidence to support an administrative determination, "that determination must be sustained, irrespective of whether a similar quantum of evidence is available to support other varying conclusions" *Id.*, citing *Matter of Collins v Codd*, 38 NY2d 269, 270.

IV. Analysis

(A) The NYCCHR's Decision and Order

The NYCCHR's finding that Riverbay's actions violated NYC HRL was supported by sufficient evidence, i.e., "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact" *300 Gramatan Ave. Assoc. v. State Div. of Human Rights, supra.* The Commissioner was not bound by the Administrative Law Judge's findings of fact or credibility, and was free to reach her own determination, so long as it was supported by substantial evidence. *Jenkins v. New York City Dept. Of Transp.*, 26 A.D.3d 176 (1st Dept. 2006).

In this case, the NYCCHR found that the side entrance would require Rose to travel fifty (50) feet beyond the front of the building. Unlike the front entrance, which was glass allowing him to see the entire entryway and security guard, this side entrance door was metal and had a small unreachable window pane. The side entrance had no video monitor system into the units, or intercom system like that installed at the main entrance. Accessing the side entrance required Rose to be issued a remote control that he would have on his person at all times. The security cameras were present at the side entrance, but the record was unclear as to whether they covered the entire area or were monitored by live individuals. Based on its review of the facts adduced in the OATH trial, the NYCCHR determined that this alternative entrance was not a "reasonable accommodation". This decision was not arbitrary, rather it was based on its review of the material differences between the subject doorways, while an appropriate front door modification was not proven to be infeasible. At minimum, there appears to be a rational basis for the determination based on sufficient evidence.

Petitioners argue that the Decision misconstrued and misapplied New York City Human Rights Law §8-107. Initially, it must be noted that great deference is given to a commission's interpretation of statute under which it operates. *Garcia v. New York City Taxi and Limousine Com'n*, 28 Misc. 3d 1232(A), *supra, citing Arif v. New York City Taxi and Limousine Commn.*, 3 AD3d 345 (1st Dept 2004).

The concept of "reasonable accommodation" under the City HRL, as set forth in

Administrative Code § 8-107 (15) (a), is equally applicable to employment, housing, and public accommodations:

> Except as provided in paragraph (b), any person prohibited by the provisions of this section from discriminating on the basis of disability shall make reasonable accommodation to enable a person with a disability to satisfy the essential requisites of a job or enjoy the right or rights in question provided that the disability is known or should have been known by the covered entity.

The City HRL definition of "reasonable accommodation" under §8-102(18) is as follows: "such accommodation that can be made that shall not cause undue hardship in the conduct of the covered entity's business. The covered entity shall have the burden of proving undue hardship." The First Department has noted that "there are no accommodations that may be 'unreasonable' if they do not cause undue hardship." *Philips v. City of New York*, 66 A.D.3d 170 (1st Dept. 2009).

In this matter, the NYCCHR interpreted City HRL "as requiring that housing providers, public accommodations and employers (where applicable), make the main entrance to a building accessible unless doing so creates an undue hardship, or is architecturally infeasible. Only then should an alternative entrance be considered." The NYCCHR then determined that in this matter, Petitioners had not satisfied their burden of proving undue hardship. This interpretation of the statute is consistent with that in *Philips, supra*, which noted that there is no accommodation that can be "categorically excluded from the universe of reasonable accommodation." *Id.*

Petitioners argue that this interpretation runs afoul of City Code §27-292.6. This section, however, allows for waiver of the handicapped access requirements of City Code §27-357(d) in certain enumerated situations. §27-357(d) requires certain buildings to have at least one primary entrance accessible to and usable by individuals who use wheelchairs. Further, "the commissioner may waive the requirements of this section in the alteration of buildings existing on the effective date of this code in accordance with section 27-292.6 of this code". Under 27-292.6, the aforementioned requirements are waived where strict compliance (a) would create an undue burden, (b) would not achieve its intended objective, (c) would be physically or legally impossible, (d) would be unnecessary in light of alternatives which insure the achievement of the

intended objective or which, without a loss in the level of safety, achieve the intended objective more efficiently, effectively or economically or (e) would entail a change so slight as to produce a negligible additional benefit consonant with the purposes of this code. In this case, the NYCCHR's application and interpretation of City HRL was consistent with this section, as the commission found that strict compliance with wheelchair access was not unduly burdensome and the proposed alternatives were not equally safe or effective.

Petitioners argue that this matter is analogous with *Pelton v. 77 Park Ave. Condo, supra.* In that matter, the First Department dismissed plaintiff's disability discrimination claim against individual members of the condominium's board of managers, since the actions of those members were protected from liability by the business judgment rule. 38 A.D.3d 1 (1st Dept. 2006). The disabled *Pelton* plaintiff asked to have a ramp installed in the front entrance of his residential condominium building. Two architects hired by the condominium association determined that installation of such ramps would not be reasonable due to "both physical impracticality and cost". *Id.* at 4. Instead, the board communicated with Plaintiff to devise a temporary access plan that included a portable wheelchair lift, and in the long term, to allow access through a snowblower storage room and installation of platform lifts. The court found that the above constituted reasonable accommodations and thus no discriminatory act was found. *Id.* at 12, 13. *Pelton* is distinguishable from the case at bar, as here it was not conclusively established that installation of handicap accessible doors was not reasonable or constituted an undue hardship. The OATH trial in this matter revealed that installation of ADA complaint doors could be installed, albeit at a cost of roughly $19,965. It was conceded, however, that this price was a "high" estimate that was made without regard to competitive bidding. It was never conclusively determined that installation of ADA complaint doors would be architecturally infeasible. Accordingly, unlike in *Pelton*, Petitioners herein did not satisfy their burden of showing that complying with Rose's request would constitute an undue hardship.

Further, this Court rejects Petitioners' argument that NYCCHR seeks to "establish that...landlord must provide persons with disabilities with access to buildings that is *identical* to that of other residents." That is not what is stated in the NYCCHR's Decision and Order.

Rather, the Commission interpreted the City HRL as "requiring that housing providers, public accommodations and employers (where applicable), make the main entrance to a building accessible unless doing so creates and undue hardship, or is architecturally infeasible. Only then should an alternative entrance be considered. The Commission stated that "in this case, there was no evidence of financial hardship or architectural infeasibility ... the law requires that the front door be made accessible." Such an interpretation would conform to the ruling in *Pelton, supra.* as in that matter, the architects found that complying with the plaintiff's initial accommodation request granting access to the front entrance to the building would have been architecturally and financially infeasible. *Pelton, supra.*

The court finds petitioner's arguments regarding the alleged failure of the NYCCHR to consider the entire record and numbered exhibits to be without merit.

(B) The NYCCHR's Damages and Fines Imposed

In its Decision and Order, the NYCCHR awarded compensatory damages to Rose in the amount of $1,000 for damage to his motorized scooter while using the current non-ADA-complaint entryway, and $50,000 for "mental anguish".

An award of compensatory damages to a person aggrieved by illegal discriminatory practice may include compensation for mental anguish, and that award may be based solely on the complainant's testimony. *Matter of 119-121 E. 97th St. Corp. v. New York City Comm'n on Human Rights*, 220 A.D.2d 79 (1st Dept. 1996), citing *Matter of Board of Educ. v. McCall*, 108 A.D.2d 855. An award may be reviewed for legal error and excessiveness, and must be reasonably related to the wrongdoing, supported by evidence before the Commissioner, and compare favorably with other awards for similar injuries. *Matter of NYCTA v. State Div. of Human Rights*, 78 N.Y.2d 207, 218-219. Such an award must not be "punitive or arbitrary". *Matter of NYCTA v. State Div. of Human Rights*, 181 A.D.2d 891, 894-95. Evidence of mental treatment is not required for a finding of mental anguish. *NYPD v. DeLeon*, 201 A.D.2d 260.

In this matter, the NYCCHR determined that Rose was wrongly denied access to the front

entrance of his building for two and a half years from the date of his initial request for an accommodation in 2008. The Commission also based the award on Rose's testimony that there were several instances where he was "caught in the elements for up to 45 minutes" waiting for assistance to enter his building, and he had to always be conscious of arriving home at a time when people would be leaving or entering the building.

This court finds the award of $50,000 for "mental anguish" excessive. Although it did take over two years to offer Rose alternative entrance into the building, the evidence before the Commissioner indicated that Petitioner had engaged in assessments of possible accommodations during this time frame. Moreover, the award of $50,000 is excessive in light of comparative cases. In *Matter of 2132-38 Wallace Ave Corp. v. Gibson*, the First Department reduced a compensatory award from $10,000 to $2,500 where disabled complainant was inexplicably denied, for one year, keys to his building's rear entrance which did not have steps and was closer to available parking spaces. 60 A.D.3d 575 (1st Dept. 2009). Like this case, the NYCCHR found that petitioners had discriminated against respondent on the basis of disability due to this delay, although the court in *Gibson* found that respondent did provide reasonable accommodations. In this matter, where two and a half years elapsed from Rose's initial request before an attempt to accommodate was made, the award will be reduced from $50,000 to $15,000 for mental anguish. The award of $1,000 for property damage will remain undisturbed.

Finally, the NYCCHR ordered that Petitioners pay a fine to the City of New York in the amount of $50,000. With respect to civil penalties and fines imposed, the Administrative Code §8-126(a) provides "[t]he commission may, to vindicate the public interest, impose a civil penalty of not more than one hundred thousand dollars." Such penalties are not intended to compensate the complainant, but to punish the violator. *Matter of 119-121 E.97th St. Corp., supra.* In *Matter of 119-121 E.97th St. Corp.*, the First Department reduced a fine from $75,000 to $25,000, holding that while the landlord's actions were egregious, committed over a period of time, and implicated other individuals besides complainant, the public interest was not affected to a great extent since the landlord owned a relatively number of units. Further, the ALJ had noted that there were no previous findings of discrimination against the petitioners. *Id.*

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Such punitive fines are generally reserved for unlawful discriminatory practices that are the result of a willful, wanton, or malicious act. *Id.*, citing HRL §8-126(a). In this matter, there is no indication that Petitioner's actions were egregious, willful, wanton, or malicious. At a minimum, it may be said that Petitioner's failure to accommodate implicated many others in the thousands of residents it houses in Co-Op City, and thus some punitive fine is warranted. The Commission's punitive fine imposed will thus be reduced from $50,000 to $5,000.

V. Conclusion

Accordingly, it is hereby

ORDERED, that the petition of Riverbay Corporation and Vernon Cooper, and cross-motion of respondents New York City Commission on Human Rights and John Rose are hereby decided to the extent provided herein, and it is further

ORDERED, that the petition to annul and vacate the decision of respondent New York City Commission on Human Rights in *Rose v. Riverbay Corp.*, Complaint No. 1020824 is hereby DENIED, and it is further,

ORDERED, that the petition to vacate the penalties, damages and fines imposed by respondent New York City Commission on Human Rights is granted to the extent provided herein, and it is further,

ORDERED, that the New York City Commission on Human Rights' award for compensatory damages for mental anguish is hereby reduced to $15,000, and the $1,000 award for property damage remains undisturbed, and it is further,

ORDERED, that the New York City Commission on Human Rights' imposition of a fine against petitioner Riverbay is hereby reduced to $5,000.

The above constitutes the Decision and Order of this Court.

Dated: September 9, 2011

Hon. Mary Ann Brigantti-Hughes, J.S.C.