

Patterson v New York City Dept. of Social Servs.

2013 NY Slip Op 30109(U)

January 16, 2013

Supreme Court, New York County

Docket Number: 401764/2012

Judge: Kathryn E. Freed

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. KATHRYN FREED
JUSTICE OF SUPREME COURT
Justice

PART 5

Index Number : 401764/2012
PATTERSON, GUY
vs
CITY OF NEW YORK
Sequence Number : 001
DISMISS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

CAL: #64

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

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

FILED

JAN 23 2013

COUNTY CLERK'S OFFICE
NEW YORK

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

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

Dated: JAN 16 2013


_____, J.S.C.
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

- 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 5

-----X
GUY PATTERSON,

Plaintiff,

-against-

THE NEW YORK CITY DEPARTMENT OF
SOCIAL SERVICES,

Defendant.

FILED

JAN 23 2013

COUNTY CLERKS OFFICE
NEW YORK

DECISION/ORDER
Index No.: 401764-2012
Seq. No.: 001

PRESENT:
Hon. Kathryn E. Freed
J.S.C.

-----X
HON. KATHRYN E. FREED:

RECITATION, AS REQUIRED BY CPLR §2219(a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION.

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....1-3.....
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....
ANSWERING AFFIDAVITS.....
REPLYING AFFIDAVITS.....
EXHIBITS.....4-5.....
STIPULATIONS.....
OTHER.....

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THIS MOTION IS AS FOLLOWS:

Defendant moves for an Order dismissing the complaint pursuant to CPLR§ 2214, CPLR§ 3211(a)(2) and the Court of Claims Act, Art 2, § 8 & 9, on the grounds that the New York State Supreme Court lacks subject matter jurisdiction over plaintiff's claim for negligence. No opposition has been submitted by plaintiff.

After a review of the instant motion, all relevant statutes and caselaw, the Court grants the motion.

Factual and procedural background:

Plaintiff had been receiving Public Assistance benefits. The Court has reviewed a document entitled "The Decision After Fair Hearing," which is appended to defendant's moving papers as Exhibit #1. It states in pertinent part that "[b]y notice dated October 27, 2011, the New York City Department of Social Service, advised Appellant that it would be discontinuing said benefits on the grounds that Appellant failed to comply with the Agency's employment program. The notice advised the Appellant that a fair hearing must be requested within 60 days of the date of the Agency's action concerning Public Assistance benefits."

The Agency mailed the notice to plaintiff address, and he originally requested that a fair hearing be conducted on November 23, 2011 to review the October 27, 2011 determination. At plaintiff's request, a fair hearing was scheduled for January 26, 2012, but plaintiff and/or a representative failed to appear. Additionally, plaintiff failed to contact the Office of Administrative Hearings within 15 days of the scheduled hearing to request that the original hearing be rescheduled. Plaintiff also failed to contact the Office of Administrative Hearings within 45 days of the scheduled hearing to request that the original hearing be rescheduled based on a failure to receive that Office's letter setting forth the date of the scheduled hearing.

The agency rendered a written decision dated March 9, 2012, wherein it decided that "[a]s this hearing was requested more than 60 days after the Agency's October 27, 2011 determination sought to be reviewed the Commissioner is without jurisdiction to review the Agency's determination."

Defendant now argues that because it is a State administrative agency, an action for monetary damages cannot be maintained against it in Supreme Court, thus necessitating the dismissal of this

action based on a lack of subject matter jurisdiction. Additionally, it argues that pursuant to the principle of “sovereign immunity,” New York State is wholly immune from suit unless it waives its sovereign immunity. Defendant further argues that to the extent that this litigation seeks review of the March 9, 2012 DAFH, it can only be commenced as a CPLR Art. 78 proceeding, which must be commenced within four months after the determination to be reviewed becomes final and binding. Defendant asserts that plaintiff commenced this action on August 8, 2012, four months and 30 days after the State issued DAFH.

Conclusions of law:

Supreme Court unquestionably has subject matter jurisdiction over CPLR Art. 78 proceedings seeking judicial review of state administrative determinations (*see* Sims v. State of New York, 30 A.D.3d 949 [3d Dept. 2006]; Matter of Gross v. Perales, 72 N.Y.2d 231, 236 [1988], *rearg denied* 72 N.Y.2d 1042[1988]; Madura v. State of New York, 12 A.D.3d 759, 760-761 [3d Dept. 2004], *lv denied* 4 N.Y.3d 704 [2005]). However, said proceedings “must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner” (CPLR § 217(1); *see also* Daughtry v. New York City Police Dept., 250 A.D.2d 415-416 [1st Dept. 1998]).

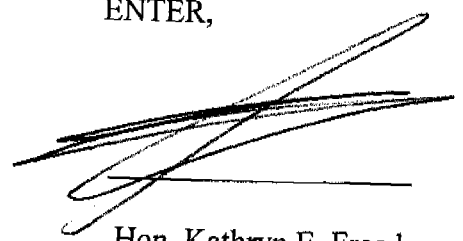
In the case at bar, the Civil Index Inquiry obtained via “SCROLL,” indicates the index date of the instant action to be August 8, 2012, which is four months and 31 days after the date of the decision. Therefore, this action comes 31 days after the statutory limit afforded plaintiff to commence a CPLR Art. 78 proceeding. Indeed, even if the Court were to use the date plaintiff dated his Summons With Notice (July 30, 2012), or the date said Summons With Notice was actually stamped “Received” by the Office of Administrative Hearings, (August 16, 2012), plaintiff would still have exceeded the statutorily mandated four month period.

Therefore, in accordance with the foregoing, it is hereby
 ORDERED: that defendant's motion to dismiss the complaint is granted and it is further
 ORDERED: that this order with notice of entry be served on the appropriate Court Clerk and
 it is further
 ORDERED: that this constitutes the decision and order of the Court.

DATED: January 16, 2013

JAN 16 2013

ENTER,



Hon. Kathryn E. Freed
 J.S.C.
 HON. KATHRYN FREED
 JUSTICE OF SUPREME COURT

FILED
 JAN 28 2013
 COUNTY CLERK'S OFFICE
 NEW YORK