

Matter of Daudier v City of New York Commn.

2013 NY Slip Op 30176(U)

January 24, 2013

Supreme Court, New York County

Docket Number: 401995/2012

Judge: Geoffrey D. Wright

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

JUDGE GEOFFREY D. WRIGHT

PRESENT: _____
Justice

PART 62

Index Number : 401995/2012
DAUDIER, EVE
vs.
NYC COMMISSION OF HUMAN RIGHTS
SEQUENCE NUMBER : 001
ARTICLE 78

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

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 decided in accordance with the annexed hereto decision.

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

FILED
JAN 30 2013
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/24/13

G
GEOFFREY D. WRIGHT

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

-----x
In the mater of the Application of

EVE (aka AMBIKA) DAUDIER,

Petitioner,

Index # 401995/2012

-against-

DECISION

For a Judgment under and pursuant to Article 78
of the Civil Practice Law and Rules

-against-

FILED
JAN 30 2013
NEW YORK
COUNTY CLERK'S OFFICE

CITY OF NEW YORK COMMISSION ON HUMAN
RIGHTS, NANCY (aka ANNE) CLIFFORD-
ADMINISTRATOR FOR S.R.O. OF SAINT AGNES
RESIDENCE, INC. And SAINT JOSEPH IMMIGRANT
HOME, INC.

Respondents.

Present:
Hon. Geoffrey D. Wright

-----x Acting Justice Supreme Court

RECITATION , AS REQUIRED BY CPLR 2219(A), of the papers considered in the review of
this Motion/Order for summary judgment.

PAPERS	NUMBERED
Notice of Motion and Affidavits Annexed.....	_____ 1 _____
Order to Show Cause and Affidavits Annexed	_____
Answering Affidavits.....	_____ 2 _____
Replying Affidavits.....	_____
Exhibits.....	_____
Other.....cross-motion.....	_____ 3 _____

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Petitioner Eve Daudier, a/k/a Ambika Daudier ("Petitioner") seeks judicial review of Respondent, City of New York Commission on Human Rights ("NYCCHR") findings of "no probable cause" in the Determination and Order After Investigation ("Order after Investigation") and the Determination and Order After Review (Order After Review") in the proceeding brought by Petitioner. Respondent, Nancy Anne Clifford, Administrator for S.R.O. of Saint Agnes

Residence, Inc., and Saint Joseph Immigrant Home i/s/h/a Saint Joseph (“Human Right Respondents”) cross-move pursuant to CPLR 3211(a)(7) for an order dismissing Petitioner’s verified petition with prejudice for failure to state a claim.

BACKGROUND

Petitioner initially filed a complaint against Human Rights Respondents with the U.S. Department of Housing and Urban Development (HUD) on April 13, 2011. The complaint was accepted by HUD for filing on May 2, 2011, and was referred to and filed with the New York State Division on Human Rights, but before Respondents could interpose and answer, Petitioner withdrew her complaint.

On May 10, 2011, Petitioner filed a complaint against Human Rights Respondents, with the New York City Commission on Human Rights (“NYCCHR”). Specially, Petitioner who is a woman of mixed African American and Caucasian heritage who identifies as black, alleged that Respondents were discriminating against her based upon her race and were further retaliating against her since she complained about the discrimination, contrary to Section 8-107(5) of the Administrative Code of The City of New York.

Specifically, the complaint alleged that somewhere around January 2008 Respondents discriminated against Petitioner by repeatedly refusing to rent her larger rooms in her residence as they became available and instead offered those rooms to Caucasian and Asian tenants. The Complaint further alleges that the Human Right Respondents retaliated against her following her complaint of discrimination made via email around May 2010 by initiating unjustified holdover proceedings and by making a false accusation about her to the police.

On or about July 15, 2011, the Human Rights Respondents submitted a response to the Commission denying the allegations which included a Verified Answer and a “lengthy” letter with exhibits. The Answer asserted that Petitioner requested a transfer to a larger room with a private bath and had been placed on a wait list. In total, Petitioner had been offered no less than three room transfers with the final being a large room with bath, all of which she rejected. The Answer also denied retaliation and stated that holdover proceedings were commenced prior to the filing of the complaint because petitioner refused to abide by the rules and regulations of the residence and that Petitioner had been involved in incidents with a long time resident (and other sixth floor residents) which resulted in the commencement of holdover proceedings. In addition, they argued that Petitioner had not paid rent for the months of August, 2010 and January, 2011 thru May, 2011 by the time she filed her complaint against Respondents. Petitioner submitted a 36 page rebuttal to the Answer in which she basically asserted that Respondent, Nancy Anne Clifford and the other tenants (whose correspondence was attached to the position statement) were lying. Additionally, Petitioner admitted that in October 2010 she was offered a large room

¹The original complaint was against St. Joseph’s Immigrant Home, Inc., St. Agnes Residence, Inc. and Nancy Anne Clifford.

with a private bath but declined because "...But after I realized it was another scam from Nancy's part; I walked away in an effort to avoid further of Nancy's stress/drama of handling the basics."

On April 20, 2012, NYCCHR issued a Determination and Order After Investigation ("Order After Investigation") in which it determined there was no probable cause to believe Respondents had engaged in any unlawful practice. The Order After Investigation found that Respondents had presented well founded non-discriminatory reasons to evict Petitioner.

Petitioner filed for an appeal for review of the Order After Investigation on May 21, 2012. A Determination and Order After Review ("Order After Review") was rendered on August 9, 2012 whereby NYCCHR issued a decision affirming the Order After Investigation.

On or about September 13, 2012, Petitioner filed the instant Petition against the Human Rights Respondents and NYCCHR seeking judicial review of the Order After Review. The basis for the review of the Order and Review is that "the facts were not presented by Respondent Ms. Clifford with honesty but fabricated lies and tactics by Ms. Clifford and her attorneys." The Petitioner seeks injunctive relief and "civil penalties" for causing personal injuries to petitioner, constant stress, duress, mental, emotional physiological [sic], anxieties; asking for compensatory and punitive damages \$500,000.00."

DISCUSSION

The only issue before this Court is whether the NYCCHR determination, that there was no probable cause of harassment by Respondents, was rational, supported by the evidence and not arbitrary or capricious.

"It is well settled that a court may not substitute its judgment for that of the board or body it reviews *unless* the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion [internal quotation marks and citation omitted] [emphasis in original]." *Matter of Pell v Board of Education of Union Free School District No. 1 of Towns of Scarsdale & Mamaronack, Westchester County*, 34 NY2d 222, 232 (1974). The arbitrary or capricious test is whether the action taken is justified or without foundation in fact. *See id.* at 231. "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." *Id.* at 231. Where there is a "rational basis" for an agency's determination, the court is not permitted to substitute its own judgment for that of an administrative agency (see *Matter of Andersen V Klein*, 50 AD3d 296, 297, 854 N.Y.S.2d 710 [1st Dept. t 2008]; *Matter of Hazeltine v City of N.Y.*, 89 AD3d 613, 615, 933 N.Y.S.2d.

Petitioner basically makes the same argument she made in her complaint with the NYCCHR. She argues that NYCCHR decision should be reversed because Clifford harassed and

discriminated against her. Aside from that argument, she does not offer any new argument or evidence to support her allegations against Human Rights Respondents, nor does she allege any wrong doing by the NYCCHR or offer any basis for reversing the decision of the NYCCHR.

In opposition to the motion, the NYCHHR argues that the finding of no probable cause was based on the evidence presented by the parties, was rational and not arbitrary or capricious.

In this Case, both Petitioner and Respondent had a fair and full opportunity to submit evidence to substantiate their claims. Notably, Petitioner is not denying she was given a fair opportunity to present her case to the NYCCHR. Indeed, Petitioner made no fewer than four formal submissions that were considered by the NYCCHR and supplemented these submissions with emails which elaborated on the submissions. Moreover, Petitioner admitted to being offered a larger room with bath, but turned it down for reasons that are not clear to this Court. In fact, Petitioner offers no new argument and consistently makes the identical argument made in her previous complaints, that Clifford harassed her and would not rent her a larger room and bath because she was an African American. Moreover, the evidence presented in support of her claims was considered and rejected by the NYCCHR. As such, NYCCHR was not acting arbitrary or capricious and their determination was rationally based on the evidence provided by the parties. That Petitioner does not like or agree with the decision of the NYCCHR does not warrant a reversal.

CROSS-MOTION

The Human Rights Respondents cross move seeking on order pursuant to CPLR § 3211(a)(7) dismissing the petition, with prejudice, for failure to state a claim. They argue that their finding of no probable cause was not arbitrary or capricious was rational and based on the evidence presented by Petitioner. In addition, they argue that Petitioner is now seeking two bites at the apple, by essentially making the same argument previously made to the NYCCHR.

In determining a motion to dismiss pursuant to CPLR 3211, the court must accept the facts as alleged in the complaint as true, accord them every possible favorable inference and determine whether the facts as alleged fit within any cognizable legal theory (*Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561, 570-571 [2005]). Whether a Plaintiff can ultimately establish its allegations is not taken into consideration in determining a motion to dismiss. *Philips South Beach, LLC v. ZC Speciality Insurance Company*, 55 A.D.3d 493, 867 N.Y.S.2d 386 (1st Dept. 2008). Mere legal conclusions are not entitled to a presumption truth. In *re Loukumi, Inc.*, 285 A.D.2d 595. "...the narrow question presented on review of a motion to dismiss is not whether plaintiff should ultimately prevail in the action, but whether the complaint states cognizable causes of action, vague and conclusory allegations will not suffice." However, allegations that are bare legal conclusions or are inherently incredible, or that are flatly contradicted by the documentary evidence, are not accorded such favorable inferences, and need not be accepted as true. *Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999], *affd* 94 NY2d 659 [2000].

Based on the foregoing, this Court concludes that the determination made by the NYCHHR is supported by the evidence and this Court sees no reason to reverse it. Petitioner makes essentially the same allegations in this motion which were considered in the Order After Investigation and Order After Review. She has not raised any issue which warrants reversal of the determination by the NYCCHR and this Court does not find any evidence that NYCCHR acted arbitrary or capricious in their findings.

CONCLUSION

Accordingly, the Petition is dismissed with prejudice and the cross-motion is granted.

This constitutes the decision and order of the Court.


GEOFFREY D. WRIGHT
AJSC

Dated: January 24, 2013

JUDGE GEOFFREY D. WRIGHT
Acting Justice of the Supreme Court

FILED
JAN 30 2013
NEW YORK
COUNTY CLERKS OFFICE