

**Matter of Curran v New York State Div. of Human Rights**

2014 NY Slip Op 32034(U)

July 29, 2014

Sup Ct, New York County

Docket Number: 401982/13

Judge: Joan B. Lobis

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This opinion is uncorrected and not selected for official publication.

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

Index Number : 401982/2013  
 CURRAN, CAROLYN J.  
 vs  
 NYS DIVISION OF HUMAN RIGHTS  
 Sequence Number : 001  
 ARTICLE 78

PART \_\_\_\_\_

INDEX NO. \_\_\_\_\_  
 MOTION DATE 5/13/14  
 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) 1 (ex-mot)  
 Answering Affidavits — Exhibits \_\_\_\_\_ No(s) 2, 3  
 Replying Affidavits \_\_\_\_\_ No(s) \_\_\_\_\_

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

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

**THIS MOTION IS DECIDED IN ACCORDANCE  
 WITH THE ACCOMPANYING MEMORANDUM DECISION**

*Order & Judgment*

**UNFILED JUDGMENT**

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).

Dated: 7/29/14

*JBL*  
 \_\_\_\_\_, J.S.C.  
**JOAN E. LOBIS**

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  
NEW YORK COUNTY: IAS PART 6**

-----X  
In the Matter of the Application of  
CAROLYN J. CURRAN,

Petitioner,

Index No. 401982/13

- against -

**Decision, Order and  
Judgment**

NEW YORK STATE DIVISION OF HUMAN RIGHTS  
and HEARTSTONE HOUSING DEVELOPMENT  
FUND CORPORATION,

Respondents.

-----X  
**JOAN B. LOBIS, J.S.C.:**

Carolyn J. Curran, proceeding pro se, petitions pursuant to Article 78 of the Civil Practice Law and Rules against the New York State Division of Human Rights (Division) and her landlord, Heartstone Housing Development Fund Corporation (Heartstone). She challenges the Division's "no probable cause" determination and order dated September 20, 2013 (Determination), which followed an investigation of her complaint of housing discrimination based on age, disability and race. The Division answers the petition, and Heartstone cross-moves to dismiss, without opposition, based on untimely service. For the following reasons, Heartstone's cross-motion is granted; the petition against the Division is denied, and the proceeding is dismissed in its entirety.

Carolyn Curran moved into 519 East 11th Street (Building) in Manhattan in November 1986. She currently resides in Apartment 4W. The Building is owned by Heartstone Housing Development Fund Corporation and is maintained as a limited equity cooperative for lower income residents.

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Ms. Curran first fell behind in her maintenance payments approximately ten years ago. In the interval she has retired from full-time employment and suffered financial setbacks, including bankruptcy. She continues to be in arrears for an amount exceeding \$25,000.

Over the years, Ms. Curran has engaged in efforts to resolve her financial issues, including pursuing the sale of her apartment. Several years ago, her Building's board of directors (Board) took up revising the Building's resale policy. At an annual shareholder's meeting in 2011, a revised resale policy was adopted (Resale Policy).

In the meantime, in December 2010, Ms. Curran began to complain about mold in her apartment. Over the next few years, repairs ensued. Efforts to eliminate the mold have continued into the course of the underlying administrative proceeding in this action.

In March 2012, Ms. Curran notified the Board, which has a right of first refusal to purchase units, of her intention to sell her apartment. In response to that notice, the shareholders in Apartment 3S, Eulogio and Aida DelValle, expressed interest in purchasing her unit. By the end of the month, however, Ms. Curran had notified the Board that she was rescinding her offer to sell.

In January 2013, Heartstone signed a new regulatory agreement with the New York City Department of Housing Preservation and Development, which supervises housing development fund corporations (the Agreement). In pertinent part, the Agreement permits shareholders to keep 30% of any resale profit. The Resale Policy imposes a maximum resale price, however, of no more

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than 120% of the area median income.

At the same time that the Agreement was executed, the Board sent Ms. Curran a letter offering her an opportunity to bypass the procedures set forth in the Resale Policy and market her unit through the Urban Homesteading Assistance Board. In a separate letter sent shortly after that offer, it advised her that her proprietary lease would be terminated due to her arrears. Notwithstanding that notification, she remains in her apartment.

Having received these letters, Ms. Curran filed a complaint with the New York State Division of Human Rights alleging housing discrimination. In particular, she claimed that Heartstone failed to make proper repairs relating to the mold in her apartment based on her age, race, and disability. She further alleged that she was being discriminated against based on her race as a white person from selling her apartment and that Heartstone was also taking advantage of her age and disability in obstructing her sale. She contended that comparable market analysis indicated that her apartment could sell for \$400,000. Under Heartstone's maximum resale limit, however, she argued that after deductions, including her substantial arrears balance, she would only recover \$10,000. Without a maximum resale price, she would recover \$230,000, which she intended to use to relocate to Canada to be closer to her family. In requesting relief, Ms. Curran sought repairs to her apartment and the right to sell her unit without any price restriction.

Heartstone opposed the charges. It pointed out that the Building is small, consisting of no more than eleven residential units. It related that the Board is an all-volunteer Board with

limited time and limited financial resources, noting further that despite Ms. Curran's arrearage since December 2004, she has remained as a tenant-shareholder. It acknowledged that it has been attempting to address Ms. Curran's repair requests but denied that any delays in responding to those requests or problems with the repairs were based on discriminatory animus. It further denied any discriminatory animus in attempting to work with her on reselling her apartment. It acknowledged that the parties have been unable to successfully resolve their differences regarding any resale, but denied that these differences emanated from any discriminatory animus.

In reply, Ms. Curran indicated that she was withdrawing her race claim. In addressing her age claim, she conceded that she was not the oldest shareholder, but distinguished herself from the older shareholder because she is the sole source of income for her unit, while the older shareholder shares his unit with another income earner. In addressing disability discrimination, she focused her criticism on how the mold was adversely affecting her health. She restated her desire to sell her apartment without restriction to its sale price.

The Division investigated Ms. Curran's discrimination claims. In addition to considering the parties' submissions and supporting papers, the Division made numerous attempts to contact potential witnesses, including drafting letters to shareholders in the Building, interviewed witnesses and obtained additional materials from Heartstone.

Following its months-long investigation, in September 2013, the Division issued a final investigative report and its Determination. It found no probable cause for the claims. In

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pertinent part, it failed to find evidence that others were treated better than Ms. Curran based on their age or that non-disabled residents received preferential treatment. The Determination notes, among other things, that during the relevant time period Heartstone provided repairs to other white tenants. In its interviews with residents it did not obtain any corroboration of discrimination. It further points out that while Ms. Curran is claiming obstruction of the resale of her apartment, Ms. Curran rescinded her offer to sell before the discrimination complaint was ever filed. The Determination specifically found that Heartstone's submissions provided legitimate, non-discriminatory business reasons for its actions that have not been shown by Curran to be pretextual or that there was any causal nexus between the treatment complained of and the basis of the allegations in the complaint.

After receiving the Determination, Ms. Curran brought this proceeding against the Division, in which she claims that the Determination is arbitrary, capricious, and an abuse of discretion. She criticizes the Division for failing to include her version of the facts and claims that the Division's conclusions are based largely on Heartstone's response. She argues that the Division should have conducted more interviews in investigating her claims. The Division has answered to deny the claims, and attaches a certified copy of the administrative record. Heartstone moves to dismiss the proceedings against it based on untimely service. That motion is not opposed. In March 2014, Curran also brought a declaratory action in New York County Supreme Court in which she is seeking an order voiding Heartstone's Resale Policy. Curran v. Heartstone Housing Development Fund Corporation, Index No. 151953/14.

This Court first considers Heartstone's motion to dismiss. An Article 78 proceeding

to challenge a determination of the Division must be brought within sixty days of service of the determination. Exec. Law § 298; see also Jackson v. N.Y.S. Div. of Human Rights, 69 A.D.3d 501 (1st Dep't 2010) (affirming dismissal of proceeding brought more than sixty days after service of Division's determination). In addition, the petition must be served on the respondents within fifteen days after the sixty day period. See C.P.L.R. § 306-b (where statute of limitations is four months or less, service must be made no later than fifteen days after the date on which the statute of limitations expires). According to the affidavit of service contained in the administrative record, the Division served its Determination by regular mail on the same day that it was issued. While this action, which was filed in November 2013, was timely commenced, the record further shows that Curran did not serve Heartstone, however, until several months later, on March 13, 2014, nor has she submitted any opposition to Heartstone's motion. Based on this record, the Court finds that this Court lacks personal jurisdiction over Heartstone.

This Court next considers Petitioner's remaining claim against the Division. In an Article 78 proceeding to review a determination and order after investigation, where no hearing has been held, "the appropriate standard of review is whether the determination was arbitrary and capricious or lacking a rational basis." McFarland v. New York State Div. of Human Rights, 241 A.D.2d 108, 111 (1st Dep't 1998). In pursuing her administrative complaint, Curran had the burden to show probable cause for the discriminatory acts charged. Id. at 113. Conclusory allegations will not suffice. See id. In investigating allegations of discrimination, the Division has broad discretion as long as the investigation is "sufficient" and a claimant is afforded a "full opportunity to present" the claims. Id. at 111-12. The court may not reevaluate the evidence presented to the Division nor

“substitute its judgment” for the Division’s judgment, “but must ascertain only if there is a rational basis for the decision or whether it is arbitrary and capricious.” Cuccia v. Martinez & Ritorto, P.C., 61 A.D.3d 609, 610 (1st Dep’t 2009).

In this instance, Petitioner has failed to show that relief is warranted. Nothing in this Court’s review of the administrative record suggests that the Division’s Determination lacked a rational basis or that its conduct was arbitrary or capricious. The record shows that the Division considered each side’s positions relating to the charges. The parties’ submissions included extensive documentation. Over the course of many months, the investigators reached out to potential witnesses, conducted various interviews, and considered the data provided. Petitioner concedes that no other apartment has mold as an issue nor has she identified other shareholders seeking to resell their units. Nothing suggests that she was denied an opportunity to provide evidence supporting her claims or that the investigation was abbreviated. See, e.g., Cuccia, 61 A.D.3d at 610. This Court will not substitute its judgment for the Division’s in concluding there was no probable cause to show that Heartstone was discriminating against Ms. Curran. Accordingly, it is

ADJUDGED that Heartstone’s motion to dismiss is granted, the petition is denied, and the proceeding is dismissed in its entirety.

Dated: July 29, 2014

**UNFILED JUDGMENT**

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JOAN B. LOBIS, J.S.C.