

**Matter of Steinberg-Fisher v North Shore Towers
Apts., Inc.**

2014 NY Slip Op 33107(U)

August 21, 2014

Supreme Court, Queens County

Docket Number: 7466/2014

Judge: Thomas D. Raffaele

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE THOMAS D. RAFFAELE IA PART 13

Justice

-----x

In the Matter of the Application of
ARLENE STEINBERG-FISHER,,

Index No. 7466/2014

Plaintiff-Petitioner

Motion Date: 7/15/14

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

Sequence No. 1

-against-

NORTH SHORE TOWERS APARTMENTS, INC.,
LEON C. DIMAYA, as Director of the New York
State Division of Human Rights, and the
NEW YORK STATE DIVISION OF HUMAN
RIGHTS,

Respondents.

-----x

The following papers numbered 1 to 10 read on this petition by Arlene Steinberg-Fisher seeking an order of judgment, pursuant to CPLR Article 78: (1) declaring the conduct, actions and determinations of respondent North Shore Towers Apartments, Inc. (North Shore) and respondent New York State Division of Human Rights (SDHR) to be in violation of the petitioner's rights pursuant to Human Rights Law Section 296, (2) declaring the NYS Division of Human Right's determination dismissing petitioner's complaint to be arbitrary, capricious and in violation of Human Rights Law Section 296 and as a result, invalid; (3) declaring that petitioner's request for a reasonable accommodation under the circumstances of this case were reasonable as a matter of both law and fact; (4) reviewing and annulling vacating and/or reversing the determination of respondent, Leon C. DiMaya, as Director of the New York State Division of Human Rights which determination erroneously held that the requested accommodation sought herein was unreasonable; (5) a declaration that respondent North Shore violated petitioner's rights under, *inter alia*, Human Rights Law Section 296 by refusing to make a reasonable accommodation in its rules, policies, practices and services in spite of petitioner's uncontested disability and repeated demands for accommodation; (6) a declaration that petitioner is entitled to the requested relief sought herein, i.e. a relaxation of the arbitrary, capricious, unsupported and unreasonable policy of requiring any and all work to be performed in a given unit to be completed within ninety (90) days; (7) an order directing respondent North Shore to immediately grant the requested reasonable accommodation sought herein; (8) an order of this

court directing respondent, North Shore, to refrain from enforcing or attempting to enforce its ninety (90) day rule as against petitioner and her unit and allowing her to complete the proposed non-structural renovations within her apartment without having to complete all work within ninety (90) days; (9) an order of this court preventing, prohibiting and enjoining North Shore from taking any action to prevent, frustrate, or impede petitioner’s ability to perform non-structural renovations within the confines of petitioner’s unit, pursuant to the terms and provisions of North Shore’s governing proprietary lease and By-Laws and from taking any other steps to frustrate, impede or prevent petitioner’s right and ability to complete the proposed renovations; (10) an order of this court prohibiting and enjoining respondent North Shore from taking any steps to evict petitioner from her unit, terminate her lease and/or prohibiting North Shore from taking any other steps to frustrate, prevent or impede her right, title and ownership of shares; (11) an order of this court permanently removing, rescinding and deducting any and all fines, fees and other penalties or costs imposed against petitioner or her unit as a result of any purported violation of the ninety (90) day rule; (12) sanctions, punitive damages, and recovery of damages incurred by petitioner in an amount to be determined at trial, but in no event less than \$250,000.00; and (13) for such other and further relief as this court may deem just and proper.

PAPERS NUMBERED

Notice of Petition-Affidavit-Exhibits.....	1-4
Amended Verified Answer.....(North Shore).....	5-6
Answer (State Division of Human Rights (SDHR)).....	7-8
Amended Reply.....	9
Record.....	10

Upon the foregoing papers, the petition is determined as follows:

Petitioner, Arlene Steinberg-Fisher is a shareholder, lessee and resident of the premises known as 270-10 Grand Central Parkway, Apartment 19-0, Floral Park, New York 11005 (the apartment) at North Shore, a residential co-op. Petitioner contends that she has been clinically diagnosed with certain ailments which interfere with her ability to focus, plan concentrate and deny her the ability to emotionally and psychologically comply with rigorous time schedules and demands. This allegation is supported by medical testimony annexed to the petition. The apartment was previously purchased by petitioner’s mother, Madeline Steinberg who wanted to renovate the interior of the apartment. Since petitioner is an interior designer she agreed to take

over the renovation project for her mother with the intent that upon completion of the work petitioner would reside there with her husband and her mother, Madeline Steinberg. Presently petitioner and her family live in California.

North Shore has a policy that all structural renovations must be completed within ninety days. Petitioner alleges that in spite of the fact that North Shore's proprietary lease and by-laws require Board approval only for structural modifications, North Shore unfairly imposed a requirement that any shareholder or tenant wishing to perform any alteration whatsoever to the interior of any unit submit an "apartment alteration agreement." Initially the agreement between petitioner and North Shore did not contain any ninety (90) day time constraint to complete the work. She states specifically in her petition that North Shore's attorney, Errol Brett, Esq. sent her a letter on January 30, 2012 stating that the co-op rules prohibit her from making renovations over a protracted period of time, without any specific reference in the by-laws for this arbitrary prohibition. She further alleges that she then attempted to amicably resolve the matter with the assistance of her attorney over the next several months without success. Ms. Steinberg-Fisher's requests for an extension of time were refused by North Shore regardless of the fact that she agreed to every other term imposed by the co-op save for the ninety (90) day rule. Consequently, petitioner's work was brought to a halt as a result of North Shore's intentions to fine her and threaten eviction proceedings (*see footnote 1 p. 11 of petition*).

As a result of the foregoing, petitioner filed a verified complaint on September 26, 2013 (*see Exhibits A of petition*) with co-respondent SDHR alleging that North Shore knowingly and intentionally violated her rights, pursuant to Human Rights Law Section 296(18)(12) which reads in relevant part:

It shall be an unlawful discriminatory practice for the owner, lessee sub-lessee, assignee, or managing agent of, or other person having the right of ownership of, or possession of, or the right to rent or lease housing accommodations...[t]o refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling, including reasonable modification to common use portions of the dwelling.

On November 7, 2013 respondent North Shore served its Verified Answer and thereafter on December 5, 2013 petitioner served her verified reply. On March 12, 2014, Director Leon C. DiMaya of SDHR found “that there is NO PROBABLE CAUSE to believe that the respondent has engaged in or is engaging in the unlawful discriminating practice complained of” to wit not extending the ninety (90) day rule. Director Dimaya further opined that “The Division notes that Complainant’s request cannot be considered ‘reasonable’ because Complainant refused to agree to any time limitations whatsoever.” The complaint was then dismissed without affording petitioner a hearing. Petitioner contends that the decision of the SDHR was arbitrary and capricious and without basis in the law or facts.

This court notes that based upon the record before this court the remaining work to be completed on the subject apartment was not structural in nature. This court further finds that petitioner did cooperate in submitting all required documentation and all required fees except for the agreement to complete the work within the ninety (90) days. The court also finds that based upon the evidence in the record, petitioner Arlene-Steinberg Fisher does suffer from certain physical ailments which would entitle her to a reasonable accommodation as outlined above in Human Rights Law Section 296(18)(12).

It is well settled that SDHR's determinations are "entitled to considerable deference due to its expertise in evaluating discrimination claims" (*see Matter of Garrison Protective Services, Inc. v New York State Div. of Human Rights*, 71 AD3d 1021 [2d Dept. 2010]). Moreover, a court may not substitute its own judgment for the judgment of SDHR and SDHR's determination must be upheld unless the complainant can demonstrate that the determination is without reasonable basis in fact or law (*see Moorehead v New York City Transit Authority*, 147 AD2d 569 [2d Dept. 1989]). As long as both parties have an opportunity to present evidence, investigations do not have to be conducted in a particular fashion (*see Cornelius v New York State Div. of Human Rights*, 286 AD2d 329 [2d Dept. 2001]). SDHR's dismissal of a complaint based on a finding of no probable cause will not be set aside unless it acted arbitrarily, capriciously or irrationally (*see Orosz v NYS Div. of Human Rights* 88 AD3d 798 [2d Dept. 2011]).

After a careful review of the record, the court finds that the SDHR's determination of no probable cause was in fact arbitrary and capricious and an abuse of discretion. North Shore has failed to set forth a sound non-discriminatory explanation for its actions. It is axiomatic that a no probable cause determination cannot be arbitrary and capricious if SDHR investigated the allegations and afforded the petitioner a complete and fair chance to present its case (*see Ramirez v. NYS Div. of Human Rights*, 4 NY3d 789 [2005]). However, in the case at bar, notwithstanding medical records presented to the director of SDHR, he refused to make a finding of probable cause and summarily dismissed the complaint, thus denying petitioner the opportunity of a hearing (*cf Ramirez v NYS Div. Of Human Rights supra* at 790). As set forth herein, the record does not support SDHR's determination of no probable cause (*cf Peconic Bay*

Broadcasting v. Board of Appeals, Town of Southampton, 99AD2d 773, [2d Dept. 1984], *app den.* 62 NY2d 603 [1985]). Moreover, SDHR's failure to address petitioner's disability was arbitrary or capricious.

Parenthetically, petitioner seeks declarations and other ancillary relief in her petition. As SDHR's answer dated June 3, 2014 correctly states, this is a proceeding pursuant to Executive Law Section 298, which governs judicial review of SDHR final orders. Petitioner cannot also seek additional relief under Executive Law Section 297(9). As such, this court's sole role is to decide whether the underlying determination dismissing the complaint was arbitrary and capricious. As stated above, this court answers that question in the affirmative. Pursuant to Executive Law Section 298, this court has the authority to "grant such temporary relief or restraining orders as it deems just and proper, and to make and enter upon the pleadings, testimony proceedings set forth in such transcript an order enforcing, modifying and enforcing as so modified, or setting aside in whole or in part such order."

In accordance with the foregoing and based upon the record before this court, IT IS ORDERED AND ADJUDGED that the petition is granted to the extent of finding that the decision of Director DiMaya of SDHR dated March 12, 2014 was arbitrary and capricious, and in accordance therewith IT IS FURTHER ORDERED AND ADJUDGED that the dismissal of the complaint is set aside and the matter is remanded to the SDHR for further proceedings.

This constitutes the decision judgment and order of this court.

Dated: August 21, 2014

THOMAS D. RAFFAELE, J.S.C.