

<b>Matter of shahbain v Commission on Human Rights</b>
2015 NY Slip Op 32044(U)
March 17, 2015
Supreme Court, New York County
Docket Number: 100842/14
Judge: Jr., Alexander W. Hunter
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

EA  
3/17/15  
E

PRESENT: ALEXANDER W. HUNTER, JR.  
Justice

PART 33

Mohamed shahbain and Mojeeb shahbain

INDEX NO. 100842/14

-v-  
Commission on Human Rights ex. rel  
Adam Dilco

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

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 Decision and Order annexed hereto.

**FILED**

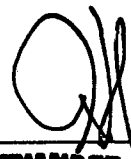
MAR 18 2015

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

Dated: 3/17/2015

  
\_\_\_\_\_, J.S.C.  
**ALEXANDER W. HUNTER JR**

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 33**

-----X

In the Matter of the Application of

Index No.: 100842/2014

MOHAMED SHAHBAIN and MOJEEB SHAHBAIN,

Petitioners,

Decision and Order

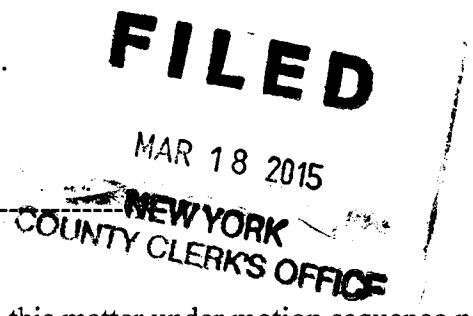
For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

-against-

COMMISSION ON HUMAN RIGHTS ex. rel.  
ADAM DILEO,

Respondent.

-----  
HON. ALEXANDER W. HUNTER, JR.



Two separate applications were filed in this matter under motion sequence no. 001 and no. 002. Both applications will be decided herein.

The application by Mohamed Shahbain and Mojeeb Shahbain (collectively, “petitioners”) for an order pursuant to C.P.L.R. Article 78, vacating and annulling the May 22, 2014 determination by respondent, the New York City Commission on Human Rights (the “Commission”) including vacating the award of damages against petitioner in the amount of \$5,000 and order of training for respondents, is hereby transferred to the Appellate Division, First Department.

Respondent’s motion to dismiss the petition and enforce the Decision and Order of the Commission entered on May 22, 2014, is hereby transferred to the Appellate Division, First Department.

Petitioner Mohamed Shahbain (“Mohamed”) and his son, Mojeeb Shahbain (“Mojeeb”) own the building located at 451 11<sup>th</sup> Street, Brooklyn, New York (the “subject premises”). The subject premises consists of three apartments each respectively located on the first, second, and third floor. Mohamed’s daughter, son-in-law and grandchildren reside in the first floor apartment. Mohamed resides in the second floor apartment and the third floor apartment is rented to non-family tenants. It is noted that petitioner Mojeeb resides in Michigan and was not present in New York at the time of the incident. It is also noted that at the time of the incident Mohamed was in Yemen.

On June 5, 2012, Adam DiLeo (“Mr. DiLeo”) filed a complaint with the Commission claiming that the petitioners violated the New York State Human Rights Law (“HRL”) when their agent refused to show him an apartment because a child would be residing there.

Specifically Mr. DiLeo alleges that on February 1, 2015 he presented at the subject premises to view the third floor apartment which was listed for rent on Craigslist.com. Upon arrival he rang the first-floor doorbell, as he was instructed to do so by Firas Toun (“Toun”), the real estate agent in-charge of renting the apartment. A man whom was later confirmed to be Najmuddin Shahbain (“Najmuddin”), Mohamed’s son-in law, answered the door. Mr. Dileo informed Najmuddin that he was there to see the apartment and confirmed that he was sent by Toun. As Najmuddin began to let Mr. DiLeo into the subject premises, he allegedly asked Mr. DiLeo whether the apartment was for him and upon learning that it was for him and his pregnant wife, Najmuddin looked at him and said “No, no babies.” Mr. DeLeo, who is a licensed attorney in New York and New Jersey, informed Najmuddin that it was illegal not to show the apartment because he has a child, who then responded that “something about dust” and closed the door in Mr. DiLeo’s face. Immediately following his encounter with Najmuddin, Mr. DiLeo phoned and emailed Toun to notify him of the incident. In his email, he explained what happened and concluded, “You need to make this right” and asked Toun to provide alternate properties in the same price range and area by the end of the day. Toun advised that did not have any other properties in the same price range or area and thus, had no further communications with Mr. DiLeo.

On December 13, 2013, a hearing was held before Administrative Judge Allesandra F. Zorgniotti. Following the hearing, Judge Zorgniotti issued a Report and Recommendation where she found that the petitioner failed to establish that respondents violated section 8-107(5) of the HRL. Specifically, she found that Najmuddin did not have apparent nor express authority to act on behalf of the petitioners. On May 22, 2014, the Commission rejected Judge Zorgniotti’s Report and Recommendation and found that the petitioners had discriminated against Mr. DiLeo on the basis of the lawful presence of a child and ordered the petitioners to pay \$5000 in compensatory damages to Mr. DiLeo and undergo anti-discriminatory training.

Petitioners now seek to annul the determination of the Commission claiming that the decision was both arbitrary and capricious. In particular, they argue that: (1) the Commission failed to properly review relevant law and (2) the decision is not reasonably related to the facts and is not supported by substantial evidence resulting in an abuse of discretion.

The Commission opposed the petition and in a separate application, moved to dismiss the petition and enforce the Decision and Order. In its answer, respondent asserts that substantial evidence supports its determination that Najmuddin had actual authority to act on behalf of the petitioners.

There are no procedural issues for this court to decide. The instant Article 78 proceeding involves an issue of substantial evidence and should be transferred to the Appellate Division, First Department pursuant to CPLR 7804(g). “CPLR 7804(g) authorizes the court in which the article 78 proceeding is commenced to decide any issues which would terminate the case if no issue of substantial evidence is raised. Otherwise, the section requires the court to transfer the case to the Appellate Division for disposition.” **Al Turi Landfill, Inc. v. New York State Dept. of Env’tl. Conservation**, 98 N.Y.2d 758, 760 (2002).

Accordingly, it is hereby

ORDERED, that this matter is transferred to the Appellate Division, First Department; and it is further

ORDERED, that petitioner is directed to serve a copy of this order with notice of entry upon all parties and file proof thereof with the Office of the County Clerk, who is directed to transfer this action to the Appellate Division, First Department.

Dated: March 17, 2015

ENTER

J.S.C. **ALEXANDER W. HUNTER JR**

**FILED**  
MAR 18 2015  
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