

Simmons v City of N. Y. Commn. on Human Rights

2015 NY Slip Op 32051(U)

September 1, 2015

Supreme Court, New York County

Docket Number: 101263/2014

Judge: Michael D. Stallman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21

FILED

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SHAQUIA SIMMONS,

SEP 4 2015

Petitioner,

COUNTY CLERK'S OFFICE
NEW YORK

- against -

Index No. 101263/14

THE CITY OF NEW YORK COMMISSION ON
HUMAN RIGHTS, GUARDIAN ANGEL SCHOOL,
MAUREEN MCEL DUFF, and BETH SANCHEZ,

**Decision and
Judgment**

Respondents.

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HON. MICHAEL D. STALLMAN, J.:

Petitioner Shaquia Simmons brings this article 78 proceeding to reverse the determination of the New York City Commission on Human Rights (Commission) which dismissed petitioner's claim of unlawful discrimination against Guardian Angel School (Guardian), the school's principal, Maureen McElduff, and the school's secretary, Beth Sanchez, for allegedly refusing to give her and her minor son a scholarship application for the school because of their race.

BACKGROUND

Petitioner enrolled her son in kindergarten in Guardian Angel School for the 2012-13 school year. (Petition Ex. D) Petitioner alleges that during that year, petitioner repeatedly asked whether there was any financial aid or scholarships available for her son, and petitioner was repeatedly told by

McElduff and Sanchez that there was nothing available. (*Id.*) Petitioner alleges that in September 2012, petitioner asked Sanchez if her son qualified for any scholarships, and Sanchez told petitioner not at this time, but that he might qualify in first grade. (*Id.*) Petitioner purportedly continued to ask about scholarships on a weekly basis but was always told there was nothing available. (*Id.*)

Petitioner alleges that on February 15, 2013, petitioner came to pick her son up from school and asked about scholarships for her son again. (*Id.*) McElduff said there were none available, and then asked petitioner if she had a W-2 form because if any scholarships became available, the application would require a W-2 form. (*Id.*) On February 25, 2013, petitioner claims she gave her W-2 form to McElduff. (*Id.*)

On March 26, 2013, a parent with a child in petitioner's son's class purportedly told petitioner that she received a scholarship application for her child. (*Id.*) That evening when petitioner picked up her son from school, petitioner asked the evening staff about scholarship applications and then left a note for Sanchez requesting an application. (*Id.*)

According to petitioner, on March 27, 2013, petitioner dropped her son off at school, and McElduff asked petitioner who told her about the scholarship applications. (*Id.*) McElduff informed petitioner that the

scholarship applications available were only for children who were already receiving scholarships. (*Id.*) Later that day, according to petitioner, a parent in petitioner's son's class informed petitioner that the scholarship application she received for her child was for a new application. (*Id.*) Petitioner also alleges that she called the Scholarship Fund and the Inner City Fund and was told that Guardian Angel School had received a few scholarship applications, and she could only get those applications from McElduff. (*Id.*) Petitioner alleges that she then called McElduff informing her of what she just learned, and McElduff yelled at her. (*Id.*)

According to petitioner, from March to April 2013, petitioner spoke with the Inner City Fund supervisor a few more times to determine and confirm that Guardian was on the list of schools receiving scholarship applications. (*Id.*) Petitioner also alleges that she saw Guardian listed on the Inner City Fund's website and learned about the Emergency Tuition Assistance (ETA) program. (*Id.*)

McElduff alleges that, on April 8, 2013, Guardian provided petitioner with an ETA application and that petitioner failed to return the completed ETA application to Guardian. (McElduff Aff. ¶ 14.) Petitioner alleges that she never received the ETA application. (Petition Ex. D.)

On April 9, 2013, petitioner filed a complaint with the Commission alleging discrimination by Guardian, McElduff and Sanchez on the grounds that they refused to give petitioner and her son a scholarship application because of their race. (*Id.*)

Petitioner alleges that in June 2013, petitioner received a letter sent to parents that their children could not participate in the graduation ceremony unless all tuition had been paid. (*Id.*) Another parent purportedly informed petitioner that her child was attending the ceremony even though she still owed her child's tuition to Guardian. (*Id.*) Petitioner alleges that there is no record of her son completing his kindergarten year at Guardian, her son could not continue attending Guardian the following year as petitioner could not afford the tuition, and her son is now in counseling as a result of this. (*Id.*)

The Commission conducted an investigation and issued an Order After Investigation dated February 25, 2014. (Mishra Affirm Ex. 5). In the Order After Investigation, the Commission stated that there was no probable cause to believe that Guardian or its employees had discriminated against petitioner. (*Id.*) The Commission found that no Caucasian students in the kindergarten class received a scholarship application for 2013-2014 school year; two Hispanic students that had already received scholarships received

applications for the 2013-2014 school year; one of the parents petitioner spoke to only received an application for her older daughter who had received a scholarship from Guardian previously; and McElduff gave petitioner an ETA form and did not receive the completed form or the W-2 form from petitioner. (*Id.*)

By letter dated March 5, 2014, petitioner appealed the Order After Investigation. (Mishra Affirm. Ex. 6.) In the Commission's Order After Review dated October 8, 2014, the Commission affirmed the findings of the Order After Investigation.

On October 30, 2014, petitioner commenced this Article 78 proceeding.

Respondents argue that the petition should be denied and the proceeding dismissed because the Commission's determination was not arbitrary or capricious and was supported by substantial evidence in the record considered as a whole.

DISCUSSION

"In reviewing administrative proceedings in general," courts are "limited to considering 'whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion.'" (*Chinese Staff & Workers Assn. v*

City of New York, 68 NY2d 359, 363 [1986], quoting CPLR 7803 [3]; see also *Wu v New York City Comm'n Human Rights*, 84 AD3d 823, 824 [2d Dept 2011].) “The proper test is whether there is a rational basis for the administrative ordersRationality is what is reviewed under . . . the arbitrary and capricious standard.” (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974].) Here, the Commission had a rational basis for its determination that there was no probable cause to believe that Guardian had discriminated against petitioner.

Under New York City Human Rights Law, it is an unlawful discriminatory practice for “any person, being the owner, . . .manager, superintendent, agent or employee of any place or provider of public accommodation because of the actual or perceived race . . .of any person directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof” (Administrative Code § 8-107[4][a].) “The findings of the commission as to the facts shall be conclusive if supported by substantial evidence on the record considered as a whole.” (Administrative Code § 8-123[e].) “Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or ultimate fact.” (*Mittl v*

New York State Div. of Human Rights, 100 NY2d 326, 331 [2003] [internal quotations omitted].) Where substantial evidence supports the Commission's determination, "that determination must be sustained, irrespective of whether a similar quantum of evidence is available to support other varying conclusions." (*119-121 E. 97th St. Corp. v New York City Comm'n Human Rights*, 2201 AD2d 79, 82 [1st Dept 1996].) Also, the Commission has broad discretion "to decide how to conduct its investigations." (*Stern v New York City Comm'n Human Rights*, 38 AD3d 302, 302 [1st Dept 2007].)

Here, the Commission conducted a thorough investigation, and its determination is supported by substantial evidence on the record. The Commission took nearly eleven months to conduct an investigation of petitioner's claim, reviewed all documents submitted by petitioner and Guardian, spoke to petitioner several times, interviewed petitioner's witnesses, investigated the scholarships and financial assistance available through the Archdiocese and the Inner City Fund, and reviewed multiple audio recordings that petitioner provided of her telephone conversations during the relevant period. (Mishra Affirm Ex. 5, 6, 7). The Commission found that Guardian demonstrated a non-discriminatory reason for not giving petitioner a scholarship application, which is, that during the relevant

period, Guardian was not providing any applications to any students for new scholarships. (Mishra Affirm Ex. 2, 5, 3.) The Commission found that, during the relevant period “[n]o Caucasian student in [the kindergarten] class, or indeed the whole school received a scholarship application,” and there was no “evidence that any students in [the kindergarten] class – of any race- received scholarship applications for the year in question. (Mishra Affirm Ex. 5).

The Commission did not find any credible evidence that the decision not to give petitioner a scholarship application for her son was based on their race. Although it might be argued that Guardian could have handled petitioner’s situation more sensitively and compassionately, that does not make the Commission’s determination arbitrary and capricious. There is no legal basis for disturbing the Commission’s determination. Therefore, the Commission’s determination - that there was no probable cause to believe that Guardian unlawfully discriminated against petitioner and her son - was not arbitrary and capricious.

CONCLUSION

Accordingly, it is hereby

ORDERED that the petition is denied and the proceeding is dismissed.

Dated: September 1, 2015
New York, New York

ENTER:



J.S.C.

HON. MICHAEL D. STALLMAN

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