

Mitchell v State of New York
2019 NY Slip Op 30016(U)
January 4, 2019
Supreme Court, New York County
Docket Number: 101022/2018
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

-----X
INDEX NO. 101022/2018
SETH MITCHELL, MOTION DATE 12/18/2018
Petitioner, MOTION SEQ. NO. 001

- v -

THE STATE OF NEW YORK, NEW YORK STATE OFFICE OF
VICTIM SERVICES,

DECISION AND ORDER

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33
were read on this motion to/for JUDGMENT - MONEY

The petition to reverse a decision by respondent the New York State Office of Victim Services ("OVS") is denied and this proceeding is dismissed.¹

Background

Petitioner claims that he was the victim of a crime in 2003 by the NYPD. On June 15, 2003, petitioner was removed from the hotel he was staying in by the NYPD after a call was placed about a disturbance. The police report suggested that petitioner was being violent with his family at the Trump International Hotel (NYSCEF Doc. No. 17). Petitioner was taken for psychiatric evaluation at a local hospital. He later left the hospital, which caused the hospital to file missing person's report. The NYPD eventually located petitioner and escorted him back to the hospital.

¹ Although respondent, the State of New York, is not a proper party, that issue is immaterial because the petition is dismissed.

Fourteen years later, in August 2017, petitioner filed an application for victim compensation with OVS. After considering the evidence submitted by petitioner, OVS determined that it “did not obtain enough information to confirm that a crime occurred, and as such, we are unable to render an award decision” (NYSCEF Doc. No. 23). Petitioner appealed this decision and requested a hearing. The request was granted, and after the hearing, OVS concluded that “claimant has not presented sufficient evidence to warrant a reversal of the Decision by the Office dated October 4, 2017” (NYSCEF Doc. No. 26). Petitioner then commenced this proceeding to reverse OVS’ determination.

Discussion

In an article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious” (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*id.*). “If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*id.*).

OVS is a state agency designed to provide “government financial assistance” to victims of crime” (Executive Law § 620). Pursuant to Executive Law § 631(1), “No award shall be made unless the office finds that (a) a crime was committed, (b) such crime directly resulted in personal physical injury to or the exacerbation of a preexisting disability, or condition, or death of, the victim, and (c) criminal justice agency records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the criminal justice agency records show that such report was made more than one week after the occurrence of such crime unless the office, for good cause shown, finds the delay to have been justified.”

Here, the Court finds that OVS' determination was rational. At the hearing, the Hearing Officer questioned whether a crime had been committed and noted that they had a police report "from the NYPD that indicates that you were removed to New York Hospital because you became violent and that you had to be removed. And at New York Hospital it was diagnosed that you needed psychiatric treatment" (NYSCEF Doc. No. 25 at 9). The Hearing Officer observed that these records did not show that there was a crime committed (*id.*).

Although petitioner asserted that he disagreed with the need for police intervention and whether he needed psychiatric evaluation, petitioner did not establish that he was the victim of a crime. It was not irrational for OVS to rely on police reports that claimed petitioner was acting violently especially where petitioner did not provide any information to counter that account. As the Hearing Officer made clear, OVS "can only work with the information that we have. We request information and what we get in response to that, we have to assume is the information that—that is available" (*id.*). The only information available was that petitioner was taken to the hospital for psychiatric evaluation, he left, and the NYPD escorted him back to the hospital. That does not establish that a crime was committed; therefore, OVS rationally found that no award was justified.

To the extent that petitioner seeks records from OVS, that request is denied. Generally, there is no discovery permitted in Article 78 proceedings (CPLR 408). And although petitioner might be entitled to records through a FOIL request, petitioner did not attach a FOIL request (or OVS' response) to his petition. Therefore, the Court cannot make any determination about OVS' disclosure of records because the Court has no idea what records were requested or how OVS responded.²

² In any event, after the petition was fully submitted, OVS submitted a letter dated May 22, 2018 indicating that petitioner was provided with OVS' records related to this proceeding (NYSCEF Doc. No. 38).

NYSCEF DOC. NO. 46

RECEIVED NYSCEF: 01/07/2019

Accordingly, it is hereby

ADJUGED that the petition is denied, this proceeding is dismissed without costs or disbursements and the clerk is directed to enter judgment accordingly.

1/4/19
DATE

[Signature]
ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					OTHER REFERENCE

HON. ARLENE P. BLUTH