

<b>Godfrey v Amityville Pub. Lib.</b>
2019 NY Slip Op 33088(U)
September 12, 2019
Supreme Court, Suffolk County
Docket Number: 6823/2018
Judge: William G. Ford
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

INDEX NO.: 6823/2018

**SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 38 - SUFFOLK COUNTY**

PRESENT:

**HON. WILLIAM G. FORD  
JUSTICE OF THE SUPREME COURT**

\_\_\_\_\_ x

**SHERRIE GODFREY,**

**Petitioner,**

**-against-**

**AMITYVILLE PUBLIC LIBRARY,**

**Respondent.**

\_\_\_\_\_ x

**Motions Submit Date: 05/16/19  
Mot Seq 001 MD; CASE DISP  
Mot Seq 002 MG; CASE DISP**

**PETITIONER'S PRO SE:**

**SHERRIE GODFREY  
407 Wartburg Ave., Apt # 121  
Copiague, New York 11726**

**INTERESTED NON-PARTY'S COUNSEL:**

**New York State Division of Human Rights  
By: Caroline J. Downey Esq., General Counsel  
One Fordham Plaza, 4<sup>th</sup> Fl  
Bronx, New York 10458**

**RESPONDENT'S COUNSEL:**

**Marshall Dennehey Warner Coleman Goggin  
Wall Street Plaza, 88 Pine St., 21<sup>st</sup> Fl  
New York, New York 10005**

Read on the petitioner's special proceeding commenced under CPLR Article 78, the Court considered the following: Notice of Petition, Petition, and supporting papers; Answer, Certified Administrative Return; Notice of Motion to Dismiss, Affirmation in Support of Motion; and upon due deliberation and full consideration of the same; it is

**ORDERED** that this special proceeding commenced by petitioner's Notice of Petition and Verified Petition pursuant to CPLR Article 78 seeking to vacate, annul, or otherwise set aside a determination made by interested non-party New York State Division of Human Rights of no probable cause for discrimination on the basis of disability is **denied** for the following reasons; and it is further

**ORDERED** that respondent's motion to dismiss the Petition pursuant to CPLR 404 & 406, 1001 & 22 NYCRR § 202.57(a) for *inter alia* failure to join a necessary and indispensable party is **granted in part** as stated below; and it is further

**ORDERED** that respondents' counsel are hereby directed to serve a copy of this decision and order with notice of entry on petitioner's counsel by certified first class mail, return receipt requested forthwith; and it is lastly

**ORDERED** that if applicable, within 30 days of the entry of this decision and order, that respondent's counsel is also hereby directed to give notice to the Suffolk County Clerk as required by CPLR 8019(c) with a copy of this decision and order, and pay any fees should any be required.

## FACTUAL BACKGROUND & PROCEDURAL POSTURE

Petitioner Sherrie Godfrey commenced this special proceeding filing her notice of petition and petition on December 31, 2018. By her petitioner, petitioner seeks to annul a final determination of no probable cause rendered on allegations of unlawful discriminatory acts by interested nonparty the New York State Division of Human Rights (“NYSDHR” or “SDHR”) against respondent the Amityville Public Library.

Plaintiff filed a verified administrative complaint with the SDHR on June 18, 2018, alleging that she was subject to unlawful discrimination due to her disability by respondent on September 27, 2017 violative of the New York State Human Rights Law, Executive Law Article 15 § 290 *et seq* as well as Civil Rights Law § 40-b. Specifically, she stated that she was denied access to a place of public accommodation, the library, when she was subjected to harassment and forcibly removed and ejected from its premises by the library’s security with assistance of the Village of Amityville’s police department.

On July 10, 2018, the SDHR forwarded respondent’s response to the petitioner. In their response to petitioner’s complaint, the Library contends that it did not subject petitioner to any discriminatory conduct. Rather, petitioner was indeed a patron of its facility on the date, time and location in question, but rather was ejected from the premises due to petitioner’s own culpable conduct: she refused to lower her voice and as a result violated the library’s policy regarding breach of peace and maintenance of public order.

Having concluded its administrative investigation of petitioner’s charge of discrimination, the SDHR concluded that no probable cause existed to believe that respondent was culpable of having subjected petitioner to disability discrimination. In its determination, the SDHR credited as credible the Library’s proffer as a legitimate nondiscriminatory reason that petitioner was removed from its premises for her own conduct and violation of library rules. The SDHR reached this result having reviewed corroborative incident reports and statements given by the library’s employees as well as the review of video surveillance footage. In particular, the SDHR reasoned that petitioner had failed to come forward with any evidence indicative that respondent or its employees were actually aware of petitioner’s disabilities.

The resulting petition giving rise to this proceeding was notably filed against the Library but failed to name as a party-respondent the SDHR. The Library has moved to dismiss the petition arguing petitioner has failed to properly serve it and thus the Court lacks personal jurisdiction over it. Interested nonparty the SDHR has answered that petition with objections in point of law including invocation of Executive Law § 298, CPLR § 406, and 22 NYCRR § 202.57 arguing that the proceeding must be dismissed for petitioner’s failure to join it to this proceeding.

## STANDARDS OF REVIEW

“Any complainant, respondent or other person aggrieved by any order of the State Commissioner of Human Rights or the State Division of Human Rights may obtain judicial review of such order by commencing a special proceeding, within 60 days after service of the

order, in the Supreme Court in the county where the alleged discriminatory practice which is the subject of the order occurred or where any person required by the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business. Such proceeding shall be commenced by the filing of a notice of petition and petition naming as respondents the State Division of Human Rights and all other parties appearing in the proceeding before the State Division of Human Rights (N.Y. Comp. Codes R. & Regs. tit. 22, § 202.57[emphasis supplied]).

The parties should be well versed in the fundamental legal principle that pursuant to CPLR § 7803 as relevant here “the only questions that may be raised in a proceeding under this article are ... (3) whether a determination was ... was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed.” If the action taken is without foundation in fact or not justified it is arbitrary and capricious (*see Pell v Bd. of Educ.*, 34 NY2d 222, 231 [1974]; *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; *Matter of Wooley v N.Y. State Dep't of Corr. Servs.*, 15 NY3d 275, 280 [2010]; *Ward v City of Long Beach*, 20 NY3d 1042, 1043 [2013]).

Indeed, where, as here, the SDHR renders a determination of no probable cause without holding a hearing, the appropriate standard of review is whether the probable cause determination was arbitrary and capricious or lacked a rational basis (*Gordon v New York State Div. of Human Rights*, 126 AD3d 697, 698, 2 NYS3d 368 [2d Dept 2015]).

Undertaking such a review, the motion court is cautioned that SDHR's determination is “entitled to considerable deference due to [SDHR's] expertise in evaluating discrimination claims.” Thus, our courts have previously held that their probable cause determination made after sufficient investigation, founded on a rational basis in the evidentiary record, warrants denial of the Article 78 petition and dismissal of the proceeding (*Knight v New York State Div. of Human Rights*, 118 AD3d 791, 792, 987 NYS2d 217, 218 [2d Dept 2014]). This is often in reflection of the knowledge that SDHR has broad discretion in conducting its investigations (*Sahni v Foster*, 145 AD3d 733, 734, 42 NYS3d 343, 345 [2d Dept 2016]).

## DISCUSSION

### **A. New York State Substantive Law Regarding Disability Discrimination**

The New York Human Rights Law plainly provides that:

2. (a) It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the ... disability ... status of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof,

(Exec. L. § 296(2)(a))

The term “place of public accommodation” is defined by a lengthy, if not exhaustive, list codified at Exec. L. § 292. For the purposes of the parties’ application and this Court’s determination, since no party has conclusively argued the point either way, this Court will presume, without deciding, that the library *sub judice* indeed was a place of public accommodation for purposes of the petition and the motion to dismiss.

Due to substantive similarities between federal and state antidiscrimination law, New York courts have addressed claims asserted under the federal Americans with Disabilities Act of 1990 (“ADA”) as relevant to an analysis of similar provisions of the New York Human Rights Law, Executive Law § 296, determining the two to employ the same legal standards to establish discrimination (*Gill v Maul*, 61 AD3d 1159, 1160, 876 NYS2d 751, 753 [3d Dept 2009]; *Inikoff v New York State Div. of Human Rights*, 83 AD3d 1159, 1162, 920 NYS2d 458, 461 [3d Dept 2011]).

Accordingly, the Second Department has acknowledged that title III of the ADA prohibits discrimination against individuals “on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns ... or operates a place of public accommodation.” Proof of such a claim requires that a plaintiff establish that (1) she is disabled within the meaning of the ADA; (2) that the defendants own, lease, or operate a place of public accommodation; and (3) that the defendants discriminated against the plaintiff within the meaning of the ADA” (*Gordon v PL Long Beach, LLC*, 74 AD3d 880, 881-82, 903 NYS2d 461, 463-64 [2d Dept 2010]).

#### B. Necessary Joinder of Parties

When a plaintiff fails to name a necessary party, dismissal of the preceding is warranted (*Matter of Jeanty v N.Y. State Dep’t of Corr. Servs.*, 36 A.D.3d 811, 812, 828 N.Y.S.2d 499, 500 [2d Dept. 2007]; *Seemer v N.Y. State Div. of Human Rights*, 2011 NY Slip Op 32317(U), ¶ 5 [Sup Ct, New York Co. 2011][Gische, J.]).

As a subject matter expert, the SDHR has promulgated rules and administrative guidance pertaining to the resolution and adjudication of matters challenging its determinations. One such regulation which our courts have found entitled to due deference appears at 22 NYCRR § 202.57(a), entitled “**Judicial review of orders of the State Division of Human Rights; procedure**” which provides in pertinent part:

(a) Any complainant, . . . aggrieved by any order of the . . . the State Division of Human Rights may obtain judicial review of such order by commencing a special proceeding, within 60 days after service of the order, in the Supreme Court in the county where the alleged discriminatory practice which is the subject of the order occurred or where any person required by the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business. Such proceeding shall be commenced by the filing of a notice of petition and petition **naming as respondents the State Division of Human Rights and all other parties appearing in the proceeding before the State Division of Human Rights.**

22 NYCRR 202.57 [2019][emphasis supplied]

Applying the above here, it is clear that petitioner has failed to join a necessary and indispensable party to this proceeding, namely the SDHR. Under CPLR § 1001, the SDHR is a necessary party as the records makes evident that they participated in the proceedings below and accordingly, should this court to enter judgment in favor of petitioner, it would necessarily affect it (*Id.*) Accordingly, that aspect of the opposition to the petition and the Library’s motion to dismiss for failure to name a necessary party is **granted** and the petition is **dismissed**.

**C. Merits of the Petition**

In the alternative, even were it the case that this Court had not determined the petition procedurally deficient for failure to join a necessary and indispensable party, petitioner still would fare no better on the merits. The evidence adduced and read on the parties’ respective applications does not suffice to sustain a finding that the SDHR’s determination of no probable cause was infected with irrationality, or was otherwise arbitrary or capricious, contrary to petitioner’s claims. Thus, even if petitioner had joined the SDHR to this proceeding, based on this record, this Court would have **denied** the petitioner for petitioner’s failure to sustain her burden under CPLR § 7803.

The foregoing constitutes the decision and order of this Court.

Accordingly, respondent is hereby **directed** to settle judgment on notice.

Dated: September 12, 2019  
Riverhead, New York

  
\_\_\_\_\_  
**WILLIAM G. FORD, J.S.C.**

  X   FINAL DISPOSITION

\_\_\_\_\_ NON-FINAL DISPOSITION