| **New York City Commn. on Human Rights v American Constr. Assoc., LLC** |
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| 2020 NY Slip Op 33265(U) |
| October 5, 2020 |
| Supreme Court, New York County |
| Docket Number: 451294/2020 |
| Judge: Carol R. Edmead |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** HON. CAROL R. EDMEAD **PART** IAS MOTION 35EFM

*Justice*

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NEW YORK CITY COMMISSION ON HUMAN RIGHTS,

Plaintiff,

- v -

AMERICAN CONSTRUCTION ASSOCIATES, LLC,O. VALENTINE JOHNSON, NICOLA JOHNSON

Defendant.

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**INDEX NO.** 451294/2020

**MOTION DATE** 10/04/2020

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for JUDGMENT - MONEY.

Upon the foregoing documents, it is

ORDERED that the application for relief, pursuant to CPLR Article 4, of Petitioner New York City Commission on Human Rights ("Petitioner") (Motion Seq. 001) is granted to the extent that Respondents American Construction Associates, LLC ("American Construction"), O. Valentine Johnson and Nicola M. Johnson (collectively, the "Respondents") are directed to: (i) pay Ms. Miladys Agosto $13,000.00 as compensatory damages; (ii) pay the City of New York $10,000.00 as a civil penalty; (iii) attend, along with other managerial staff of American Construction, Petitioner-led anti-discrimination training within ninety (90) days of service of this Decision and Order; (iv) cease and desist from any unlawful discriminatory conduct; and (v) post a copy of the "Notice of Rights", a form available on the Commission's website, in a location conspicuous to current and prospective tenants; and it is further

ORDERED that the Cross-Petition of Mr. and Ms. Johnson (Motion Seq. 001) for the dismissal of the Petition for lack of jurisdiction is denied in its entirety; and it is further

ORDERED that the Clerk of the Court is to enter judgment accordingly; and it is further

ORDERED that counsel for Respondents shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on counsel for all parties.

## MEMORANDUM DECISION

In this proceeding, Petitioner New York City Commission on Human Rights ("Commission") seeks an order: (i) enforcing the Commission's Amended Decision and Order dated April 5, 2017 (the "Amended Decision and Order"); and (b) imposing civil penalties in the amount of $50,000 and cumulative daily penalty of $100.00 per day for each day that respondents American Construction Associates, LLC ("American Construction"), O. Valentine Johnson ("Mr. Johnson") and Nicola M. Johnson ("Ms. Johnson") (collectively, the "Respondents") fail to comply with the Commission's Order.

Mr. and Ms. Johnson (the "Johnsons") filed a Cross-Petition challenging this Court's jurisdiction over their persons and to hear the Commission's Petition (Motion Seq. 001). The Commission opposes the Cross-Petition.

For the reasons below, the Petition is granted in part and the Cross-Petition is denied.

## BACKGROUND FACTS

American Construction is the owner of the building located at 2129 Pitkin Avenue, Brooklyn, New York 11207 (the "Pitkin Building"). Valentine Johnson is American Construction's managing agent while Nicola Johnson is American Construction's Chief Financial Officer.

On July 19, 2014, the Johnsons showed Ms. Miladys Agosto, a prospective tenant, an apartment at the Pitkin Building (NYSCEF doc No. 1, ¶ 24). On July 20, 2014, Ms. Agosto signed an agreement (the "Lease Agreement"), signed by Mr. Johnson on behalf of American Construction, to lease a room on the second floor of the Pitkin Building for $750 per month with a security deposit of $750 (*Id.*, ¶ 35). To pay for her first month's rent, Ms. Agosto presented to Ms. Johnson a public assistance check for $250 issued by the New York City Human Resources

Administration ("HRA") and a money order for $200. Ms. Agosto allegedly planned to pay the remaining first month's rent of $300 at a later time. To cover the required security deposit, Ms. Agosto presented a security voucher issued by the HRA. The Commission alleges that the Johnsons rejected the Department of Social Services ("DSS") voucher and refused to proceed with the Lease Agreement unless Ms. Agosto paid the security deposit in cash or check (*Id.*, ¶ 24). As a result, Ms. Agosto was allegedly left homeless for several months in 2014 and suffered mental anguish.

***Ms. Agosto's Complaint with the Commission***

On October 14, 2014, Ms. Agosto filed a complaint against Respondents before the Law Enforcement Bureau ("LEB") of the Commission for discrimination in violation of Section 8-107(5) of the Administrative Code of New York (see NYSCEF doc No. 7). In their response, the Johnsons admitted that they showed Ms. Agosto the apartments at the Pitkin Building on July 19, 2014 but insisted that they advised her that they do not accept security vouchers for security deposits as a matter of practice, and Ms. Agosto stated that she understood the practice (NYSCEF doc No. 8). The Johnsons also claimed that when they signed the Lease Agreement the following day, Ms. Agosto was again told that she should pay in cash or check but she failed to do so (*Id.*). Thus, the Johnsons argued that the Lease Agreement should be considered "voided" (*Id.*). In response to her discrimination charges, the Johnsons maintained that their practice of not accepting security vouchers was in view of "past bad experiences" and "not because [they] were trying to discriminate" against Ms. Agosto (*Id.*).

On January 22, 2015, the LEB issued the "Notice of Probable Cause Determination and Intention to Proceed to Public Hearing" finding that there is probable cause that Respondents have discriminated against Ms. Agosto "by refusing to rent to her and provide her a housing

accommodation due to her lawful source of income" (NYSCEF doc No. 9). A conference before the Office of Administrative Trials and Hearings ("OATH") was scheduled for and held on April 28, 2015, but Respondents failed to appear.

***The ALJ Hearing***

A two-day trial was scheduled before Administrative Law Judge John Spooner on September 29, 2015 and October 16, 2015 (NYSCEF doc No. 1, ¶¶ 25-32). Respondents failed to appear on both days.

Despite Respondents' non-appearance, the hearings proceeded with testimony from Ms. Agosto and from Mr. Jorge Gomez, a tenant counselor for the Cypress Hills Local Development Corporation. Ms. Agosto testified to the facts relating to her being denied a room at the Pitkin Building by reason of her inability to pay the security deposit in "money" (NYSCEF doc No. 13, p. 3). Mr. Gomez testified that, in his capacity as tenant counselor, he assists tenants in their dealings with their landlords. He stated that in late August or early September 2014, Ms. Agosto came to him seeking help. To assist, Mr. Gomez called American Construction to ask about what happened to Ms. Agosto's Lease Agreement. Mr. Gomez was allegedly told by American Construction that American Construction "did not accept the government assistance that [Ms. Agosto] had" and that American Construction cannot accept Ms. Agosto "because of her voucher" (NYSCEF doc No. 13, p. 4). Mr. Gomez further testified that American Construction refunded Ms. Agosto the rent money she had paid in cash but he had to refer Ms. Agosto to Brooklyn Legal Services for assistance in obtaining the refund of the HRA-issued public assistance check (*Id.*)

On December 1, 2015, ALJ Spooner issued a "Report and Recommendation" ("R&R") wherein he recommended that the "landlord's actions be found to have violated section 8-107(5),

that [Ms. Agosto] be awarded $6,000 in damages, that Respondents pay a $10,000 civil penalty and that American Construction's employees undergo anti-discrimination training."

In the R&R, ALJ Spooner held that the Pitkin Building was a housing accommodation subject to Human Rights Law ("HRL") as there were ten rooms being rented on two different floors at the Pitkin Building -- more than the five or fewer housing units exempted under the law (*Id.*, pp 5-6). ALJ Spooner also found that the security voucher qualified as a "lawful source of income" under the HRL as Section 8-102 (25) defines "lawful source of income" as "income derived from . . . any form of federal, state, or local public assistance or housing assistance including section 8 vouchers." Thus, insofar as the DSS voucher is similar to a section 8 voucher in that it is used to satisfy a security deposit, it may also be said to be the equivalent of income. ALJ Spooner therefore concluded that Respondents' refusal to lease a room to Ms. Agosto due to her "lawful source of income" violated Section 8-107(5)(a)(1) of the HRL.

***The Commission's Decision and Order***

On April 5, 2017, the Commission issued an Amended Decision and Order[1] which adopted the R&R and directed Respondents to (i) immediately cease and desist from engaging in discriminatory conduct; (ii) pay $13,000.00 in emotional distress damages to Ms. Agosto within thirty days of service of the Order; (iii) pay $20,000.00 in civil penalties to the City of New York within thirty days of service of the Order; (iv) have the Johnsons and all of ACA's managerial staff attend a Commission-led training on the HRL within sixty days of service of the Order; (v) post a Notice of Rights in a form available on the Commission's website in a location conspicuous to current and prospective tenants within thirty days of service of the Order for a period of at least two years; and (vi) in addition to any civil penalties that may be assessed for non-compliance with

[1] A copy of the original decision was not provided to the Court, but the Commission alleges that the Amended Decision was issued to correct a clerical error on the address of the Pitkin Building (NYSCEF doc No. 1, ¶ 47, n. 2).

the Order, pay a civil penalty of $100.00 per day for every day the violation continues. A copy of the Amended Decision and Order was served on Respondents by mail on April 6, 2017 (see NYSCEF doc No. 5, p. 3).

On June 15, 2017, the Commission sent a letter to Respondents informing them of their final notice to comply with the Amended Decision and Order until July 1, 2017. Despite this, the Commission alleges that Respondents have failed to comply with the Amended Decision and Order.

***The Special Proceeding***

The Commission then commenced this special proceeding seeking an order enforcing the Amended Decision and Order and imposing additional civil penalties against Respondents.

The Johnsons filed a Cross-Petition captioned "NOTICE, not a motion" ("Notice"; NYSCEF doc No. 25). In the Cross-Petition, the Johnsons challenge the jurisdiction of the Commission and of this Court, as follows:

> "[The Johnsons] by limited appearance to this matter in this court of record with clean hands, without prejudice and with all rights reserved including UCC 1-308 in dealing with this court, in pro per, sui juris (NOT PRO SE), have not seen any evidence that proves how this court got its jurisdiction." (*Id.*, p. 1).
>
> "[The Johnsons] has (sic) the right to challenge the jurisdiction of any court that attempts to force compliance with its deceptive practices, procedures, rules, word-smithing at any time, and this right has been upheld by numerous decisions by the Supreme Court of the United States." (*Id.*).
>
> "[The Johnsons] at this time makes (sic) that challenge and demands that the SUPREME COURT OF THE STATE OF NEW YORK order the so-called Plaintiff in this case provide direct evidence and proof on the Record that the NEW YORK CITY COMMISSION ON HUMAN RIGHTS is a judicial power court which was created by the Constitution for the State of New York and operated in compliance with all of the provisions of the Constitution for the United States of America." (*Id.*, p. 4).
>
> "The Court would lack jurisdiction being that there is evidence to support the improper contrived subject matter by proper legislative process; and the Eleventh

> Amendment of the United States Constitution removed all "judicial power" in law, equity, treaties contract law and the right of the State to bring suit against the People, therefore the "alleged Defendant" challenged jurisdiction for the record." (*Id.*).
>
> "[The Johnsons] declare that [they are] not in receipt of any evidence or other material facts that the NEW YORK CITY COMMISSION ON HUMAN RIGHTS, or aliases of this name, is not a lower federal district court limited in jurisdiction to only those areas which are federal enclaves, and [we] believe no contrary evidence exists." (*Id.*, p. 7).
>
> "[The Johnsons] declare [we are] not in receipt of any evidence or other material facts that the NEW YORK CITY COMMISSION ON HUMAN RIGHTS or any/all aliases of this name, is not without *in personam* jurisdiction over Johnson-El: O. Valentine Doe, one of the People of New York, and I believe that no contrary evidence exists." (*Id.*).
>
> "[The Johnsons] declare that [we are] not in receipt of any evidence or other material facts that the NEW YORK CITY COMMISSION ON HUMAN RIGHTS or any/all aliases of this name, does not have the ability to obtain jurisdiction over one of the People of Texas, the property of one of the People of New York, and I believe that no contrary evidence exists." (*Id.*).

In the Cross-Petition, the Johnsons "demand and direct [this] Court to order Plaintiff to prove…the Declarations of [the Johnsons] to be invalid and prove that this Court was created by the Constitution for the State of New York, holding judicial power [a]nd that the judge who have presided over this case prove by certified archival documents that they had on file the required oath set forth by Act of Congress as 1 Stat. 23 before they issued the order, which said judges claim to have judicial power to issue and to have enforced by any law enforcement agency." (*Id.*, 12).

As supporting documents, the Johnsons submitted mailing receipts addressed to the counsel for the Commission and the Attorney General (NYSCEF doc No. 26), Mr. Johnson's "Affidavit of Citizenship" (NYSCEF doc No. 27), Ms. Johnson's "Affidavit of Citizenship" (NYSCEF doc No. 28), a "Notice of Appointment to the Office of Executor for the Estate Named or Known as Nicola: Johnson (NYSCEF doc No. 29), a "Notice of Absolute Forgiveness and

Discharge Forever of All Known and Unknown Estate Debts, Duties, Claims, and Liabilities," (*Id.*) and citation of sections of the United States Code (*Id.*). In both affidavits of citizenship, the Johnsons claim that they are citizens "of all states, and one of the people, and [] beneficiar[ies] of, the republic U.S.A. constitution of 1789/1791." (NYSCEF doc Nos. 27 and 28). As "State Citizens", they argue that they have "absolute freedom and liberty protected by [their] founding documents." (*Id.*).

In opposition to the Cross-Petition, the Commission argued that this Court has proper jurisdiction to enforce the Amended Decision and Order pursuant to Administrative Code Section 8-125 and Article 4 of the CPLR, and that the Court acquired jurisdiction over Respondents as they were properly served with process pursuant to the CPLR (NYSCEF doc No. 30).

**DISCUSSION**

***The Issue of Sovereign Citizenship and Jurisdiction of Court***

Based on their submissions, the Johnsons appear to subscribe to the tenets of the "sovereign citizen" movement. Sovereign citizens believe that "the state and federal governments lack constitutional legitimacy and therefore have no authority to regulate their behavior." (*United States v. Ulloa*, 511 F. App'x 105, 1 [2d Cir. 2013]). They "openly reject their citizenship status and claim to exist beyond the realm of government authority…to justify...fraud." (*2720 Realty Co. v Williams*, 2012 NYLJ LEXIS 5582 [2012], *citing* the 2012 report of the Federal Bureau of Investigation entitled "Criminal Aspects of the Sovereign Citizen Movement in the United States").

As courts have explained, sovereign citizens "seek to 'clog[ ] the wheels of justice' and 'delay proceedings so justice won't ultimately be [d]one. . . . They do so by raising numerous—often frivolous—arguments, many alleging that the Courts or the Constitution lack any authority

whatsoever." (*Miller v. John*, 2020 U.S. Dist. LEXIS 144519 [EDNY 2020], *citing United States v. McLaughlin*, 949 F.3d 780, 781 [2d Cir. 2019] and *Tyson v. Clifford*, No. 18-CV-1600 (JCH), 2018 U.S. Dist. LEXIS 215377, 2018 WL 6727538, at *3 [D. Conn. Dec. 21, 2018]). Federal and State courts across the country have refused to credit arguments based on "sovereign citizenship" as they are often "frivolous, irrational and unintelligible" (*Id.*; *see also United States v Bommer*, 2020 US Dist. LEXIS 72683 [WDNY 2020]["The 'sovereign citizen' belief system has been described by other courts as 'completely without merit,' 'patently frivolous,' and having 'no conceivable validity in American law."]).

Jurisdiction over the Johnsons

Here, while not well articulated, the Johnsons assert that their status as "sovereign citizens" puts them beyond the jurisdiction of this Court. The Court rejects this argument as patently without merit.

In the recent case of *Bey v Antoine* (2019 US Dist. LEXIS 67724 [EDNY 2019]), the United States District Court for the Eastern District of New York held that Plaintiff's supposed status as "sovereign" does not exempt him from prosecution, and thus:

> "Further, the Court notes that Plaintiff's submissions suggest that Plaintiff is seemingly an adherent of the "sovereign citizenship" movement. To the extent Plaintiff relies on the "sovereign citizen" theory to assert that she is exempt from prosecution, beyond the jurisdiction of the state or federal courts, or not subject to the procedural and substantive requirements of federal law, such an assertion lacks an arguable basis in law or fact…Accordingly, Plaintiff's claims seeking criminal prosecution are dismissed as frivolous because they lack an arguable basis in law."

In so ruling, the *Bey* Court relied on several cases, including *El Bey v. Centralia Police Dep't*, (No. 13-CV-313 (JPG), 2013 U.S. Dist. LEXIS 59670, 2013 WL 1788514, at *3 [S.D. Ill. Apr. 26, 2013]) which held that "[a] [p]laintiff is free to call himself a Moorish American National,

or any other description that suits him. However, he is subject to state and federal laws, just like any other person regardless of citizenship."

State courts in New York have similarly rejected jurisdictional challenges premised on one's status as a sovereign citizen. Hence, in *Williams-Bey v. Webster Park Ave. Hous. Dev. Fund Corp.*(2010 NY Slip Op 50247 (U) [Sup Ct 2010]), the Supreme Court of New York held that plaintiff therein was subject to the court's jurisdiction notwithstanding the claim of "special status as a 'Moorish-American,'" to wit:

> "The challenge to jurisdiction of American courts over members of the "Moorish American Nation " has been tried in both federal and state courts, always to no avail. . . even were the Court to treat Plaintiff as a member of such a cognizable group, that status would confer no special benefits to Plaintiff under these facts."

Indeed, the belief system that the status as a sovereign citizen puts one beyond the jurisdiction of the courts has no conceivable validity in American law (*United States v. Sloan*, 939 F.2d 499, 500-01 [7th Cir. 1991]; *see also United States v Underwood*, 726 Fed. Appx. 945 [4th Cir. 2018] and *Charlotte v. Hansen*, 433 F. App'x 660, 661 [10th Cir. 2011]).

In light of the above, the contention of the Johnsons that this Court lacks authority over their persons lacks merit.

Subject-Matter Jurisdiction

In the Cross-Petition, the Johnsons argue that this Court lacks jurisdiction over the subject matter as conferred by "legislative process" because the "Eleventh Amendment of the United States Constitution removed all 'judicial power' in law." The Court rejects this argument for being erroneous and having no basis in law.

"The question of subject matter jurisdiction is a question of judicial power: whether the court has the power, conferred by the Constitution or statute, to entertain the case before it" (*Security Pac. Natl. Bank v Evans* (31 AD3d 278 [1st Dept 2006]), *citing Matter of Fry* (89 N.Y.2d

[Ct App 1997])). The New York Supreme Court is "a court of original, unlimited and unqualified jurisdiction" (*HSBC Guyerzeller Bank AG v Chascona NV* (42 AD3d 381 [1st Dept 2007]), *citing Kagen v Kagen*, 21 NY2d 532 [Ct App 1968]) and "competent to entertain all causes of action unless its jurisdiction has been specifically proscribed"(*In re Albert* (5 AD3d 5 [2d Dept 2004]), *citing Lacks v Lacks* (41 NY2d 71 [Ct App 1976]).

In this case, the authority of a New York Supreme Court to hear cases involving judicial review or enforcement of orders issued by the New York City Commission on Human Rights is conferred by statute, specifically Section 8-123 and 8-125 of the Administrative Code of New York which, in relevant part, provide that:

> "§ 8-123 Judicial Review.
> a. Any complainant, respondent or other person aggrieved by a final order of the commission issued pursuant to section 8-120 or section 8-126 of this chapter or an order of the chairperson issued pursuant to subdivision f of section 8-113 of this chapter affirming the dismissal of a complaint may obtain judicial review thereof in a proceeding as provided in this section.
> b. Such proceeding *shall be brought in the supreme court of the state* within any county within the city wherein the unlawful discriminatory practice or act of discriminatory harassment or violence as set forth in chapter 6 of this title which is the subject of the commission's order occurs or wherein any person required in the order to cease and desist from an unlawful discriminatory practice or act of discriminatory harassment or violence or to take other affirmative action resides or transacts business." (emphasis added).
>
> "§ 8-123 Enforcement.
> a. Any action or proceeding that may be appropriate or necessary for the enforcement of any order issued by the commission pursuant to this chapter, including actions to secure permanent injunctions enjoining any acts or practices which constitute a violation of any such order, mandating compliance with the provisions of any such order, imposing penalties pursuant to section 8-124 of this chapter, or for such other relief as may be appropriate, may be initiated in any court of competent jurisdiction on behalf of the commission.
> b. In any action or proceeding brought pursuant to subdivision a of this section, no person shall be entitled to contest the terms of the order sought to be enforced unless that person has timely commenced a proceeding for review of the order pursuant to section 8-123 of this chapter."

In commencing this proceeding, the Commission properly invoked the authority of this Court to enforce the Amended Decision and Order pursuant to Section 8-125 of the Administrative Code above, and pursuant to Article 4 of the CPLR which generally provides for uniform summary mode of procedure for every special proceeding.

This Court also notes that New York Supreme Courts have, in the past, exercised jurisdiction on proceedings commenced pursuant to Sections 8-123 and 8-125 of the Administrative Code (*see Vance v New York City Commission on Human Rights*, 2102 NY Slip Op 31759 (U) [Sup Ct, 2012][This was a special proceeding brought under Section 8-123 and 8-125 of the Administrative Code and the Court ruled that it "must hear and decide all issues raised in the Petition and Answer, including the questions of substantial evidence"]; *Silver Dragon Rest. V. City of New York Comm'n on Human Rights*, 2004 NY Slip Op 30317 (U) [Sup Ct 2004] [Here, the Court held that petitioner "has incorrectly proceeded under CPLR Article 78. However, the conversion of such proceeding, pursuant to CPLR 103 (c), into a review proceeding under Administrative Code § 8-123 represents an appropriate remedy considering that jurisdiction over the parties exists". In so ruling, the Court cited *New York City Commission on Human Rights v Pathmark Stores Inc.* (NYLJ, October 3, 1999, at 28, col 5) which was special proceeding pursuant to CPLR Article 4 converted to enforcement action under Administrative Code 8-125 (b) regarding civil penalty for discriminatorily denying access to a public accommodation]).

***Section 8-125 Relief***

The Court now turns to the merits of the petition. As stated, Section 8-125 precludes a party to contest the terms of the order sought to be enforced by the Commission unless that party commenced a proceeding to review the same under Section 8-123. Here, the Johnsons had thirty (30) days to institute judicial review of the Amended Decision and Order (Section 8-123(h)). As

they failed to seek judicial review within the statutory timeframe, the Johnsons have waived their right to such remedy.

However, if the Court were to review the Amended Decision and Order, the Court finds that the same should be upheld. Section 8-123 of the New York City Administrative Code provides that "[t]he findings of the commission as to the facts shall be conclusive if supported by substantial evidence on the record considered as a whole."[2] After a review of the commission's trial transcript (NYSCEF doc No, 10), it is clear that the Amended Decision and Order is fully supported by substantial evidence. During the hearing, Ms. Agosto submitted as evidence copies of: (i) the signed Lease Agreement between her and American Construction (NYSCEF doc No. 11, pp. 17-20); and (ii) the HRA-issued security voucher signed by Mr. Johnson (*Id.*, p. 21). Ms. Agosto also offered her testimony and that of Mr. Gomez as evidence. Mr. Gomez's testimony corroborates Ms. Agosto's claim that American Construction refused to proceed with the Lease Agreement because Ms. Agosto was unable to pay the security deposit except through the HRA-issued security voucher. The Johnsons do not deny as they admitted before the LEB that they "do not accept "security vouchers" as a security deposit for [their] rentals [since] its [their] choice of practice" (NYSCEF doc No. 11, p. 10).

Based on the facts established during the two-day trial, there is substantial evidence that Respondents violated Section 8-107(5)(a) of the HRL which, in relevant part, provides that:

> "It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation . . . or any agency or employee thereof:

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[2] Since this is not an Article 78 proceeding, there is no basis to refer the substantial evidence question to the Appellate Division (*Vance v New York City Commission on Human Rights*, NY Slip Op 31759 (U) [Sup Ct 2012]); see also Section 8-123 (f) of the Administrative Code which provides that "[t]he jurisdiction of the supreme court shall be exclusive and its judgment and order shall be final, subject to review by the appellate division of the Supreme Court and the court of appeals in the same manner and form and with the same effect as provided for appeals from a judgment in a special proceeding."

> To refuse to sell, rent, lease approve the sale, rental or lease or otherwise deny to or withhold from any person or group of persons such a housing accommodation or an interest therein because of. . . any lawful source of income of such person."

The Court finds that there is sufficient evidence to support the Commission's conclusion that the Pitkin Building is covered by Section 8-107(5)(a) of the HRL. The record demonstrates that the Pitkin Building contains more than five units. Not only did Ms. Agosto testify to such fact, but the LEB submitted a copy of the NYC Department of Buildings "ECB Violation Details" issued to American Construction for converting the first floor of the Pitkin Building into five single room occupancies (NYSCEF doc No. 11, pp. 15-16). Thus, adding six units on each of the second and third floors, the Commission calculated that there are around 17 units in the Pitkin Building (NYSCEF doc No. 5, p. 12, footnote 3). As only "housing accommodations that contain a total of five or fewer housing units" are exempt (*see* Section 8-107(5)(o)), the Pitkin Building is covered by Section 8-107(5)(a) of the HRL.

The Court also finds that there is substantial evidence to support the Commission's conclusion that HRA-issued voucher is a "lawful source of income" within the meaning of the Section 8-107(5)(a) of the HRL. In arriving at this conclusion, the Court notes that the Commission cited law and the legislative history of the HRL. In particular, the Commission relied on: (i) Section 8-102(25) of the HRL which defines the "lawful source of income" as including "income derived from social security, or any form of federal, state or local public assistance or housing assistance"; and (ii) the legislative history showing that protections on the basis of "lawful source of income" were added to ensure greater housing access to voucher recipients who were regularly denied residential leases by private landlord (see NYSCEF doc No. 5, pp. 10-11).

On the basis of the foregoing, this Court finds that the Amended Decision and Order is supported by substantial evidence in law and in fact.

***Damages and Civil Penalties***

With regard to damages and civil penalties, "the relief imposed by the Commissioner need only be reasonably related to the discriminatory conduct. Unless the award is so arbitrary and capricious as to constitute an abuse of discretion, it is not erroneous as a matter of law." (see *New York City Transit Authority v. State Div. Of Human Rights*, 78 NY2d 207 [1991]). Here, in awarding Ms. Agosto $13,000 in damages, the Commission considered precedents which are closely similar to the factual circumstances of this case and the amount of damages awarded in each case (NYSCEF doc No. 5, pp. 17-8). In comparing these cases to the Ms. Agosto's case, the Commission considered various factors such as the nature and duration of the emotional harm suffered by Ms. Agosto when she was left homeless by Respondents conduct and the time and effort Ms. Agosto invested to seek legal assistance to recover part of the money she paid to Respondents. Thus, this Court upholds the Commission's award of $13,000 in damages to Ms. Agosto.

However, this Court finds that the amount of civil penalties imposed against Respondents should be modified from $20,000.00 to $10,000.00. In so ruling, this Court finds guidance from *119-121 East 97th Street Corp. v New York City Commission on Human Rights*, (220 AD2d [1st Dept 1996]) ("*119-121 East*") and *Silver Dragon Rest. v. City of New York Comm'n on Human Rights* (2004 NY Slip Op 30317(U) [Sup Ct, 2004]) ("*Silver Dragon*"). In *119-121 East*, the Court reduced the civil penalty from $75,000.00 to $25,000.00 holding that "while the[] actions [of the 50-unit landlords] were egregious, committed over a period of time, and implicated individuals besides complainant, the public interest was not affected to the much greater extent it would have been had petitioners been large landlords whose actions affected hundreds, if not thousands of individuals". In *Silver Dragon*, the Court reduced the civil penalty from $10,000.00 to $5,000.00

holding that the restaurant's single act of discriminating against African-American customers is distinguishable from cases characterized by a "litany of severely hostile discriminatory acts found over a period of time" or "documented discriminatory scheme…over an extended period of time" where a civil penalty of $10,000.00 may be appropriate.

Here, ALJ Spooner recommended civil penalties in the amount of $10,000.00. Upon review, the Commission increased the amount to $20,000.00 on the grounds that Respondents "defiantly refused to cooperate with the LEB or OATH," "consistently asserted spurious objections to the proceeding," "expressly and unapologetically admitted…that it is [Respondents'] "choice of practice" to refuse to accept security vouchers" and "to advance and protect public interest" (NYSCEF doc No. 5, pp. 21-23). This Court, however, finds these grounds insufficient to double the amount of civil penalties imposed by ALJ Spooner. American Construction's size as a 17-unit landlord weighs in favor of a lesser civil penalty. There is also no evidence that Respondents intentionally "asserted spurious objections," as their submissions to the LEB, and even to this Court, may just be by reason of what the Commission itself describes as mere "lack of sophistication". Finally, while Respondents indeed stated that it is their choice of practice to refuse "security vouchers", they explained that it is because of "past bad experiences" and "not because "[they] were trying to discriminate or biases (sic) her situation." (NYSCEF doc No. 8). Thus, there is not sufficient evidence that the Johnsons committed purposeful discrimination warranting a higher civil penalty.

Finally, this Court denies the Commission's application for an additional civil penalty and cumulative daily penalty per day for each day Respondents failed to comply with the Amended Decision and Order. While the Commission invokes Section 8-124 of the Administrative Code as basis, it appears that that this section refers to civil penalties imposable by the Commission given

that the following section, Section 8-125, provides for the mechanism to enforce orders issued by the Commission including those "imposing penalties pursuant to section 8-124 of this chapter." The Commission failed to point to any case law providing for the Commission's entitlement to seek enforcement of its order and seek additional civil penalties at the same time.

**CONCLUSION**

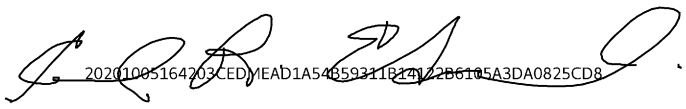
ACCORDINGLY, for the foregoing reasons it is hereby

ORDERED that the application for relief, pursuant to CPLR Article 4, of Petitioner New York City Commission on Human Rights ("Petitioner") (Motion Seq. 001) is granted to the extent that Respondents American Construction Associates, LLC ("American Construction"), O. Valentine Johnson and Nicola M. Johnson (collectively, the "Respondents") are directed to: (i) pay Ms. Miladys Agosto $13,000.00 as compensatory damages; (ii) pay the City of New York $10,000.00 as a civil penalty; (iii) attend, along with other managerial staff of American Construction, Petitioner-led anti-discrimination training within ninety (90) days of service of this Decision and Order; (iv) cease and desist from any unlawful discriminatory conduct; and (v) post a copy of the "Notice of Rights", a form available on the Commission's website, in a location conspicuous to current and prospective tenants; and it is further

ORDERED that the Cross-Petition of Mr. and Ms. Johnson (Motion Seq. 001) for the dismissal of the Petition for lack of jurisdiction is denied in its entirety; and it is further

ORDERED that the Clerk of the Court is to enter judgment accordingly; and it is further

ORDERED that counsel for Respondents shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on counsel for all parties.




10/5/2020
DATE

CAROL R. EDMEAD, J.S.C.

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|---|---|---|---|---|---|---|---|
| CHECK ONE: | x | CASE DISPOSED | | | NON-FINAL DISPOSITION | | |
| | | GRANTED | | DENIED | x GRANTED IN PART | | OTHER |
| APPLICATION: | | SETTLE ORDER | | | SUBMIT ORDER | | |
| CHECK IF APPROPRIATE: | | INCLUDES TRANSFER/REASSIGN | | | FIDUCIARY APPOINTMENT | | REFERENCE |