Bibliotechnical Athenaeum v New York State Div. of Human Rights
2022 NY Slip Op 31017(U)
March 29, 2022
Supreme Court, New York County
Docket Number: Index No. 156722/2022
Judge: Arlene Bluth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE BLUTH** **PART** **14**

Justice

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BIBLIOTECHNICAL ATHENAEUM,

Petitioner,

- v -

NEW YORK STATE DIVISION OF HUMAN RIGHTS, CONOPCO, INC.

Respondent.

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INDEX NO. 156722/2022

MOTION DATE 03/24/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for ATTORNEY - FEES.

The motion by petitioner for legal fees is denied.

Background

In this special proceeding, petitioner seeks to reverse a decision by respondent New York State Division of Human Rights ("NYSDHR") that it lacked jurisdiction over petitioner's administrative complaint against respondent Conopco, Inc. NYSDHR requested a remand so it could do additional investigation and the Court agreed.

The only remaining issue is whether petitioner is entitled to legal fees. It argues that it has prevailed in this proceeding and so it is entitled to recover legal fees under CPLR Article 86, also known as the Equal Access to Justice act ("EAJA"). Petitioner asserts that NYSDHR has voluntarily agreed to do an additional investigation, which is what petitioner sought in this proceeding. It argues that the First Department has embraced the so-called catalyst theory of

awarding legal fees under the EAJA and that is what happened here—petitioner brought this proceeding and that caused NYSDHR to take another look.

In opposition, NYSDHR argues that remanding a proceeding does not constitute a final judgment, which is a condition precedent under the EAJA. It also points to a decision by another justice in New York County Supreme Court, who denied a request for legal fees where a proceeding was remanded back to the NYSDHR. NYSDHR argues that petitioner failed to demonstrate that it is eligible for legal fees and submitted no proof in support of that contention. It also argues that petitioner was not the prevailing party.

In reply, petitioner claims it is an eligible entity and that fees can be awarded here. It argues that the Court issued a final judgment and, in any event, a final judgment is not required for the Court to award legal fees.

Discussion

CPLR 8601(a), the EAJA, provides, in part, that:

> "In addition to costs, disbursements and additional allowances awarded pursuant to sections eight thousand two hundred one through eight thousand two hundred four and eight thousand three hundred one through eight thousand three hundred three of this chapter, and except as otherwise specifically provided by statute, a court shall award to a prevailing party, other than the state, fees and other expenses incurred by such party in any civil action brought against the state, unless the court finds that the position of the state was substantially justified or that special circumstances make an award unjust. Whether the position of the state was substantially justified shall be determined solely on the basis of the record before the agency or official whose act, acts, or failure to act gave rise to the civil action."

The statute defines "party" as "(i) an individual whose net worth, not including the value of a homestead used and occupied as a principal residence, did not exceed fifty thousand dollars at the time the civil action was filed; (ii) any owner of an unincorporated business or any partnership, corporation, association, real estate developer or organization which had no more than one hundred employees at the time the civil action was filed, (iii) any organization

described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code1 regardless of the number of employees" (CPLR 8602[d]). "Prevailing Party" is defined as "a plaintiff or petitioner in the civil action against the state who prevails in whole or in substantial part where such party and the state prevail upon separate issues" (CPLR 8602[f]).

As an initial matter, the Court observes that petitioner's attorney is also an authorized principal for petitioner. Therefore, his assertion that petitioner has less than 100 employees (a requirement for potential entitlement to legal fees) is sufficient to make petitioner eligible. The question, then, is whether petitioner is the prevailing party under the EAJA. The Court of Appeals has defined a prevailing party under this statue to be "if it has succeeded in acquiring a substantial part of the relief sought in the lawsuit. Thus, a 'prevailing party' is not one who has succeeded on merely 'any significant issue' in the litigation which achieved only some of the benefit sought in bringing the lawsuit—which is the Federal standard. Rather, it is a plaintiff who can show that it succeeded in large or substantial part by identifying the original goals of the litigation and by demonstrating the comparative substantiality of the relief actually obtained" (*Matter of New York State Clinical Lab. Assn., Inc. v Kaladjian*, 85 NY2d 346, 355, 625 NYS2d 463 [1995]).

In the notice of petition, petitioner demanded an order "reversing" NYSDHR's decision dismissing petitioner's administrative complaint (*see* NYSCEF Doc. No. 2). Here, NYSDHR agreed to remand the case to take a second look but it did not agree that it had jurisdiction over the complaint. Therefore, the Court finds that petitioner was not a prevailing party under the EAJA and is not entitled to legal fees. "[P]rocedural determinations, including agency remands such as in the instant case, do not suffice to qualify claimants as 'prevailing' parties" (*Matter of*

NANCO Envtl. Services, Inc. v New York State Dept. of Envtl. Conservation, 149 Misc 2d 991, 995 [Sup Ct, Albany County 1991]).

Although petitioner is correct that the First Department has embraced the catalyst theory (fees are permissible where a state agency voluntarily gives petitioner what it seeks) (*Solla v Berlin*, 106 AD3d 80, 961 NYS2d 55 [1st Dept 2013]), the Court finds it does not apply here because NYSDHR has simply agreed to reconsider whether it has jurisdiction over the complaint. Moreover, the Court of Appeals specifically took no position on whether the catalyst theory even applies to EAJA legal fee claims when it reversed the First Department's decision in *Solla* on other grounds (*Matter of Solla v Berlin*, 24 NY3d 1192, 1196, 3 NYS3d 748 [2015]).

And the Court observes that even if petitioner was the prevailing party, NYSDHR's decision to take a second look is "substantial justification" sufficient to deny the claim for legal fees. "The phrase 'substantially justified' has been interpreted by the Supreme Court as meaning justified to a degree that could satisfy a reasonable person, or having a reasonable basis both in law and fact" (*Kaladjian*, 85 NY2d at 356 [internal quotations and citation omitted]). This Court finds that a state agency that agrees to take a second look at a complaint constitutes substantial justification; it is a position that agencies should be encouraged to take where appropriate.

After all, "[t]he statute was enacted to improve access to justice for individuals and businesses who may not have the resources to sustain a long legal battle against an agency that is acting without justification" (*id*. at 351). Here, petitioner brought a complaint, NYSDHR initially disagreed and then, when petitioner commenced this proceeding, NYSDHR decided to take another look. That is exactly the type of behavior (substantial justification) contemplated under the statute. Otherwise, there would be no incentive for an agency to take another look and suggest a remand, as it did here.

Under petitioner's theory, once a petition is filed, a respondent can only avoid paying legal fees by asserting opposition and winning the dispute. The point should be for an agency to do what it believes to be the right thing under the circumstances and remand where it believes it is appropriate. Considering that a petitioner's burden is so high in an Article 78 proceeding, the Court declines to incentivize an agency to "litigate to win" just so it can avoid paying legal fees rather than agree to reconsider where that might be the best course of action for all parties.

Accordingly, it is hereby

ORDERED that the motion by petitioner for legal fees is denied.

3/29/2022
DATE

ARLENE BLUTH, J.S.C.

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