

Roach v New York City Hous. Auth.

2025 NY Slip Op 31258(U)

April 9, 2025

Supreme Court, New York County

Docket Number: Index No. 159233/2023

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO **PART** **33M**

Justice

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EDMINDO ROACH

Plaintiff,

- v -

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

INDEX NO. 159233/2023

MOTION DATE 03/15/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 14, 15, 16, 18

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, and after oral argument, which took place on January 28, 2025, where Sharan R. Abraham, Esq. appeared for Plaintiff Edmindro Roach (“Plaintiff”) and Hanh H. Le, Esq. appeared for Defendant New York City Housing Authority (“Defendant”), Defendant’s motion to dismiss Plaintiff’s Amended Complaint pursuant to CPLR 3211(a)(7) is granted.¹

I. Background

Plaintiff is a Seventh Day Adventist employed by Defendant as a maintenance worker from July 23, 2018, until he was terminated on April 19, 2022, for refusing to receive a COVID-19 vaccine. Defendant required employees to submit proof of COVID-19 vaccination by November 1, 2021, or they would be placed on leave without pay. Plaintiff submitted a request for a religious exemption, and on November 23, 2021, Defendant requested additional information from Plaintiff

¹ Defendant also moved to dismiss pursuant to CPLR 3211(a)(10). However, as the Court dismisses the Amended Complaint pursuant to CPLR 3211(a)(7), the Court does not reach the merits of Defendant’s CPLR 3211(a)(10) arguments.

regarding his beliefs. Plaintiff only responded to one of Defendant's inquiries and left unanswered three other inquiries. Plaintiff's request for a religious exemption was denied on January 21, 2022, and Plaintiff appealed the denial on January 26, 2022. Plaintiff continued working while his appeal was pending, until April 19, 2022, when his appeal was denied, and his employment terminated. Plaintiff now sues for religious discrimination under Title VII, the New York State Human Rights Law, and the New York City Human Rights Law. He also asserts a 42 U.S.C. § 1983 claim premised on a violation of the Equal Protection Clause of the Fourteenth Amendment. Defendant responds with a pre-answer motion to dismiss.

II. Discussion

A. Standard

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give the Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and determines only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). All factual allegations must be accepted as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). Conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009] *Barnes v Hodge*, 118 AD3d 633, 633-634 [1st Dept 2014]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

B. Discrimination Claims (First through Third Causes of Action)

Defendant's motion to dismiss Plaintiff's Title VII, New York State Human Rights Law and New York City Human Rights Law claims is granted. The sole allegation of discrimination is

Plaintiff's disagreement with NYCHA's administrative decision to refuse him a COVID-19 vaccine exemption. The proper avenue for Plaintiff to challenge this determination, as with other plaintiffs before him, was an Article 78 proceeding (*Goolsby v City of New York*, 83 Misc.3d 445, 456 [Sup. Ct., NY Co 2024] [Kingo, J.] *aff'd* 2025 NY Slip Op 01189 [1st Dept 2025]; *see also Masteller v City of New York*, 217 AD3d 543, 544 [1st Dept 2023]).

It is well established that the statute of limitations to bring an Article 78 proceeding is within four months after the administrative determination becomes final and binding (*Best Payphones Inc. v Department of Information, Technology and Communications of City of New York*, 5 NY3d 30 [2005]). According to Plaintiff's own allegations, Plaintiff's appeal was denied on April 19, 2022 and he was immediately terminated thereafter (NYSCEF Doc. 5 at ¶ 27). This suit was not filed until September 19, 2023, well after the four-month limitation to challenge the denial of Plaintiff a Covid-19 vaccine exemption request. Therefore, Plaintiff's challenge to that administrative decision is untimely.

Contrary to Plaintiff's contention, the filing of a charge with the Equal Employment Opportunity Commission did not toll the statute of limitations for an Article 78 proceeding. As the United States Supreme Court has held, the filing of an EEOC charge does not toll the statute of limitations for claims based on the same facts but brought under separate statutory schemes (*Johnson v Railway Express Agency, Inc.*, 421 US 454, 465-466 [1975]; *see also Castagna v Luceno*, 744 F3d 254, 257 [2d Cir 2014]).

Plaintiff cannot avoid the time limitation to initiate an Article 78 proceeding by reframing his claims into violations of the New York State Human Rights Law and New York City Human Rights Law (*see, e.g. 12th & 14th Street Investor, LLC v The New York City Hous. Auth.*, 2013 NY Slip Op 30696[U] at *3 [Sup Ct, NY Co 2013] [Kern, J.]). The same holds true for Plaintiff's

Title VII claims (*Dawson v New York Univ.*, 160 AD3d 555 [1st Dept 2018] [affirming dismissal of Title VI claim because it was a challenge to an administrative decision which should have been brought in an article 78 proceeding]).

A challenge to an administrative decision pursuant to Article 78 “shall be brought in the Supreme Court” (*see* CPLR 7804). While it is possible Plaintiff may bring a Title VII claim in Federal Court (*see Purcell v NY Inst of Tech*, 931 F3d 59, 64 [2d Cir 2019]), Plaintiff elected to bring this claim in State Court based solely on a challenge to NYCHA’s decision to deny Plaintiff’s request for a COVID-19 vaccination exemption. Because Plaintiff brought these allegations in State Court, the claims should have been brought in an Article 78 proceeding. As Plaintiff may be able to assert his Title VII claims in Federal Court, the Court dismisses Plaintiff’s Title VII claim without prejudice (*Purcell, supra* at 64 [although claims in State Court challenging an administrative proceeding shall be brought in an Article 78 proceeding, Article 78 is not an exclusive remedy where federal cause of action exists and federal cause of action is brought in Federal Court]).

C. Section 1983 Claim (Fourth Cause of Action)

Plaintiff’s Section 1983 claim is dismissed. Vaccine mandates, which Plaintiff attempts to challenge based on an alleged violation of the Equal Protection Clause, have routinely been found facially neutral and generally applicable, and Plaintiff has failed to allege any similarly situated individuals who also refused to answer NYCHA’s inquiries into a religious accommodation request but were granted that accommodation nonetheless (*see generally New Yorkers for Religious Liberty, Inc. v New York*, 125 F4th 319, 324-325; 330 [2d Cir 2024]). Therefore, Plaintiff’s fourth cause of action alleging a Section 1983 claim premised on a violation of the Fourteenth Amendment’s Equal Protection Clause is dismissed.

Accordingly, it is hereby,

ORDERED that Defendant’s motion to dismiss Plaintiff’s Complaint is granted in its entirety, and it is further

ORDERED that Plaintiff’s second through fourth causes of action are dismissed with prejudice; and it is further

ORDERED that Plaintiff’s first cause of action alleging religious discrimination in violation under Title VII is dismissed without prejudice; and it is further

ORDERED that within ten days of entry, counsel for Defendant shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

4/9/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

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