

Aitcheson-Valentin v Act Up/N.Y., Inc.

2025 NY Slip Op 33762(U)

October 2, 2025

Supreme Court, New York County

Docket Number: Index No. 158452/2023

Judge: Kathleen Waterman-Marshall

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHLEEN WATERMAN-MARSHALL PART 31

Justice

-----X

CARLOS AITCHESON-VALENTIN

Plaintiff,

- v -

ACT UP/NEW YORK, INC.,

Defendant.

-----X

INDEX NO. 158452/2023

MOTION DATE 08/25/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 23, 24, 25, 26, 27, 28, 29, 30, 36, 37, 38, 39, 40, 41, 42, 43, 48, 49, 58, 59, 61, 62

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, petitioner Carlos Aitcheson-Valentin ("Mr. Aitcheson-Valentin") moves, pursuant to CPLR Article 78, for an order declaring that his expulsion from respondent Act Up/New York, Inc. ("Act Up") was arbitrary and capricious. He further seeks to annul: (1) all actions taken by Act Up at meetings held on June 8, 2020, April 17, 2023, April 24, 2023, January 8, 2024, and January 15, 2024; (2) Act Up's Harassment Policy; and (3) Act Up's adoption of bylaws on April 17, 2023 and January 8, 2024.

Upon the same record, Act Up opposes and cross-moves to dismiss the petition pursuant to CPLR § 3211, without specifying a subsection, as moot, failing to state a claim, and for want of standing.

Background

I. Procedural Posture

This matter has a somewhat complicated procedural history. Mr. Aitcheson-Valentin was a member of respondent Act Up, a not-for-profit organization fighting to end AIDS. In June 2020, Act Up adopted a Harassment Policy which, inter alia, prohibited intermember harassment, set forth a method to report alleged harassment, and created the Harassment Grievance Team ("the HGT") to address allegations of harassment.

In August 2021, the HGT issued two separate notices to Mr. Aitcheson-Valentin notifying him that it had received formal complaints from its members of harassment by him. After Mr. Aitcheson-Valentin answered and disputed the claims, the HGT determined that his conduct warranted permanent expulsion from Act Up. Mr. Aitcheson-Valentin appealed the HGT expulsion

1 The Court has not considered the August 29, 2025 letter of Thomas Hillgardner, Mr. Aitcheson-Valentin's attorney, which is, at best, tacky. The letter is more of the same ill-advised bullying behavior by Mr. Hillgardner and Mr. Aitcheson-Valentin as noted in the Harassment Grievance Team's January 15, 2024 report, discussed infra.

decision in October 2021 and, after a separate Article 78 proceeding in March 2023, Act Up was directed to issue a determination on the appeal and produce a copy of its bylaws.

Act Up held meetings on April 17 and 24, 2023 in which it adopted new bylaws and denied Mr. Aitcheson-Valentin's appeal, respectively. Act Up provided the April 2023 bylaws to Mr. Aitcheson-Valentin. Mr. Aitcheson-Valentin then filed this Article 78 proceeding seeking to annul his expulsion and the adoption of the April 2023 bylaws. He alleged that there was an insufficient notice and quorum for the meetings, that Act Up had been operating for decades without a sufficient quorum, that the bylaws do not comply with the Not-for-Profit Corporation Law, and that his expulsion was arbitrary and capricious.

After Mr. Aitcheson-Valentin commenced this Article 78 proceeding, Act Up sought to address his claim that Act Up had been operating without a sufficient quorum for decades and that the April 2023 bylaws regarding quorum conflicted with the Not-for-Profit Corporation Law. On January 8, 2024, Act Up held a meeting with more than 100 members attending, which it contends constitutes a sufficient quorum under the Non-for-Profit Corporation Law. At the January 8, 2024 meeting, Act Up further amended its bylaws regarding who constituted a "voting member" and retroactively adopted all prior votes – excepting those votes regarding complaints against Mr. Aitcheson-Valentin and his expulsion from Act Up. It contends that the January 8, 2024 meeting was the best attended meeting in recent memory, with at least 160 voting members attending. At the meeting, Act Up also voted to send the complaints against Mr. Aitcheson-Valentin back to the HGT to produce a new decision within five days, and the HGT issued its report and recommendation thereupon on January 15, 2024.

By Decision and Order dated July 11, 2024, this Court granted Mr. Aitcheson-Valentin leave to supplement his petition to allege that: the January 8, 2024 meeting improperly amended the April 2023 bylaws; the HGT's January 15, 2024 report and recommendation was arbitrary and capricious, affected by an error of law, made in violation of lawful procedure, and constituted an abuse of discretion as to the penalty imposed; and the HGT report should not have been adopted at the January 15, 2024 meeting. The Court denied Mr. Aitcheson-Valentin leave to assert claims that Act Up violated an unspecified and self-proclaimed right to confidentiality in this proceeding.

II. Harassment Claims & the HGT January 15, 2024 Report & Recommendation

Mr. Aitcheson-Valentin sent text messages to an Act Up member calling her "a tacky piece of shit" and a "tacky lesbian." Mr. Aitcheson-Valentin also sent a message to another member referring to them as a "drunk without hope" before ending the message with "No.don't [sic] bother with ever with me. [sic] Fuck you."

In considering the two initial complaints based upon, *inter alia*, Mr. Aitcheson-Valentin's text messages, the HGT January 15, 2024 report and recommendation found a pattern of abusive, harassing, retaliatory, and intimidating behavior by Mr. Aitcheson-Valentin. This pattern existed before the complaints and, notably, continued even after Mr. Aitcheson-Valentin received notice of the initial two complaints. The HGT found Mr. Aitcheson-Valentin threatened another member with physical violence, crediting the testimony of several witnesses to the threat and finding Mr. Aitcheson-Valentin's testimony incredible. It found that Mr. Aitcheson-Valentin sought to retaliate against a member for their involvement with Act Up, after the member supported certain actions and opposed others in disagreement with Mr. Aitcheson-Valentin, by sending an email entitled "No need and I plan to end it all" in which he threatened to "drag your ass to court if you still in act up. [sic]"

Resign!!!” and “I plan to make you responsible for part when i [sic] have done no wrong. Fuck You!”

In another email, Mr. Aitcheson-Valentin demanded a member resign for their engagement with Act Up, “Resin [sic] and leave “act up ” [sic] for while [sic] and come back . i'm [sic] not like you. I was told Cubans are racist by my best friend a Cuban him self. [sic] [...] shame on you and your wife. [...] Get a life.” In yet another email, following a disagreement about whether a subcommittee (ERT) could take a certain action or whether a full floor vote was required, Mr. Aitcheson-Valentin told a member to “go fuck your self [sic] with your bullshit that only you believe”. Finally, the HGT report discussed a Veteran’s Day social media post by Mr. Aitcheson-Valentin in which he posted a photo of himself during his service with the armed forces holding a rifle which had been edited to include the face of an Act Up member, and included a lengthy caption airing grievances with the Act Up member stating “It ends with me. You want to see what unleash the power means. Just wait.”

Although the HGT report discussed, as factual background, Mr. Aitcheson-Valentin’s lengthy history of troubling behavior, the report’s findings were limited to the two August 2021 complaints and retaliation therefor. The HGT report found and recommended that Mr. Aitcheson-Valentin’s conduct amounted to harassment of the basis of members’ sexual orientation and perceived disability, violating the both the current harassment policy and the harassment policy in effect at the time of Mr. Aitcheson-Valentin’s conduct. The HGT further noted that the member who Mr. Aitcheson-Valentin called a “tacky lesbian” no longer organizes within Act Up, ostensibly because of his conduct, and that his conduct was meant to send a message to this member that she was not a real member of Act Up due to her identity as a lesbian as opposed to a cis-gender gay man. The HGT further found that Mr. Aitcheson-Valentin engaged in retaliation towards members. Mr. Aitcheson-Valentin wrote to one member, “now that I know you are behind all that happen [sic] on act up with me I am coming for you with all i [sic] got.”

Notably, the January 15, 2024 HGT report and recommendation also found that Mr. Aitcheson-Valentin used his counsel in this litigation, Thomas Hillgardner, to continue to harass Act Up members and Act Up’s counsel by misgendering Act Up’s counsel and mocking non-binary attorneys, and by physically menacing a member keeping time during an Act Up meeting. The HGT attributed Mr. Hillgardner’s conduct to Mr. Aitcheson-Valentin.

Conspicuously, in this Article 78 proceeding, Mr. Aitcheson-Valentin does not dispute that he sent the communications mentioned in the HGT report. Instead, he alleges that: his communications do not constitute harassment under the harassment policy; the HGT report considered communication *dehors* the record; the HGT report should have only considered his conduct that occurred within 90 days before it was issued; he was not afforded an opportunity to address new complaints; and the HGT report does not name the members who participated in the report; the HGT report applied the 2024/2023 Harassment policy instead of the 2020 harassment policy; and expulsion from Act UP or barring his future membership is unwarranted.

Discussion

Mr. Aitcheson-Valentin’s decision to commence this special proceeding in the first instance is confounding, given that he resigned from Act Up on July 26, 2020 – at least a year before Act Up took any of the actions he seeks to challenge.

The Court first addresses Act Up's cross-motion to dismiss the petition "pursuant to CPLR 3211 because, among other things, it is moot, petitioner lacks standing for some or all of the relief he seeks, and fails to state a claim." (NYSCEF Doc. No. 36). Although Act Up does not specify a subsection of CPLR § 3211, the Court deems the motion to be brought under CPLR § 3211(a)(1), (3), and (7), and deals with each out of order.

Where dismissal is sought for documentary evidence under CPLR § 3211(a)(1), the complaint should be liberally construed, the facts presumed to be true, and the pleading accorded the benefit of every possible favorable inference (*see e.g. Leon v Martinez*, 84 NY2d 83 [1994]). Under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*id.*; citing *Heaney v Purdy*, 29 NY2d 157 [1971]).

The party challenging standing on a motion to dismiss under CPLR § 3211(a)(3) bears the burden to establish, as a matter of law, a lack of standing (*Wilmington Savings Fund Society, FSB v Matamoro*, 200 AD3d 79, 90 [2d Dept 2021]). If met, the burden shifts to the party asserting standing to demonstrate a question of fact regarding standing (*id.*).

Finally, on a motion to dismiss for failure to state a claim under CPLR § 3211(a)(7), the complaint is afforded the benefits of liberal construction, a presumption of truth, and any favorable inference (*see e.g. M & E 73-75, LLC v 57 Fusion LLC*, 189 AD3d 1 [1st Dept 2020]; *Askin v Department of Educ. of City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013]). The motion must be denied if, from the four corners of the pleadings, "factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Polonetsky v Better Homes Depot*, 97 NY2d 46, 54 [2001] [internal quotation omitted]). A complaint should not be dismissed so long as, "when the plaintiff's allegations are given the benefit of every possible inference, a cause of action exists," and a plaintiff may cure potential deficiencies in its pleading through affidavits and other evidence (*R.H. Sanbar Projects v Gruzen Partnership*, 148 AD2d 316, 318 [1st Dept 1989]). However, bare legal conclusions and factual allegations which are inherently incredible or contradicted by documentary evidence are not presumed to be true (*Mark Hampton, Inc. v Bergreen*, 173 AD2d 220 [1st Dept 1991]).

I. Standing

As an initial matter, Mr. Aitcheson-Valentin's petition is dismissed for want of standing. "Standing is a threshold determination" (*Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 769 [1991]). When challenging an administrative action, standing requires the petitioner to show "a direct harm, injury that is in some way different from that of the public at large" (*id.* at 774; *Matter of Panevan Corp. v Town of Greenburgh*, 144 AD3d 806, 807 [2d Dept 2016]; *Matter of Riverhead PGC, LLC v Town of Riverhead*, 73 AD3d 931, 933 [2d Dept 2010]). This injury-in-fact requirement "ensures that the party seeking review has some concrete interest in prosecuting the action which casts the dispute in a form traditionally capable of judicial resolution" (*New York Univ. v City of New York*, 230 AD3d 416, 420 [1st Dept 2024]).

Mr. Aitcheson-Valentin voluntarily resigned from Act-Up on July 26, 2020, more than a year before the August 2021 harassment complaint notices giving rise to this litigation were sent, and three years before he commenced this Article 78 proceeding. He has not rescinded his resignation, nor has he sought to regain membership. As such, Act Up's expulsion of Mr. Aitcheson-Valentin (or barring his future membership) is non-injurious – he has already left Act Up. Furthermore, given his

resignation, Mr. Aitcheson-Valentin's challenge of Act Up's bylaws and meeting quorum is, at best, a general indirect injury suffered by the public and is insufficient to grant standing. Accordingly, the petition is denied for lack of standing.

II. Mootness

Assuming, *arguendo*, that the petition was not dismissed for lack of standing, the first two causes of action are subject to dismissal as moot.²

Mr. Aitcheson-Valentin's first cause of action contends that the resolution at the April 24, 2023 meeting – which denied his appeal of the September 2, 2021 HGT decision – was procedurally defective in that proper notice of the meeting was not given to members, and a quorum was not met. Mr. Aitcheson-Valentin also argues that the complaints against him did not assert violations of the harassment policy then in effect, that he was unable to view the evidence against him or otherwise properly respond, and that his expulsion from Act-Up is unwarranted. Therefore, he contends that the April 24, 2023 resolution denying his appeal and expelling him from Act Up is arbitrary and capricious.

However, the April 24, 2023 meeting decision was rescinded by the January 8, 2024 meeting vote, which directed the HGT to reconsider the prior harassment complaints against Mr. Aitcheson-Valentin, in addition to new complaints, and produce a new decision within five days. Consequently, there is nothing from the April 24, 2023 meeting for Mr. Aitcheson-Valentin to challenge, as the April 24, 2023 decision which Mr. Aitcheson-Valentin challenges no longer exists. Therefore, the first cause of action is dismissed as moot.

Mr. Aitcheson-Valentin's second cause of action contends that an alleged lack of notice and quorum at the April 24, 2023 meeting nullifies the bylaws adopted at that meeting. However, as with the April 24, 2023 appeal decision, the April 24, 2023 bylaws were replaced by the bylaws adopted at the January 8, 2024 meeting. Thus, the second cause of action is also dismissed as moot.

III. Unsupported Allegations and Legal Conclusions

Assuming, *arguendo*, that the petition was not dismissed for lack of standing, Mr. Aitcheson-Valentin's third cause of action would be dismissed as unsupported by any evidence. Mr. Aitcheson-Valentin contends that the bylaws in effect at the time of the January 8, 2024 meeting were not the bylaws adopted at the April 24, 2023 meeting, but rather some unspecified pre-April 24, 2023 bylaws which required the general membership to first vote on whether a proposal to amend the bylaws should be placed on the agenda of a future meeting, and then vote on the proposed bylaws at that future meeting. He contends that the general membership did not vote to place the amendment proposal on the agenda of the January 8, 2024 meeting and, therefore, the adoption of new bylaws at the January 8, 2024 meeting violated these rules.

However, conspicuously absent from the petition is any evidence regarding these pre-April 24, 2023 bylaws. Mr. Aitcheson-Valentin does not provide a copy of bylaws in effect before April 24, 2023. Indeed, his petition contends that “record keeping was not a hallmark of the organization” in its early days, and that he assumed the bylaws he relies on were adopted “presumably at a general membership meeting” despite the fact that “there are no records of the organization showing that any vote adopting the bylaws ever was had and a copy of those bylaws is impossible to come by”

² Mr. Aitcheson-Valentin does not raise a substantial or novel issue which survives mootness (*Matter of Santiago v Berlin*, 111 AD3d 487 [1st Dept 2013]).

(NYSCEF Doc. No. 1 at ¶¶ 11 and 12). As such, Mr. Aitcheson-Valentin advances a “take my word for it” argument that some unspecified, assumed-to-be adopted, oral bylaws exist and are controlling upon Act Up, even though it is impossible to locate these bylaws. This unsupported claim is not entitled to any presumption of truth, and dismissal of the claim is warranted (*see e.g. Mark Hampton, Inc.*, 173 AD2d 220; *Roberts v Pollack*, 92 AD2d 440 [1st Dept 1983] [legal conclusion without factual support properly dismissed]).

Similarly, to the extent that Mr. Aitcheson-Valentin alleges the January 8, 2024 bylaws are an illegal scheme to evade quorum requirements, he does so without legal or factual support. As such, dismissal of this claim is warranted (*id.*). In any event, Not-for-Profit Corporation Law § 608(b) permits an organization’s bylaws to calculate a quorum as “members entitled to cast one hundred votes or one-tenth of the total number of votes entitled to be cast, whichever is lesser”. The January 8, 2024 bylaws define votes entitled to be cast as voting members who appear at a meeting, thus complying with § 608(b).³ Mr. Aitcheson-Valentin’s contention that the January 8, 2024 bylaw amendment was met with a challenge from the floor is disingenuous, as he does not dispute that this challenge was his own – made after he resigned for Act Up.

IV. Documentary Evidence

Assuming, *arguendo*, that the petition was not dismissed for want of standing, the fourth cause of action would be dismissed as the documentary evidence conclusively establishes a defense to the asserted claims as a matter of law. At bottom, Mr. Aitcheson-Valentin’s fourth cause of action alleges that the HGT report relied on material *dehors* the record, including allegations of new complaints, to find he violated the harassment policy.

To be sure, the HGT report discussed Mr. Aitcheson-Valentin’s pattern of harassing, threatening, and retaliatory conduct towards its members as part of the factual recitation. This discussion included Mr. Aitcheson-Valentin’s conduct before and after the initial two complaints. However, the HGT report’s analysis and recommendation found Mr. Aitcheson-Valentin violated the harassment policy based only upon: (1) the initial two complaints (sexual orientation and disability harassment) which were the subject of the first HGT investigation and decision; and (2) retaliation stemming from these two initial complaints. The HGT report did not, as Mr. Aitcheson-Valentin contends, find or make a recommendation that he violated the harassment policy based upon new conduct.

The 2020 harassment policy expressly permits the HGT to consider retaliation regarding a harassment complaint as part of the underlying complaint (NYSCEF Doc. No. 3 at ¶ 10 [“... HGT will determine whether to factor the retaliation into the original complaint, or treat it as an individual incident”]). Consequently, the HGT’s consideration of Mr. Aitcheson-Valentin’s retaliation was proper, and his claim otherwise is refuted by documentary evidence, namely the 2020 harassment policy itself.

The remainder of the fourth cause of action comprises unsupported procedural allegations (e.g. the HGT report was required to list names and votes of HGT members, the HGT report was

³ There is no dispute that Act Up does not maintain a member list, in large part due to the stigma faced by people with AIDS and the frequency at which its members died in the organization’s early days. Thus, the scheme advanced by Mr. Aitcheson-Valentin to calculate a quorum, using the total number of Act Up members, is impossible. All parties concede there is no method to determine the total number of Act Up members, and thus determining a majority of an unknown number is mathematically impossible.

required to be signed, the HGT report improperly discusses conduct older than 90 days, etc.). Mr. Aitcheson-Valentin simply declares that these violations occurred without providing the rule, bylaw, or other procedure allegedly violated – this amounts to a “because I said so” argument which is insufficient. Accordingly, the remainder of the fourth cause of action is dismissed as conclusory, without merit, and contrary to the documentary evidence.

V. Arbitrary and Capricious

Assuming, *arguendo*, that the fourth cause of action survived dismissal, it would nevertheless be denied on the merits.

The standard of review under Article 78 is well established, the Court must consider whether there was a rational basis for the underlying determination or whether the underlying determination is arbitrary and capricious (*Matter of Gilman v New York State Div. of Housing and Community Renewal*, 99 NY2d 144 [2002]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*Peckham v Calogero*, 12 NY3d 424 [2009]; *see also Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222 [1974]). When the underlying determination is supported by a rational basis, this Court must sustain the determination, notwithstanding that the Court would reach a different result (*Peckham v Calogero*, 12 NY2d at 431).

The HGT report, its recommendation to bar Mr. Aitcheson-Valentin from future membership, and Act Up’s adoption of the recommendation are neither arbitrary nor capricious. Contrary to Mr. Aitcheson-Valentin’s claim, the HGT report considered his conduct under the 2020 harassment policy in effect at the time of his harassing and retaliatory conduct. As discussed, *supra*, the 2020 harassment policy permitted the HGT to consider Mr. Aitcheson-Valentin’s later retaliation against the members who filed harassment complaints as part of the underlying harassment complaint. The HGT report’s recommendation that Mr. Aitcheson-Valentin be barred from future membership was well supported by the evidence and, conspicuously, Mr. Aitcheson-Valentin does not dispute that he sent the harassing and retaliatory communication forming the basis for the HGT’s recommendation. As discussed *supra*, and by way of example, Mr. Aitcheson-Valentin called one member a “tacky lesbian” and another member a “drunk without hope,” and had a penchant for using “fuck you” as a valediction in his communication with these members. Once Mr. Aitcheson-Valentin learned of the complainants’ identities, or believed that he had, he wrote “now that I know you are behind all that happen on act up with me I am coming for you with all i got [sic]” and the HGT report further discussed his counsel’s harassing and menacing conduct at subsequent meeting as a form of continued retaliation against Act Up and its members. The HGT report expressly recommended finding Mr. Aitcheson-Valentin’s conduct harassing and retaliatory under any harassment policy ever adopted by Act Up.

Given Mr. Aitcheson-Valentin’s conduct, which he does not deny, the HGT’s recommendation that he engaged in harassment based on sexual orientation and perceived disability, and retaliation against complaining members, was neither arbitrary nor capricious; instead, the finding was rational, grounded in reason and with regard to the facts. Act Up’s adoption of the recommendation likewise has a rational basis. Therefore, the fourth cause of action would be denied on the merits.

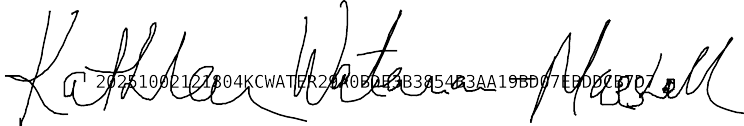
Accordingly, it is

ORDERED that the cross-motion of Act Up/New York to dismiss the petition for lack of standing is granted and the petition is dismissed in its entirety; and it is further

ORDERED that, as an alternative finding, the cross-motion of Act/Up New York to dismiss the first two causes of action as moot, the third cause of action as unsupported and conclusory, and the fourth cause of action as refuted by documentary evidence is granted and the petition is dismissed in its entirety; and it is further

ORDERED that, as a further alternative finding, the fourth cause of action is denied on the merits, as the complained of action is neither arbitrary nor capricious; and it is further

ORDERED that the petition is denied.



10/2/2025

DATE

KATHLEEN WATERMAN-MARSHALL,
J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: