

STATE OF NEW YORK COUNTY OF ONEIDA
SUPREME COURT

DECISION

LOUISE M. BIZZARI,

Petitioner,

vs.

NEW YORK STATE DIVISION OF HUMAN RIGHTS;
SLOCUM DICKSON MEDICAL GROUP P.L.L.C.,

Respondents.

Hon. Anthony F. Shaheen

Index No. CA2006-002592

RJI #32-06-1144

Appearances: July 18, 2007 [Motion Term]

for petitioner:

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SHAHEEN, J.

Petitioner *pro se* Louise M. Bizzari challenges the September 20, 2006 “Determination and Order After Investigation” of the New York State Division of Human Rights, which found no probable cause to believe that respondent Slocum Dickson Medical Center committed acts of unlawful discrimination against her. Respondent Slocum Dickson entered an Answer to this petition with a First Defense that petitioner failed to timely serve the petition. Respondent New York State Division of Human Rights entered an Answer asking this Court to remand the case to the Division for further investigation.

Initially, Slocum’s “First Defense” concerning the untimeliness of service of this petition is denied and dismissed. Petitioner Louise M. Bizzari is representing herself *pro se* and when she failed to effect service within the dates originally established by the Court in its Poor-Person Order, the Court gave her a new service date of June 6, 2007. Petitioner has submitted proof of service by certified mail on the respondents and on counsel for Slocum Dickson on June 4, 2007.

Turning to the Division of Human Rights’ request to have this case remanded for further investigation, the Court finds that the Division’s written response to this Petition is vague and conclusory when it states that “the Regional Directors’ determination lacks legal justification because the investigation is inadequate.” The Division does not advise this

Court in what way they now believe their investigation was inadequate, or what issues they failed to investigate. The remarks of counsel for the Division at the time of oral argument was likewise not helpful in clarifying the basis for this request. The record before the Division included petitioner's complaint, letters to and from the petitioner, numerous photos submitted by petitioner, statements from several doctors concerning petitioner's physical condition, a copy of the Wellness Program Consent form signed by petitioner, a copy of the police report, a detailed Inter-Office Memorandum from the Division's Investigator and a lengthy rebuttal letter from petitioner to the Division. The Court has reviewed the certified transcript of the record of the prior proceedings before the Division of Human Rights, and does not find their investigation to be inadequate, as claimed in the Answering papers submitted to this Court by the Division. Rather, it appears that petitioner's claim was based solely on disability or perceived-disability discrimination, that respondent Slocum Dickson investigated petitioner's charges and presented a defense on those grounds, and contrary to the Division's Answering papers, it appears to this Court that a complete and detailed investigation was conducted by the Division of Human Rights on the basis of petitioner's particular claim of disability or perceived-disability discrimination. Moreover, if the Division intends to investigate allegations of discrimination, on grounds other than disability or perceived-disability discrimination, it would be prejudicial to require Slocum Dickson to defend against new discrimination charges more than 2 years after petitioner's initial complaint which only raised the issue of alleged disability or perceived-disability

discrimination. After careful review of the record below, and in light of the vague and conclusory Answer submitted by the Division, the Court finds no good cause to remand this case back to the Division of Human Rights for further investigation, and the Division's request in this regard is denied.

The Court now addresses this Petition to set aside the Order and Determination of the Division of Human Rights dated September 20, 2006, which found no probable cause to believe that Slocum Dickson committed unlawful discrimination against the petitioner based on her disability or perceived-disability. The law is well settled that the scope of judicial review under the New York State Human Rights Law is extremely narrow and is limited to whether their determination is supported by sufficient evidence in the record (In Re New York State Division of Human Rights, 70 NY2d 100). Issues of credibility and weight of the evidence presented to the Division is left to the discretion of that administrative agency, and this Court will not interfere with that discretion so long as there is a rational basis for the agency's determination.

The record before the Division of Human Rights shows that petitioner enrolled in the Wellness Program at respondent's facility on April 21, 2005 and was provided with a copy of respondent's policy and a Consent Form which she signed, agreeing that she was "free of communicable diseases including those which can be transmitted through water."

On that same day, April 21, 2005, the respondent facility received a complaint from a participant who claimed to be a spokesperson for several people in the Wellness Program who were concerned that "the new person in the pool had open wounds on her leg. She wears a brace and I think it might be from that." The following day, April 22, 2005, there was another complaint from a participant in the Wellness Program, asking "has anyone brought it to your attention that the new lady in the pool, Louise, has an open sore on her leg?" These two (2) complaints were given to Suzanne W. Price, the physical trainer at respondent Slocum Dickson Medical Center, who completed a "Complaint Form" upon her return from vacation on April 25, 2005. Thereafter on May 3, 2005, when petitioner entered the facility, Ms. Price approached petitioner about the complaints. This is where the parties' versions of the incident diverge. Petitioner claims she was forced into a room and pushed onto a table and was "grievously molested by Slocum Dickson employee Susan Price" who said there were complaints that petitioner had HIV/AIDS and held petitioner captive and had her handbag, clothes, orthopedic shoes and left leg prosthetic brace forcibly removed, and that she sustained injuries from this alleged assault. Ms. Price's statement claims that when petitioner entered the facility on May 3, 2005, she asked to speak with petitioner briefly, brought petitioner into a treatment room and closed the curtain, informed petitioner that several participants complained she was in the pool with an open sore and asked if it would be all right to inspect her lower legs to make sure she was free of any open wounds. Ms. Price's statement goes on to state that petitioner became defensive and asked "This doesn't

have anything to do with the fact of who I am?" to which Ms. Price responded, "I don't know anything about you except for the fact that you are a participant in the Wellness Program and due to the fact that I got a complaint, I just have to inspect your legs for any open skin areas. It is our policy that no one can be allowed in the pool if they have an open skin area." Ms. Price then states that petitioner removed her own socks, brace and shoes, and after being allowed to inspect petitioner's skin, Ms. Price found no evidence of any open skin area. Petitioner then related to Ms. Price an incident that happened to her at another local rehabilitation facility. Ms. Price apologized for any inconvenience, assisted petitioner into the locker room, and petitioner was permitted to return to the pool.

On April 28, 2006, a year after this incident, petitioner filed a complaint with the Division of Human Rights. According to the records, e-mails and memos included in the file of the Division of Human Rights, petitioner alleged that she was verbally abused and physically assaulted by Ms. Price because of a disability or perceived disability. After investigating petitioner's claim of discrimination based on disability or perceived disability, and after reviewing the statement and Incident Report of Ms. Price as well as numerous e-mails and letters from petitioner, petitioner's Supplemental Memorandum with photos, and petitioner's 18-page Rebuttal with photos, doctors' statements and other exhibits, the Division made a finding of "no probable cause," and dismissed petitioner's complaint and closed its file. The Division's "Determination and Order After Investigation," dated

September 20, 2006, found that “[T]he record does not support the complainant’s claim of discrimination based on a perceived condition (AIDS), she is HIV negative ...” and further that “[T]here is no evidence or witnesses to prove where, how, when or what happened to cause these bruises and open sores or that they were ascertained as a result of an examination at respondent’s facility.” There was nothing in Ms. Price’s statement or Incident Report which even mentioned AIDS or HIV, nor did the original complaining participants in the Wellness Program refer to AIDS or HIV. Rather, the original complainants were concerned about what they perceived to be sores on petitioner’s leg and one of the complaints suggested that the sores could be attributed to petitioner’s brace. In fact, after examining petitioner’s legs, petitioner was permitted to return to the pool. Furthermore, there was no showing before the Division that the respondent facility or its employee Ms. Price treated petitioner in any way based upon her sexual orientation, nor was sexual orientation ever a part of petitioner’s claim before the Division of Human Rights.

This Court has reviewed the complete transcript of the record of the prior proceedings before the Division of Human Rights, and listened very carefully to oral argument at Motion Term, and finds that the Division’s Order and Determination of no-probable-cause has a rational basis and is amply supported by the evidence. As such, this Court’s review is at an end and this petition is denied and dismissed with prejudice, for the reasons stated. No costs are awarded to any party.

This constitutes the Decision of the Court, and counsel for respondent Slocum Dickson is directed to submit an Order for signature **with this original Decision appended thereto**, after submitting copies of same to petitioner and to counsel for the Division of Human Rights for approval as to form.

Dated: August 1, 2007

Anthony F. Shaheen
ANTHONY F. SHAHEEN, J.S.C.