

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
BROOKHAVEN SCIENCE ASSOCIATES, LLC, :
 :
 : Plaintiff, :
 :
 : -against- :
 :
 : MICHELLE CHENEY DONALDSON, :
 : COMMISSIONER OF THE NEW YORK :
 : STATE DIVISION OF HUMAN RIGHTS, :
 : acting in her official capacity, :
 :
 : Defendant. :
 :
 -----X

04 Civ. 4013 (LAP)

AMENDED
MEMORANDUM AND ORDER

LORETTA A. PRESKA, U.S.D.J.

Brookhaven Science Associates ("BSA" or "Plaintiff") brought this action pursuant to Article I, Section 8, Clause 17 of the United States Constitution and the federal enclave doctrine for a declaration that the New York State Division of Human Rights ("SDHR") lacks jurisdiction to enforce the New York State Human Rights Law ("HRL") with respect to BSA, and for an injunction prohibiting the SDHR from processing, investigating or otherwise proceeding with any pending or future cases against BSA for any alleged conduct occurring at the federal enclave of Brookhaven National Laboratory ("BNL"). BSA now moves for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. The parties agree that this motion presents a pure question of law. Accordingly, SDHR contends that sua sponte

summary judgment for the Defendant is appropriate.¹ For the following reasons, BSA's motion is granted.

BACKGROUND²

A. Camp Upton Property

The property in question is Camp Upton Military Reservation ("Camp Upton") in Upton, New York, Suffolk County. (Deed of Cession dated July 17, 1933 ("Deed of Cession"), attached as Ex. A to Goldman Decl.)³ The property was acquired by the United States from the State of New York in 1919 and 1920 through a series of purchases and condemnation actions. (Goldman Decl. at ¶ 3.) On April 19, 1933, the Attorney General of the United States executed a Certification that the United States acquired

¹ The SDHR also opposed BSA's motion because, *inter alia*, this action violated SDHR's Eleventh Amendment immunity as an agency of the State of New York. In response, on May 5, 2005, BSA sought leave to amend its Complaint to substitute Michelle Cheney Donaldson, then-Commissioner of the SDHR, in her official capacity, for SDHR as the Defendant, thereby eliminating any Eleventh Amendment issue. (In December 2006, Kumiki Gibson replaced Ms. Donaldson as Commissioner of the SDHR.) By letter dated May 25, 2005, SDHR notified the late District Judge Richard Conway Casey, who presided over this case, that the SDHR did not oppose the motion. (See Joint Summary of the Case ("Joint Summary"), filed on May 30, 2007, at 2.) Accordingly, Ms. Donaldson is the Defendant, and the Eleventh Amendment issue has been resolved by the parties.

² The parties agree that there are no issues of material fact. (See Joint Summary at 2.)

³ "Goldman Decl." refers to the Declaration of Michael M. Goldman, Esq., Deputy General Counsel for BSA, including the exhibits appended thereto, dated March 21, 2005.

possession under a clear and complete title of most of the property at issue. (Goldman Decl. at ¶ 4.) By Deed of Cession, the State of New York ceded Camp Upton to the United States, thereby creating a federal enclave. (56.1 Stmt. at ¶ 2.)⁴ The Deed of Cession expressly stated that the State of New York retained:

a concurrent jurisdiction with the United States on and over the property and premises as conveyed, so far as that all civil and criminal process, which may issue under the laws or authority of the State of New York, may be executed thereon in the same way and manner as if such jurisdiction had not been ceded, except so far as such process may affect the real or personal property of the United States.

(See Deed of Cession (emphasis added).)

In July 1946, Camp Upton was transferred by the United States War Department to the Manhattan District of Engineers for the United States Army. (Goldman Decl. at ¶ 6.) By Executive Order dated December 31, 1946, the United States Secretary of War transferred Camp Upton to the United States Atomic Energy Commission ("AEC"). (56.1 Stmt. at ¶ 3.) In 1974, the AEC was abolished, and Camp Upton was transferred to the United States Energy Research and Development Administration. (56.1 Stmt. at

⁴ "56.1 Stmt." refers to "Plaintiff's Local Rule 56.1 Statement of Material Facts As To Which There Is No Dispute," pursuant to Local Rule 56.1 of the United States District Courts for the Southern and Eastern District of New York, filed on March 29, 2005. SDHR did not submit a counter-statement for the reasons stated herein. (See infra n.2.)

¶ 5.) In 1977, the land was transferred to the United States Department of Energy ("DOE") which has retained jurisdiction. (56.1 Stmt. at ¶ 5.)

In 1946, BNL was created as a research laboratory, and took occupation of the federal enclave at Camp Upton. (56.1 Stmt. at ¶ 4.) From 1947 until February 28, 1998, Associated Universities, Inc. ("AUI"), a private contractor, operated BNL under a contract with the DOE. (56.1 Stmt. at ¶ 6.) Since March 1, 1998, BSA, a not-for-profit limited liability company, has operated BNL under a contract with the DOE. (56.1 Stmt. at ¶ 7.) BSA employs 2,750 individuals at BNL, and its operations are subject to the direction and supervision of the DOE. (56.1 Stmt. at ¶ 7.)

The SDHR is an agency of the State of New York whose mission is to "prevent and eliminate discrimination through enforcement of Article 15 of the Executive Law, known as the [HRL], by investigating and adjudicating complaints of illegal discrimination." (Lopez-Summa Decl. at ¶ 3.)⁵ Most individuals who file a discrimination complaint dual-file with both the SDHR and the United States Equal Employment Opportunity Commission ("EEOC"). The HRL does not conflict with federal law or policy

⁵ "Lopez-Summa Decl." refers to the Declaration of Gina Lopez-Summa, Esq., General Counsel for the SDHR, dated April 21, 2005.

and "offers certain additional protections."⁶ (Opp'n. Mem. at 14; Lopez-Summa Decl. at ¶ 4.)⁷ Unlike the primary federal anti-discrimination statutes, the HRL prohibits discrimination based on marital status, sexual orientation, military status, and against those individuals that have just attained the age of eighteen years. See Executive law § 290. In addition, the HRL defines "disability" more broadly than its federal counterparts, provides a longer statute of limitations, and pertains to employers with as few as four employees. Id. Furthermore, the SDHR adjudicates cases with no limit or restriction on the damages available to the aggrieved party. Id.

B. SDHR Enforcement Actions Against BNL At Issue

SDHR's records indicate that the companies operating BNL have submitted to its jurisdiction for over sixteen years.

(Lopez-Summa Decl. at ¶ 7.)⁸ In 2000, BSA received a monogram

⁶ In general, the HRL overlaps with the following federal anti-discrimination statutes: Title VII of the Civil Rights Act of 1964; The Age Discrimination in Employment Act of 1967; and Titles I and V of the Americans with Disabilities Act of 1990. (Lopez-Summa Decl. at ¶ 4.)

⁷ "Opp'n. Mem." refers to the Memorandum Of Law On Behalf Of The SDHR In Opposition To Plaintiff's Motion For Summary Judgment, filed by the SDHR on April 21, 2005.

⁸ SDHR's records indicate that AUI submitted to its jurisdiction in one of the thirty-three cases filed at SDHR when AUI operated BNL. During the time BSA has operated BNL, BSA has submitted to (continued on next page)

[sic] published by the Federal Publications on the federal enclave doctrine and its application to employment law. (See Lopez-Summa Decl., Ex. A at 14/24-15/27.)⁹ Since receipt of that publication, BSA has refused to submit to the SDHR's jurisdiction on the ground that the federal enclave doctrine prohibits the application of the HRL. (56.1 Stmt. at ¶ 11.) The SDHR is currently "stayed from investigating the nine remaining cases against BSA." (Lopez-Summa Decl. at ¶ 8.)¹⁰ Two of these stayed cases are described below as they relate to the specific relief sought by BSA in this action.

1. The Mulhall Proceeding

Steven Mulhall,¹¹ an engineer who worked for BSA from April 1989 until his termination of employment in September 2001, suffered from depression, bipolar affective disorder, and borderline personality disorder. Recommended Order at 2.¹²

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the jurisdiction of the SDHR in twenty-four of the thirty-three cases filed at SDHR. (Lopez-Summa Decl. at ¶ 8.)

⁹ Exhibit A is the transcript of Michael M. Goldman's deposition dated March 4, 2005.

¹⁰ The parties have not provided the Court with information pertaining to the stay.

¹¹ On or about October 8, 2003, Mr. Mulhall passed away. (Compl. ¶ 15.)

¹² "Recommended Order" refers to the October 9, 2003 decision by (continued on next page)

According to Mr. Mulhall, BSA attributed his termination of employment to "significant cuts in funding." (Mulhall Compl. at ¶ 10.)¹³ Mr. Mulhall contends that this explanation was a pretext for his firing, and that the actual reason was his disabilities. Recommended Order at 2. Furthermore, Mr. Mulhall alleges that BSA continued to discriminate against him after his termination because, in direct violation of BSA's policy for terminated employees, he was not notified by BSA of job openings at BNL after his termination but prior to BSA interviewing outside applicants. (Mulhall Compl. at ¶ 17.)

On May 9, 2002, Mr. Mulhall filed a complaint with the SDHR against BSA and BNL, charging them with discriminatory employment practices in violation of the HRL.¹⁴ Recommended Order at 1. On October 9, 2003, after conducting its investigation, the SDHR found that probable cause existed to believe that BSA and BNL engaged in an unlawful discriminatory employment

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Administrative Law Judge Thomas S. Protano in Mulhall v. Brookhaven Science Associates and Brookhaven National Laboratories, SDHR, Office of Administrative Law Judges, Case No. 2-E-D-02-6841918. The Recommended Order is attached as Exhibit C to the Declaration of Michael M. Goldman.

¹³ "Mulhall Compl." refers to the complaint filed on May 8, 2002. The Mulhall Complaint is attached as Exhibit 2 to the Declaration of Edward Cerasia II, Esq., dated May 5, 2005.

¹⁴ Mr. Mulhall did not file a complaint with the EEOC and, thus, according to the SDHR, he "would be left without any recourse for his discrimination complaint should summary judgment be granted herein." (Lopez-Summa Decl. at ¶ 8.)

practice with respect to Mr. Mulhall and referred the case for a public hearing. (Goldman Decl. at ¶ 16.) Prior to the hearing, BSA and BNL moved to dismiss the complaint, asserting that the SDHR lacked jurisdiction under the federal enclave doctrine. Recommended Order at 1.

In his decision, Administrative Law Judge ("ALJ") Thomas S. Protano granted BSA's motion to dismiss. Id. at 3, 6. ALJ Protano concluded that the Deed of Cession transferred jurisdiction of Camp Upton from the State of New York to the United States "with an express exception reserved for the service of criminal and civil process." Id. at 3. According to ALJ Protano, under the federal enclave doctrine, the only state laws applicable to the federal enclave "are those that were in effect at the time of the cession and that have not been abrogated by federal law, or those laws that have specifically been made applicable by an act of Congress." Id. at 2-3. Thus, ALJ Protano ruled that because the HRL was first enacted in 1945, twelve years after the cession of Camp Upton, the HRL does not apply at BNL. Id. at 3.

On March 31, 2004, Ms. Donaldson, then-Commissioner of the SDHR, refused to adopt ALJ Protano's decision and remanded Mr. Mulhall's complaint for further proceedings. Remand Order.¹⁵ In

¹⁵ "Remand Order" refers to the March 31, 2004 decision by (continued on next page)

so ruling, Commissioner Donaldson concluded that "the [SDHR] is not precluded from proceeding against Respondents in this case." Id. at 3. Commissioner Donaldson also asserted that BNL has submitted to the SDHR's jurisdiction "for over twenty years on more than eighty cases."¹⁶ Id. at 3. Relying on the Supreme Court's decision in Goodyear Atomic Corporation v. Miller, 486 U.S. 174, 181 (1998), the Commissioner concluded that the SDHR's enforcement of the HRL constitutes permissible "non-direct regulation" of a federally owned facility performing a federal function. Id. at 3. According to the Commissioner, "the [SDHR] is not seeking to usurp authority as to a federal function but rather to protect state citizens from illegal employment practices." Id. at 3. The SDHR has yet to schedule a public hearing with respect to Mr. Mulhall's complaint. (Compl. at

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Commissioner Donaldson in Mulhall v. Brookhaven Science Associates, LLC and Brookhaven National Laboratories, SDHR Case No. 2-E-D-02-6841918. The Remand Order is attached as Exhibit C to the Complaint.

¹⁶ The Commissioner also questioned whether BNL is actually a federal enclave given that only part of the land on which it is situated was ceded to the Federal Government. Remand Order at 2-3. However, the Commissioner ultimately concluded that "this factual determination need not be reached," given her conclusion that "the [SDHR] is not divested of jurisdiction over federally owned facilities operated by private contractors." Remand Order at 3.

¶ 19.)¹⁷

2. The Tardd Proceeding

Malry L. Tardd, a middle-aged African-American male, brought suit against BNL alleging that he was subjected to adverse employment actions as a result of racial discrimination while he was working at BNL as a Vacuum Technical Specialist. Tardd v. Brookhaven Nat'l Lab., 407 F. Supp. 2d 404, 408 (E.D.N.Y. 2006). The EEOC investigated Mr. Tardd's complaint and, on April 30, 2004, issued a Notice of Right to Sue. Id. On May 13, 2004, the SDHR issued a Notice of Conference and Production of Records to BSA regarding Mr. Tardd's SDHR complaint. (Compl. at ¶ 23.) On May 17, 2004, BSA responded to the SDHR Notice, stating that the SDHR lacked jurisdiction over BSA. (Compl., Ex. D) On May 24, 2004, the SDHR served BSA with a revised Notice and set a conference for June 17, 2004. (Compl., Ex. E) On July 29, 2004, within ninety days of receipt of the EEOC Notice, Mr. Tardd commenced a lawsuit in the Eastern District of New York. Tardd, 407 F. Supp. 2d at 409.

As with Mr. Mulhall's complaint, BSA moved to dismiss Mr. Tardd's SDHR claims under the federal enclave doctrine. Tardd, 407 F. Supp. 2d at 417. The district court denied the motion

¹⁷ "Compl." refers to the Amended Complaint, including its exhibits appended thereto, filed in this court on May 5, 2005.

without prejudice, stating that BNL could revisit the issue following discovery. Id. at 419. The district court based its ruling on the ground that the Deed of Cession is instrumental to the jurisdictional dispute and, although both parties cited the Deed, neither submitted a copy to the court. Id. at 418. In granting a motion by BNL for reconsideration and clarification with respect to Mr. Tardd's non-SDHR claims, the district court scheduled trial in the Tardd proceeding to begin July 2, 2007. Tardd v. Brookhaven National Laboratory, No. 04 Civ. 3262, 2007 WL 1423642, at *13 (E.D.N.Y. May 8, 2007).

C. Relief Sought by BSA in This Action

In this action, BSA seeks the following declaratory relief:

. . . [A] declaration that, pursuant to the federal enclave doctrine and Article I, Section 8, Clause 17 of the United States Constitution, the SDHR is without jurisdiction to enforce the HRL with respect to BSA.

. . . [A] declaration that any claim against BSA under the HRL is preempted by the United States Constitution.

(Compl. at ¶ 33.)

In addition, BSA seeks the following injunctive relief:

. . . [A]n order preliminarily and permanently enjoining the SDHR from proceeding in any and all pending and future cases where BSA is named as a respondent.

. . . [A]n order preliminarily and permanently enjoining the SDHR from holding a public hearing or any further proceeding in Mulhall v. Brookhaven Science Associates and Brookhaven National Laboratories, SDHR Case No. 2-E-D-02-6841918.

. . . [A]n order preliminarily and permanently enjoining the SDHR from holding a conference, demanding the producing of documents or witnesses, or conducting any further investigation or proceeding in Malry L. Tardd, Jr. v. Brookhaven Science Associates and Brookhaven National Laboratories, SDHR Case No. 2-E-OR-02-3506784-E.¹⁸

(Compl. at ¶ 33.)

¹⁸ BSA also seeks an award of attorneys' fees and costs. (Compl. at ¶ 33.) Under the Declaratory Judgment Act, 28 U.S.C. § 2201, a party prevailing in an action for declaratory relief is entitled to attorney's fees only when those costs would be recoverable under nondeclaratory judgment circumstances in a situation "(i) where, under the restrictive American rule attorney's fees are allowed; and (ii) where controlling substantive law permits recovery." See Mercantile Nat'l Bank at Dallas v. Bradford Trust Co., 850 F.2d 215, 216 (5th Cir. 1988) (citing Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1975), declining to award such fees because, in applying New York State law which follows the American Rule regarding attorney's fees, the parties did not contract to permit attorney's fees). Neither of these two situations occurred here. Under 28 U.S.C. § 2202, "further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment." Although the Court has the "equitable power to make awards in addition to regular statutory costs, including a reasonable attorneys' fee," the Court declines to award attorneys' fees and costs to BSA. Mercantile, 850 F.2d at 218.

DISCUSSION

A. Legal Standard for Summary Judgment Under Rule 56

Summary judgment is warranted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The movant initially has the burden to inform the district court of the matter it believes demonstrates the absence of an issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). If the movant meets its burden, the non-moving party must come forward with "specific facts showing that there is a genuine need for trial." Fed. R. Civ. P. 56(e). Summary judgment should be granted only if it is apparent that no rational finder of fact "could find in favor of the nonmoving party because the evidence to support its case is so slight." Gallo v. Prudential Residential Servs., Ltd., 22 F.3d 1219, 1223 (2d Cir. 1994). A court may grant summary judgment, sua sponte, to a non-moving party "so long as the moving party has had an adequate opportunity to present evidence on the issue on which summary judgment is granted." Celotex, 477 U.S. at 326.

B. The Federal Enclave Doctrine

The federal enclave doctrine arises out of the United States Constitution:

Congress shall have power to exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, -Arsenals, dock-Yards, and other needful Buildings.

Art. I, § 8, cl. 17.

A federal enclave is "a portion of land over which the United States government exercises federal legislative jurisdiction." Kelly v. Lockheed Martin Servs. Group, 25 F. Supp. 2d 1, 3 (D.P.R. 1998). Both parties point the Court to the decision in Kelly in order to determine whether state anti-discrimination statutes apply on a federal enclave. (See Mem. at 8; Opp'n. Mem. at 12.)¹⁹ The Kelly Court established three theories setting forth the relationship between laws enforced on a federal enclave and state law. Kelly, 25 F. Supp. 2d at 4.

Under the first theory, when an area becomes a federal enclave, the state law in effect at the time of cession becomes

¹⁹ "Mem." refers to the Memorandum Of Law In Support Of Plaintiff's Motion For Summary Judgment, filed on March 29, 2005.

federal law and is the applicable law unless Congress provides otherwise.²⁰ Id. (citing James Stewart & Co. v. Sadrakula, 309 U.S. 94, 100 (1940) ("Since only the law in effect at the time of the transfer of jurisdiction continues in force, future statutes of the state are not a part of the body of laws in the ceded area") and Chicago, Rock Island & Pacific RR. v. McGlinn, 114 U.S. 542, 546 (1885) ("It is a general rule of public law . . . that whenever political jurisdiction . . . over any territory [is] transferred from one nation or sovereign to another, the municipal laws of the country - that is, laws which are intended for the protection of private rights - continue in force until abrogated or changed by the new government or sovereign.").)

Under the second theory, state regulatory changes consistent with state laws which were in place at the time of cession are applicable within a federal enclave. See Kelly, 25 F. Supp. 2d at 4 (citing Paul v. United States, 371 U.S. 245, 268 (1963) (holding that if there were price controls on milk being sold on federal enclaves in effect at the time of the cession and that the "same basic scheme" had been in effect since that time, then state regulations could be extended to the

²⁰ Thus, if there is no relevant state law at the time the federal enclave gains enclave status, there is no law whose present-day relevance and applicability must be assessed. Kelly, 25 F. Supp. 2d at 4 n.6.

sale of milk on the federal enclave).) Thus, under the second theory, "the state/federal law [applicable to the federal enclave] is not frozen in time as of cession, but continues to develop as the state develops the law." Id.

Under the third theory, all laws of the state in which the enclave exists are applicable, unless they interfere with the laws of the United States. Id. (citing Howard v. Commissioners of the Sinking Fund of the City of Louisville, 344 U.S. 624, 626 (1953) ("The fiction of a state within a state can have no validity to prevent a state from exercising its power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the federal Government.").)

BSA asserts that the first theory of the federal enclave doctrine articulated by the Kelly Court is applicable here. According to BSA, the HRL is inapplicable at BNL because the HRL was first enacted in 1945. (Mem. at 1.) By contrast, the SDHR contends that the third theory of the federal enclave doctrine articulated by the Kelly Court governs here. The SDHR claims that the HRL does not interfere with the federal anti-discrimination statutes and even affords individuals additional protections. (Opp'n. Mem. at 9.)

The parties do not contend that the second theory articulated by the Kelly Court is applicable here. As stated,

the State of New York did not have any state anti-discrimination laws in effect at the time of cession. The Court declines to apply the third theory articulated by the Kelly Court because this case is distinguishable from the Supreme Court's decision Howard. In Howard, after the United States acquired exclusive jurisdiction over the land on which the Naval Ordnance Plant was located, the City annexed the Ordnance Plant tract, without opposition from the federal government. 344 U.S. at 625. After the annexation, the City started to collect a license tax from employees of the plant for the privilege of working in the city. Id. The employees of the plant sought a declaratory judgment that the Ordnance Plant was not within the City and that they were not subject to the tax. Id. at 626. The Court upheld the right of the City, as a taxing authority of the State, to tax income paid to employees of the Government who worked at the Ordnance Plant as was specifically granted by the Buck Act, 4 U.S.C. §§ 105-110. Id. at 627. In the instant case, in contrast, the BNL property was neither annexed by the City of Upton, nor was there any Congressional act allowing for the application of the HRL at BNL. Thus, the third theory articulated in Kelly is inapplicable. Accordingly, the Court finds that the first theory established by the Kelly Court is applicable here.

C. Application of the Federal Enclave Doctrine

The Supreme Court's ruling in Goodyear is the seminal decision discussing the first theory of the federal enclave. 486 U.S. 174. In Goodyear, the Supreme Court allowed the application of a state workers compensation law on a federal enclave because Congress had passed 40 U.S.C. § 290 which required the enforcement of state workers compensation laws on federal enclaves. Id. It is undisputed that Congress has never authorized any regulation of BNL by the SDHR. (56.1 Stmt. at ¶ 17.) BSA acknowledges that the only express exception to the federal government's complete control and jurisdiction over the BNL enclave is reserved for the service of criminal and civil process by the state of New York. (Mem. at 4 (citing Recommended Order).) The service of process was often reserved by states in order to avoid fugitives' use of enclaves as safe havens. See James v. Dravo Contracting Co., 302 U.S. 134, 146 (1937).

The parties do not appear to address squarely the issue of whether BNL performs a federal function. It is undisputed that BNL is operated under a contract that BSA has with the DOE and that BSA is subject to the direction and supervision of the DOE in operating BNL and determining which research projects to undertake. (56.1 Stmt. at ¶ 7.) BSA's budget is controlled almost entirely by the DOE, and almost all of the operations money comes from the DOE. (56.1 Stmt. at ¶ 9.) BSA argues that

the SDHR is "directly regulating a federal function by infringing on an employer-employee relationship such as that between Mulhall and BSA," as well as the federal function of all of the employees who conduct research and assist in the general operation of BSA. (Reply Mem. at 5, 7.)²¹ Thus, for purposes of this motion, BSA is considered to perform a federal function at BNL.²²

The Supremacy Clause immunizes the United States from "direct state regulation unless Congress provides 'clear and unambiguous' authorization for such regulation." Goodyear, 486 U.S. at 180 (citing EPA v. State Water Res. Control Bd., 426 U.S. 200 (1976)) (emphasis added). BSA views the enforcement of the HRL at BNL to be an impermissible instance of direct state regulation of federal facilities. The SDHR states that the application of the HRL at BNL is "permissible indirect regulation of the activities of a private contractor on a federal enclave" and that "there is no controlling authority that indirect regulation of a federal enclave through state

²¹ "Reply Mem." refers to Plaintiff's Memorandum Of Law In Support Of Its Motion For Leave To Amend And In Further Support Of Its Motion For Summary Judgment, filed on May 5, 2005.

²² The fact that BSA is a private contractor does not affect this decision. See Hancock v. Train, 426 U.S. 167, 96 S. Ct. 2006, 2012-13 (1976) (establishing that a federally owned facility performing a federal function is shielded from direct state regulation, even though the federal function is carried out by a private contractor, unless Congress clearly authorizes such regulation).

anti-discrimination laws is impermissible." (Opp'n. Mem. at 8, 11-12 (emphasis added).) SDHR asserts that its indirect regulation of BSA does not offend the federal enclave doctrine or the Supremacy Clause because it does not direct how the federal function occurs, as was found impermissible in Kelly. (Opp'n. Mem. at 13.) SDHR supports its allegation that the HRL is an indirect regulation because it enforced the HRL at BNL for over twenty years without BSA or its predecessors' raising the federal enclave doctrine as a defense. See infra.

The SDHR compares the HRL to state workers compensation statutes identified in Goodyear to be a form of indirect state regulation. (Opp'n. Mem. at 13.) However, SDHR's analysis of Goodyear ignores 40 U.S.C. § 290 which explicitly allows for the application of state workers' compensations laws on a federal enclave. (Reply Mem. at 8.) As was stated in Kelly, "no such statute has been passed to permit state anti-discrimination statutes to be enforced on federal enclaves." Kelly, 25 F. Supp. at 5.²³

The SDHR relies on a narrow reading of Kelly, arguing that the employee in Kelly based his claims on the equipment he needed to work safely, which implicated the way the defendants provided defense services, directly affecting the federal

²³ Since the Kelly decision, there has not been any Congressional action allowing for the application of state anti-discrimination laws on federal enclaves.

function performed on the federal enclave. (Opp'n. Mem. at 12.) BSA interprets Kelly more broadly and contends that the enforcement of the HRL at BNL is no different from the prohibited application of Puerto Rico anti-discrimination statutes as a form of direct regulation implicating the federal function of the enclave. Kelly, 25 F. Supp. 2d at 6.

The parties have not directed the Court to any controlling authority involving the federal enclave doctrine in the anti-discrimination arena. Although not controlling, the Court is aware of, and persuaded by, other decisions by federal courts holding that state anti-discrimination statutes are not applicable on federal enclaves. See Miller v. Wackenhut Servs., Inc., 808 F. Supp. 697, 699-700 (W.D. Mo. 1992) (dismissing plaintiff's claims under Missouri's anti-discrimination statute because the plant at which plaintiff was employed was located on a federal enclave and state law does not govern in a federal enclave "where it otherwise would not apply."); Taylor v. Lockheed Martin Corp., 113 Cal. App. 4th 380, 384 (Cal. Dist. Ct. App., 2003) (holding that a race discrimination claim based on a violation of state law was not cognizable against the company or individual defendants employed by the company where the cause of action arose on a federal enclave); Orlovetz v. Day, 18 Kan. App. 2d 142, 143 (Kan. Ct. App. 1993) (concluding that the land on which the employer operates is a federal

enclave and, therefore, plaintiff's state law claims of wrongful termination, breach of implied contract of employment and retaliatory discharge were dismissed).

BSA also relies on three Eastern District of New York cases in which BSA was a party as evidence that the HRL is not enforceable at BNL. See Sundaram v. Brookhaven Nat'l Lab., 424 F. Supp. 2d 545 (E.D.N.Y. 2006); Benjamin v. Brookhaven Science Assoc., LLC, 387 F. Supp. 2d 146 (E.D.N.Y. 2005); Schiappa v. Brookhaven Science Assoc., LLC, 403 F. Supp. 2d 146 (E.D.N.Y. 2005). In each of those cases, the court held that the employee's anti-discrimination claims under the HRL were barred by the federal enclave doctrine and the United States Constitution. Thus, for all the reasons stated above, the declaratory and injunctive relief sought by BSA is granted.

Finally, the parties dispute whether BSA has waived its right to assert the federal enclave doctrine here. The SDHR contends that BSA waived its right to object to the SDHR's application of the HRL because it previously submitted to the jurisdiction of the SDHR. (Opp'n. Mem. at 14.) BSA and its predecessor AUI submitted to the jurisdiction of the SDHR in at least 24 instances from 1984 until 2000 when BSA first asserted that the SDHR lacked jurisdiction over it under the federal enclave doctrine and the Supremacy Clause. (Opp'n. Mem. at 3.) During this time, according to the SDHR, the application of the

HRL did not conflict with federal policy or interfere with the function performed on the enclave. (Opp'n. Mem. at 14.)

BSA responds that it has not waived the federal enclave defense to SDHR's jurisdiction and, furthermore, could not waive Congress' exclusive legislative jurisdiction to authorize state regulation of federal facilities. (Reply Mem. at 9.) Assuming BSA did waive the federal enclave defense, BSA contends that SDHR's allegations only demonstrate that AUI did not raise the federal enclave doctrine in response to the filing of SDHR charges and that BSA raised this legal defense in 2000. (Reply Mem. at 8.) Because "direct regulation of federal facilities is allowed only to the extent that Congress has clearly authorized such regulation," BSA could not have waived the federal enclave defense. Goodyear, 486 U.S. at 181 n.1. Thus, absent a waiver by Congress, the SDHR does not have jurisdiction over BSA.

BSA also asserts that other agencies of the State of New York have conceded that the United States has exclusive jurisdiction over BNL. (Mem. at 3.) The New York Department of Health has recognized that it does not have jurisdiction to enforce New York laws at BNL because the site is a federal enclave. (Goldman Decl., Ex. B.) The New York Department of Environmental Conservation has recognized that it does not have jurisdiction to enforce New York laws at BNL, except on those areas that have been specifically delegated to states by

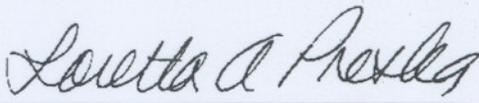
Congress. (Goldman Decl., Ex. B.) SDHR does not concede that these letters constitute "formal" recognition that the State of New York agencies do not have jurisdiction over BNL. (See Opp'n. Mem. at 14 n.5.) For the reasons stated above, the Court declines to address the import of these other agency decisions.

CONCLUSION

For the reasons set forth above, BSA's motions for summary judgment [dkt. no. 16] and to amend the Complaint [dkt. no. 20] are granted. The Clerk of the Court shall issue an amended judgment to reflect this decision forthwith and mark this action closed and all pending motions denied as moot.

SO ORDERED:

Dated: August 9, 2007
New York, New York


LORETTA A. PRESKA, U.S.D.J.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/10/07

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
BROOKHAVEN SCIENCE ASSOCIATES, LLC,
Plaintiff,

04 CIVIL 4013 (LAP)

-against-

AMENDED JUDGMENT

MICHELLE CHENEY DONALDSON,
COMMISSIONER OF THE NEW YORK
STATE DIVISION OF HUMAN RIGHTS,
acting in her official capacity,
Defendants.

-----X

Whereas the above-captioned action having come before this Court, and the matter having come before the Honorable Loretta A. Preska, United States District Judge, and the Court, on August 9, 2007, having rendered its Amended Memorandum and Order granting BSA's motion for summary judgment and to amend the complaint, it is,

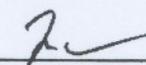
ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Amended Memorandum and Order dated August 9, 2007, BSA's motion for summary judgment and to amend the complaint are granted; accordingly, the case is closed and all pending motions are denied as moot.

Dated: New York, New York
August 13, 2007

J. MICHAEL McMAHON

Clerk of Court

BY:



Deputy Clerk

**THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON _____**

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

Date:

In Re:

-v-

Case #:

()

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is \$250.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. **No personal checks are accepted.**

J. Michael McMahon, Clerk of Court

by: _____

, Deputy Clerk

APPEAL FORMS

Docket Support Unit

Revised: March 4, 2003

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-----X
|
-V-
|
-----X

NOTICE OF APPEAL

civ. ()

Notice is hereby given that _____
(party)
hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the _____ day of _____, _____
(day) (month) (year)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

() _____
(Telephone Number)

Note: You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 1

APPEAL FORMS

Docket Support Unit

Revised: March 4, 2003

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-----X
|
-V-
|
-----X

MOTION FOR EXTENSION OF TIME
TO FILE A NOTICE OF APPEAL

civ. ()

Pursuant to Fed. R. App. P. 4(a)(5), _____ respectfully
(party)
requests leave to file the within notice of appeal out of time. _____
(party)
desires to appeal the judgment in this action entered on _____ but failed to file a
(day)
notice of appeal within the required number of days because:

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

() _____
(Telephone Number)

Note: You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment was entered (90 days if the United States or an officer or agency of the United States is a party).

FORM 2

APPEAL FORMS

Docket Support Unit

Revised: March 4, 2003

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-----X
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-V-
|
-----X

NOTICE OF APPEAL
AND
MOTION FOR EXTENSION OF TIME

civ. ()

1. Notice is hereby given that _____ hereby appeals to
(party)
the United States Court of Appeals for the Second Circuit from the judgment entered on _____.
[Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time
_____ respectfully requests the court to grant an extension of time in
(party)
accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, _____ states that
(party)
this Court's judgment was received on _____ and that this form was mailed to the
(date)
court on _____
(date)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

() _____
(Telephone Number)

Note: You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 3

APPEAL FORMS

Docket Support Unit

Revised: March 4, 2003

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-----X
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-V-
|
-----X

AFFIRMATION OF SERVICE

civ. ()

I, _____, declare under penalty of perjury that I have
served a copy of the attached _____

_____ upon _____

_____ whose address is: _____

Date: _____
New York, New York

(Signature)

(Address)

(City, State and Zip Code)

FORM 4

APPEAL FORMS

Docket Support Unit

Revised: March 4, 2003