

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

PRESENT: HON. LEWIS BART STONE

PART 50⁵

Index Number : 401290/2007

BUKSHA, LYNNE DIANE

vs

ST. LUKE'S-ROOSEVELT HOSPITAL

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion is denied and the cross motion granted. The petition is dismissed, in accordance with the annexed decision and order

FILED
JUN 22 2007

COUNTY CLERK'S OFFICE
NEW YORK

JUN 22 2007
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 19 June 07

Lewis Bart Stone
HON. LEWIS BART STONE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50S

JUN 22 2007

In the Matter of the Application of
LYNN BUKSHA,

COUNTY CLERK'S OFFICE
NEW YORK

Petitioners, : DECISION AND
ORDER

-against- :

THE NEW YORK STATE DIVISION OF HUMAN :
RIGHTS and ST. LUKES ROOSEVELT : INDEX NUMBER
HOSPITAL CENTER, : 401290/07

Respondent. :

-----X
Hon. Lewis Bart Stone, J

In this Civil Practice Law and Rules ("CPLR"), Article 78 proceeding, Petitioner Lynn Buksha ("Buksha"), pro se, seeks to have this Court reverse the determination (the "Determination") of the New York State Division of Human Rights ("SDHR") dated January 10, 2007, which dismissed Buksha's complaint filed with the SDHR charging St. Lukes/Roosevelt Hospital Center (the "Hospital"), with discrimination. The Hospital has cross moved to dismiss Buksha's Article 78 petition on the grounds that she has failed to establish the SDHR's determination was arbitrary and capricious.

On September 7, 2004, Buksha filed a complaint with SDHR alleging discriminatory treatment during her son's admission to the Hospital. SDHR

conducted an investigation of Buksha's complaint and reached the determination that the complaint was unfounded.

Buksha's son, Weslynn Jones, was born April 13, 2003 at the Hospital. Buksha brought Weslynn to the Hospital sixteen times in the first thirteen months of Weslynn's life, complaining of various illnesses. On several occasions, Buksha complained of asthma or seizures or fever but no evidence of such could be found. On some occasions, Weslynn was treated for some illnesses and released. The investigation revealed that Buksha and the physicians at the Hospital often disagreed with the treatment of Weslynn.

On January 21, 2004, Buksha filed a complaint against a physician at the Hospital with the Office of Professional Medical Conduct which was extensively investigated and concluded to be unfounded. Based on Buksha's own medical and psychiatric history and out of concern for the welfare of Weslynn, the Hospital reported Buksha to the Administration of Child Services ("ACS").

On September 7, 2004, Buksha filed a public accommodation complaint with SDHR alleging that the Hospital discriminated against her based on her race and disability. After investigation and review, the SDHR concluded that there was "no probable cause" to believe the Hospital had engaged in an unlawful discriminatory practice complained of and dismissed Buksha's petition.

CONCLUSIONS OF LAW

Under the Article 78 of the CPLR, a decision of an agency may only be vacated if the “determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode or penalty or discipline imposed.” CPLR §7803(3).

The sole issue presented to this Court is whether the SDHR decision to dismiss Buksha’s complaint was arbitrary and capricious or an abuse of discretion. Matter of Pell v. Board of Education, 34 NY2d 222, 230 (1974). In the review process, the role of this Court is to ascertain whether a rational basis exists for such an administrative decision. A rational basis exists where the administration’s determination rests on adequate evidence and a court must not disturb a determination if a rational basis is found. Sewell v. City of New York, 182 AD2d 469, 473 (1st Dept. 1992).

Buksha argues in substance that the findings of SDHR are arbitrary and capricious because the witnesses are not credible and that the Hospital retaliated against her for making the complaint and thus created a “hostile hospital environment” for her and her son.

The record shows that SDHR determined that the Hospital had properly assessed and responded to Buksha's apparent "Munchausen syndrome by proxy"¹ and treated her appropriately without regard to race or disability.

Furthermore, in reviewing the record, this Court finds that the SDHR's decision to dismiss Buksha's complaint was, under the circumstances, reasonable and rational. SDHR reviewed documentary evidence from both parties and conducted its own investigation and concluded that Buksha's had failed to demonstrate that the Hospital's medical decisions regarding her son's treatment and welfare were motivated by either discrimination or retaliation.

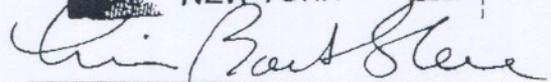
The Court finds that Buksha has failed to meet the burden of proof that the determination of SDHR was arbitrary and capricious. The petition is therefore dismissed.

FILED

This constitutes the Decision and Order of the Court. JUN 22 2007

DATED: JUNE 19, 2007
NEW YORK, NEW YORK

COUNTY CLERK'S OFFICE
NEW YORK



Hon. Lewis Bart Stone
Justice of the Supreme Court

¹ This strange but medically recognized condition exists where a parent continually seeks medical intervention for a child for diseases or medical problems which do not exist at many hospitals and from many doctors and regularly assails the medical profession for failing to care for the child.