

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

JANE S. SOLOMON

PRESENT: _____
Justice

PART 55

Matth & Anthony J. Fox

INDEX NO. 400036/07

MOTION DATE 3/28/07

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

NYS Div. of Human Rights

The following papers, numbered 1 to 9 were read on this motion to/for Art. 78 relief

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED
<u>1-3</u>
<u>4-6</u>
<u>7-9</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ^{adjudged} ordered that this ~~motion~~ petition is decided in accordance with the enured remonstrance decision order and judgment.

UNFILED JUDGMENT
his judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 41B).

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

Dated: June 22, 2007

J.S.C.
JANE S. SOLOMON

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 55

In the Matter of the Application of) DECISION, ORDER and
ANTHONY J. FOX,) JUDGMENT
)
)
Petitioner,)
)
For a Judgment under Article 78 of the)
Civil Practice Law and Rules)
)
-against-) Index No. 400036/07
)
NEW YORK STATE DIVISION OF HUMAN)
RIGHTS and NEW YORK CITY HOUSING)
AUTHORITY,)

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
Respondent's attorney, counsel or other legal representative must
appear in person at the Judgment Clerk's Desk (Room
415).

JANE S. SOLOMON, J.:

Petitioner Anthony J. Fox brings this Article 78 proceeding, seeking a judgment reversing the determination of respondent New York State Division of Human Rights dated November 20, 2005.

In September 2004, petitioner, who is a quadriplegic, applied to respondent New York City Housing Authority (NYCHA) for a one bedroom apartment which was handicapped-accessible with space for a Hoyer Lift and a mobile toilet. Petitioner does not yet have an apartment.

On August 23, 2006, petitioner filed a complaint with the State Division of Human Rights charging NYCHA with unlawfully discriminating against petitioner because of his disability in violation of the New York State Human Rights Law and the Federal Fair Housing Law. The complaint alleges that the failure of

NYCHA to afford petitioner the aforementioned apartment constitutes discrimination based on petitioner's disability.

By order dated November 20, 2005, petitioner's complaint was dismissed. The order states in pertinent part:

Complainant has alleged that the failure of respondent to afford him with a handicapped accessible apartment with sufficient space for a Hoyer lift and mobile toilet constitutes discrimination based on his disability. However complainant, who presently resides in his mother's sixth floor walk up apartment, already has been granted the highest level medical priority to which he is entitled. While the complainant does have the right to a housing priority predicated upon his disability, he does not have the right to be placed on the top of the list. Complainant already has received from respondent the highest priority to which he is entitled, an N-3 Health Emergency priority. Complainant could have received an even higher priority, an N-1, by entering the family unification program. However, complainant stated both in conference with the Division and in his rebuttal that he does not want to pursue this option and prefers retaining his status as single.

Additionally, complainant stated to the Division that the crux of his complaint was that he believes he was misinformed about Section 8. However, complainant had a prior Section 8 voucher which he allowed to lapse because he failed to timely rent an apartment. It is also noted that complainant may choose a borough other than Manhattan for a housing preference and hence further increase his probability of obtaining public housing accommodations.

Complainant has received the highest priority ranking for which he is entitled due to his disability, and has proffered no evidence that he was the victim of any disparate

treatment or discrimination at the behest of respondent precipitating from his status as a disabled individual. As such, there is insufficient evidence presented in this case to sustain a determination of probable cause.

State Division of Human Rights order of November 20, 2005.

In Matter of McFarland v New York State Division of Human Rights, the Appellate Division, First Department wrote that:

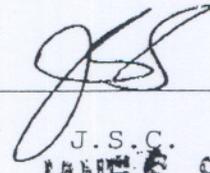
Where, as here, a determination of no probable cause is rendered without holding a public hearing pursuant to Executive Law § 297 (4) (a), the appropriate standard of review is whether the determination was arbitrary and capricious or lacking a rational basis. (Matter of Hone v New York State Div. of Human Rights, (223 AD2d 761, 762 [3d Dept 1996]; Matter of Giles v State Div. of Human Rights, 166 AD2d 779, 780 [3d Dept 1990].)

241 AD2d 108 (1st dept 1998). Here, petitioner has not submitted anything that shows that the determination was arbitrary and capricious or that it lacks a rational basis. Petitioner has not even submitted anything that would show that he was the victim of any disparate treatment or discrimination at the behest of respondent precipitating from his status as a disabled individual. Accordingly, it is

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed with costs and disbursements to respondents.

Dated: June 12, 2007

ENTER:



J. S. C.
JANE S. SOLOMON

UNFILED JUDGMENT
his judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or party representative must appear in person at the County Clerk's Desk (Room 415).