

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JOSEPH L. JONES

CIVIL ACTION

VERSUS

NO. 10-525

LOUISIANA PUBLIC SERVICE COMMISSION,
ET AL.

RULING

This matter is before the Court on a motion (doc. 35) to dismiss filed by defendant Louisiana Department of Health and Hospitals (LDHH). Plaintiff has filed an opposition (doc. 39) and a request to file supplemental more definite statement (doc. 40). There is no need for oral argument.

Rule 12(b)(6) provides for dismissal for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). In reviewing the complaint, courts accept all well-pleaded facts in the complaint as true. *C.C. Port, Ltd. v. Davis-Penn Mortg. Co.*, 61 F.3d 288, 289 (5th Cir. 1995). Courts do not, however, accept as true all legal conclusions. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Instead, “the complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). That is, a plaintiff must provide sufficient factual content for the court to reasonably infer that the plaintiff is entitled to relief based upon the context of the case and the court’s “judicial experience and common sense.” *Id.* at 1949-50. Courts, therefore, must first identify the conclusory allegations, which do not receive a presumption of truth,

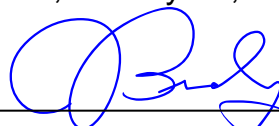
and then determine whether the remaining factual allegations plausibly give rise to an entitlement of relief. *Id.* at 1950.

Upon consideration of the legal arguments raised by defendant LDHH's motion to dismiss (doc. 35), and considering the allegations stated in plaintiff's complaint and in plaintiff's more definite statement (doc. 26), the court finds that plaintiff Jones has failed to state a claim against LDHH upon which relief can be granted. Putting aside the conclusory allegations, which are not entitled to a presumption of truth, and focusing on the factual allegations in the complaint and amended statement (doc. 26), plaintiff Jones does not allege sufficient facts entitling him to relief against LDHH.

Plaintiff has requested leave to file a supplemental more definite statement against LPSC, LDEQ, and LDHH (doc. 40). However, plaintiff has already filed a more definite statement regarding his claims against these defendants (doc. 26). The court finds that any further amended complaint or "supplemental more definite statement" by plaintiff against LPSC, LDEQ, and LDHH would be futile.

Defendant Louisiana Department of Health and Hospitals' motion (doc. 35) to dismiss is GRANTED and plaintiff's claims against Louisiana Department of Health and Hospitals are HEREBY DISMISSED. Plaintiff's request (doc. 40) to file supplemental more definite statement is HEREBY DENIED.

Signed in Baton Rouge, Louisiana, on July 25, 2011.



JUDGE JAMES J. BRADY
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA