Matter of Phillips v New York State Div. of Human Rights

2013 NY Slip Op 32232(U)

September 20, 2013

Sup Ct, New York County

Docket Number: 100823/2013

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

SCANNED ON 9/23/2013

[* 1]

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

PRESENT: Hon. EILEEN A. RAKOWER, *Justice* PART 15

In the Matter of the Application of
AVALON PHILLIPS,

Petitioner,

- v -

NEW YORK STATE DIVISION OF HUMAN RIGHTS
AND VERIZON NEW YORK INC.,

Respondents.

INDEX NO. 100823/2013
MOTION DATE ______
MOTION SEQ. NO. 1 (2)
MOTION CAL. NO. ______

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1, 2
Answer — Affidavits — Exhibits	3, 4, 5
Replying Affidavits	6

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SEP 23 2013
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NEW YORK

Cross-Motion: X Yes No

Avalon Phillips ("Petitioner") brings this CPLR Article 78 Petition to reverse the determination by the New York State Division of Human Rights ("NYSDHR") and to direct that Verizon New York Inc. ("Verizon") has violated Petitioner's due process rights by engaging in unlawful discriminatory practice, in violation of N.Y. Exec. Law, Art. 15 ("Human Rights Law") and the New York City Human Rights Law under Title 8 of the Administrative Code of the City of New York. Verizon cross-moves to dismiss the petition.

Petitioner, who is black and suffers from an alleged back injury, began working for Verizon as a field technician on October 11, 1990. Petitioner asserts that he was treated differently by Verizon because of his race/color or disability.

On October 19, 2012, Petitioner filed a complaint before the NYSDHR

alleging that he was subject to unlawful discriminatory actions based on his race, and due to his disability. Specifically, Petitioner alleges:

> 1. I am Black. I also suffer from a condition considered to be a disability within the meaning of the New York State Human Rights Law (Back injury). Because of this, I have been subject to unlawful discriminatory actions.
>
> 2. On October 23, 1990 I was hired by Respondent as a Technician. I was assigned to 605 West 153rd Street. I believe that my work performance has been satisfactory.
>
> 3. In 1997, I injured my back in a car accident. In 2011, I went out sick due to my back injury. Respondent approved my absence. I returned to work in late November 2011. However when I returned to work I was suspended for taking too much time off of work.
>
> 4. When I returned to work from suspension in December 2011, my vehicle was taken away from me. After that I was only given the use of old retired vehicles that were considered unsafe for other Respondent employees to drive. I also did not receive proper tools to my job. I often had to borrow tools from other Respondent employees at a job site to finish tasks.

In a response dated November 26, 2012, Verizon denied these allegations stating that "[t]he Company's action were based solely on legitimate business considerations, unrelated to any protected classification."

Upon the conclusion of NYSDHR's investigation of Petitioner's allegations, it issued a Determination dated April 9, 2013 finding that there was "No Probable Cause" to believe that Verizon engaged in the alleged unlawful practices. The Determination revealed no probable cause to believe that Verizon "engaged in or is engaging in unlawful discriminatory practice complained of [in the Complaint." The NYSDHR found that there was no evidence to support Petitioner's claim that his race/color and/or disability played a role in any of the alleged adverse actions he suffered, including his termination. The NYSDHR noted that Petitioner, despite his multiple submissions and amendments to his complaint, "failed to

proffer evidence that he was treated differently because of his race/color, or disability."

With respect to Petitioner's allegation that his November 2011 suspension while out of work on FMLA leave was discriminatory, the NYSDHR's investigation concluded that such allegation was not supported by the record. Specifically, the NYSDHR concluded that while Petitioner was in fact suspended, Verizon articulated a legitimate, non-discriminatory basis for such suspension- namely that Petitioner failed to submit the required medical documentation to Verizon Absence Administration team despite being provided "ample time to do so."

Petitioner also alleged in his Complaint that his reassignment to the 153rd Street garage in or around November 2011, and subsequent reassignment to the King Street garage in or around April 2012, was discriminatory. The NYSDHR rejected both of these allegations, finding that both reassignments were effectuated based on legitimate, non-discriminatory reasons. The NYSDHR found that the evidence demonstrated that Verizon reassigned Petitioner to the King Street garage based on a reorganization that resulted in various individuals being reassigned to different wire centers- not based on any unlawful discriminatory motive. Notably, those selected to relocate based on these reorganizations were from an array of races. Based upon such evidence, the NYSDHR found that ther was no probable cause to credit Petitioner's allegations that these reassignments were based on his race/color and/or disability.

Petitioner brings the instant Article 78 petition seeking the reversal of the NYSDHR's Determination and a separate finding that Verizon "violated the due process rights of [Petitioner], by engaging in unlawful discriminatory practice, in violation of N.Y. Exec. Law Art. 15 (Human Rights Law) and the New York City Human Rights Law under Title 8 of the Administrative Code of the City of New York."

It is well settled that the "[j]udicial review of an administrative determination is confined to the 'facts and record adduced before the agency'." (*Matter of Yarborough v. Franco*, 95 N.Y.2d 342, 347 [2000], quoting Matter of Fanelli v. New York City Conciliation & Appeals Board, 90 A.D.2d 756 [1st Dept. 1982]). The reviewing court may not substitute its judgment for that of the

agency's determination but must decide if the agency's decision is supported on any reasonable basis. (*Matter of Clancy -Cullen Storage Co. v. Board of Elections of the City of New York*, 98 A.D.2d 635,636 [1st Dept. 1983]). Once the court finds a rational basis exists for the agency's determination, its review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. v. Glasser*, 30 N.Y. 2d 269, 277-278 [1972]). The court may only declare an agency's determination "arbitrary and capricious" if it finds that there is no rational basis for the determination. (*Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]).

In the instant action, the NYSDHR's Determination of "no probable cause" was supported by a rational basis, based upon the NYSDHR's investigation and findings that Verizon articulated legitimate, non-discriminatory basis for each of its actions.

To the extent that Petitioner seeks a judgment that Verizon violated the NYSHRL and NYCHRL, New York Executive Law §297(9) provides:

> [a]ny person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of appropriate jurisdiction for damages... unless such person had filed a complaint hereunder or with any local commission on human rights.

Similarly, under NYC Administrative Code §8-502(a):

> [A]ny person claiming to be aggrieved by an unlawful discriminatory practice... shall have a cause of action in any court of competent jurisdiction for damages... unless such person has filed a complaint with the city commission on human rights or with the state division of human rights with respect to such alleged unlawful discriminatory practice or act of discriminatory harassment or violence.

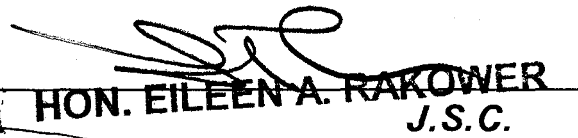
Thus, a party who elects to pursue his claim by filing a complaint with the NYSDHR is barred from also seeking a judicial remedy based on the same allegedly discriminatory practices. (*See, Ehrlich v. Kantor*, 213 A.D.2d 477 [2d Dept 1995]). Based on Petitioner's prior filing with the NYSDHR, and the NYSDHR's determination, Petitioner's claims under NYSHRL and NYCHRL are dismissed.

Wherefore, it is hereby,

ORDERED that this Petition is denied and the proceeding is dismissed.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: September 20, 2013



HON. EILEEN A. RAKOWER
J.S.C.

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION

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