

State of New York
Court of Appeals



In the Matter of

ROY DEN HOLLANDER,

Petitioner-Appellant,

-against-

THE CITY OF NEW YORK COMMISSION ON HUMAN RIGHTS,

Respondent-Respondent.

APPELLANT'S APPENDIX

ZACHARY W. CARTER
CORPORATION COUNSEL
OF THE CITY OF NEW YORK
ATTN.: INGRID R. GUSTAFSON, ESQ.
Attorney for Respondent-Respondent
New York City Law Department
100 Church Street, Room 20-101
New York, New York 10007
(212) 356-2294
NYCAppeals@law.nyc.gov

ROY DEN HOLLANDER, ESQ.
Petitioner-Appellant, Pro Se
545 East 14th Street, 10D
New York, New York 10009
(917) 687-0652
roy17den@gmail.com

Supreme Court, New York County, Index No. 100299/13

TABLE OF CONTENTS

	<i>Page</i>
Statement Pursuant to CPLR 5531	A1
Order Granting Leave to Appeal to the Court of Appeals, dated September 16, 2014.....	A2
Appellate Division, First Department Decision and Order, dated June 3, 2014.....	A3-A5
 <u><i>Appendix filed in Appellate Division, First Department:</i></u>	
Pre-Argument Statement dated August 13, 2013	A6-A9
Notice of Appeal filed August 16, 2013.....	A10-A11
N.Y. Sup. Order and Judgment entered August 6, 2013	A12-A17
Verified Petition dated February 5, 2013	A18-A31
First Supplement to Petition dated February 28, 2013	A32-A36
N.Y.C. Human Rights Commission Answer dated April 4, 2013.....	A37-A45
Carlos Velez <i>Determination and Order</i> dated July 27, 2012	A46-A51
N.Y.C. Human Rights Commission <i>Final Determination and Order</i> dated January 11, 2013	A52-A53
N.Y. State Division of Human Rights <i>Determination and Order After Investigation</i> dated September 16, 2010.....	A54-A56
Letter to N.Y.C. Human Rights Commissioner Gatling dated October 15, 2010.....	A57-A58
<i>Stern v. N.Y.C. Commn. On Human Rights</i> , N.Y. Sup. Ct., Index No. 110668/05	A59-A62

Jezebel Article, <i>NYC Attorney Out To Reclaim His Ex Wife</i> <i>From Feminism's Clutches, Get Laid Easier</i>	A63-A64
Tasty 1027 Blog	A65-A67
Maria W. NY Blog.....	A68
Kelly R. Paris France Blog	A69-A70
N.Y. State Division of Human Rights <i>Information for Complainants</i> ...	A71-A73
Certification of Record on Appeal, CPLR 2105.....	A74
Certification Pursuant to CPLR 2105 (for Appendix to Court of Appeals)	A75

**State of New York
Court of Appeals**



In the Matter of

ROY DEN HOLLANDER,

Petitioner-Appellant,

-against-

THE CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS,

Respondent-Respondent.

STATEMENT PURSUANT TO CPLR 5531

1. Supreme Court, New York County, Index No. 100299/2013.
2. The full names of the original parties are the same; there has been no change.
3. Action commenced in Supreme Court, New York County.
4. Action was commenced by the filing of a Notice of Petition and Verified Petition.
5. Nature of action: This is a special proceeding to annul the City of New York Commission on Human Rights' dismissal under the election of remedies doctrine of Petitioner-Appellant's age discrimination complaint against a public accommodation nightclub.
6. This appeal is from the Decision and Order of the Appellate Division, First Department dated June 3, 2014, which appealed the Order and Judgment of the Supreme Court, New York County entered August 6, 2013.
7. Appeal is on the Appendix method.

State of New York
Court of Appeals

*Decided and Entered on the
sixteenth day of September, 2014*

Present, HON. JONATHAN LIPPMAN, *Chief Judge, presiding.*

Mo. No. 2014-646
In the Matter of Roy Den
Hollander,
 Appellant,
 v.
The City of New York Commission
on Human Rights,
 Respondent.

Appellant having moved for leave to appeal to the Court
of Appeals in the above cause;

Upon the papers filed and due deliberation, it is
ORDERED, that the motion is granted.



Andrew W. Klein
Clerk of the Court

petitioner from filing with CCHR the instant claim of age discrimination with respect to the same alleged incident (see NYC Admin Code § 8-109[f]). This is so even though petitioner is now advancing a different theory of invidious discrimination – age discrimination as opposed to gender discrimination (see *Benjamin v New York City Dept. of Health*, 57 AD3d 403, 404 [1st Dept 2008], *lv dismissed*, 14 NY3d 880 [2010]; *Jones v Gilman Paper Co.*, 166 AD2d 294, 294 [1st Dept 1990]).

In any event, CCHR's alternative determination of "no probable cause" has a rational basis and is not arbitrary and capricious (see *David v New York City Commn. on Human Rights*, 57 AD3d 406, 407 [1st Dept 2008]; *de la Concha v Gatling*, 13 AD3d 74, 75 [1st Dept 2004]). Petitioner was afforded a "full and fair opportunity to present [his] case" (*Matter of Block v Gatling*, 84 AD3d 445, 446 [1st Dept 2011], *lv denied*, 17 NY3d 709 [2011]), and received procedural due process (see *Matter of Daxor Corp. v State of N.Y. Dept. of Health*, 90 NY2d 89, 98 [1997], *cert denied*, 523 US 1074 [1997]; *Pinder v City of New York*, 49 AD3d 280, 281 [1st Dept 2008]). There is absolutely no evidence

that CCHR's Executive Director was biased against him, let alone any showing that any such bias "affect[ed] the result" (*People v Moreno*, 70 NY2d 403, 407 [internal punctuation omitted]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JUNE 3, 2014


CLERK

A 6

Pre-Argument Statement dated August 13, 2013 [A6-A9]

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

-----X

In the Matter of the Application of

Index No. 100299/2013

ROY DEN HOLLANDER,

**PRE-ARGUMENT
STATEMENT**

Petitioner-Appellant,

-against-

THE CITY OF NEW YORK COMMISSION ON
HUMAN RIGHTS,

Respondent-Respondent.

-----X

1. The title of the action is Hollander v. NYC Commission on Human Rights.
2. There has been no change in the title of the action.
3. The petitioner-appellant is Roy Den Hollander, an attorney representing himself, 545 East 14th Street, 10D, New York, N.Y. 10009, (917) 687-0652, rdhhh@yahoo.com.
4. Respondent-respondent is represented by Leonard M. Braman, Senior Counsel, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, NY 10007, (212) 356-2294.
5. Court and County from which appeal is taken: Supreme Court, New York County.
6. This appeal is from an order and judgment entered on August 6, 2013.

7. There is no related action or proceeding now pending in any court of this or any other jurisdiction except for (1) a Motion to Supplement the Petition in the Supreme Court that was filed on the very same day that the Order and Judgment was issued. The petitioner did not learn of the Order and Judgment until the following day when he received notice through the e-track system. That Supplement raised deprivations of the petitioner's federally protected rights under the Fourteenth Amendment to the U.S. Constitution and (2) a Motion to Reargue the Petition in the Supreme Court that would include consideration of the alleged deprivations of the petitioner's Fourteenth Amendment rights.
8. This is a special proceeding that alleges the Commission on Human Rights and its Executive Director of Law Enforcement, Carlos Velez, intentionally discriminated against the petitioner because of his ancestry (Euro-American protestant), his speech (litigates for men's rights), his marital status (divorced) when Velez and the Commission dismissed an age discrimination complaint filed by the petitioner against a public accommodation nightclub. The Commission's Final Order and Determination was not based on substantial evidence, relied on misrepresentations, resulted from an abbreviated and one sided investigation, and Velez failed to follow the Commission's procedures in

investigating the age-discrimination complaint. The petitioner seeks (1) reversal of the Commission's Final Order; (2) that the Commission implement anti-discrimination policies to avoid unlawful discriminatory acts by its employees against Euro-Americans of protestant origin, divorced husbands, and any man who chooses to petition the government for a redress of grievances; (3) that Carlos Velez undergo sensitivity training to the federally protected rights of those who belong to groups that he does not identify with; (4) nominal damages from New York City plus compensatory damages in the amount of the disbursements for bringing this action; and (5) incidental punitive damages from Velez in his personal capacity for the amount of \$3,000.

9. The Supreme Court denied reversal of the Commission's Final Order, granted the Commission's motion to dismiss, and as of the filing of this Pre-Argument Statement, has not addressed the discrimination claims against the Commission and Carlos Velez.
10. The ground for seeking annulment or modification of the Supreme Court's decision are (1) age-discrimination by a public accommodation nightclub is not legally justified in order to further the club's image by populating the finite space within the club with only people who fit that image; (2) substantial evidence does not include Internet blogs by

unknown persons concerning irrelevant events; (3) an investigation is inadequate when it fails to use reasonable efforts to interview two of the three persons who were eyewitnesses, wrongly blames the petitioner for the absence of a video tape that lacked probative value because it had no audio, and misrepresents findings by the State Human Rights Division's investigation; (4) New York's election of remedies law does not bar the bringing of a different claim in a different agency stemming out of the same fact situation; (5) violation of procedural due process occurs when an agency fails to follow its procedures; and (6) the allegations of discrimination based on ancestry, speech, and marital status need to be decided.

11. There is no additional appeal in this action.

Dated: New York, N.Y.
August 12, 2013

/S/

By: Roy Den Hollander
Pro se plaintiff-appellant
545 East 14 St., 10D
New York, N.Y. 10009
(917) 687-0652

Notice of Appeal filed August 16, 2013 [A10-A11]

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

-----X
In the Matter of the Application of

Index No. 13-100299

ROY DEN HOLLANDER,

Petitioner,

-against-

THE CITY OF NEW YORK COMMISSION ON
HUMAN RIGHTS,

Respondent.
-----X

NOTICE OF APPEAL

NEW YORK
COUNTY CLERK'S OFFICE

AUG 16 2013

NOT COMPARED
WITH COPY FILE

PLEASE TAKE NOTICE, that the petitioner, Roy Den Hollander, appeals to the Appellate Division of the New York Supreme Court in and for the First Department, from an Order and Judgment in the above-entitled proceeding in favor of the defendant, City of New York Commission on Human Rights, against the above-named petitioner, entered in the office of the Clerk of the County of New York on the 6th day of August, 2013. This appeal is taken from each and every part as well as the whole of the Order and Judgment.

Dated: New York, N.Y.
August 12, 2013

NEW YORK
COUNTY CLERK'S OFFICE

AUG 16 2013

NOT COMPARED
WITH COPY FILE



By: Roy Den Hollander
Pro se petitioner
545 East 14 St., 10D
New York, NY 10009
(917) 687-0652

To: Norman Goodman
Clerk of the County of New York
60 Centre Street, Rm. 161

New York, N.Y. 10007
Paul W. Steinberg, Esq.
Attorney for respondent City of New York

Leonard M. Braman
Senior Counsel
Affirmative Litigation Division
New York City Law Department
100 Church Street
New York, NY 10007
(212) 356-2294

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

----- x
In the Matter of the Application of
ROY DEN HOLLANDER,

Petitioner,

-against-

THE CITY OF NEW YORK COMMISSION ON
HUMAN RIGHTS,

Respondent.
----- x

NOTICE OF ENTRY

Index No.: 100299 / 2013

(Part 33; Hunter, J.)

CITY OF NEW YORK DEPT. OF
CORRECTIONS
AUG 15 PM 1:33

PLEASE TAKE NOTICE that the attached is a true copy of an Order in the above-captioned action dated July 30, 2013 and duly entered in the office of the Clerk, New York State Supreme Court, County of New York, on August 6, 2013.

Dated: New York, New York
August 6, 2013

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
*Attorneys for Respondent New York City
Commission on Human Rights*
100 Church Street, Room 20-101
New York, New York 10007
(212) 356-2294

By: 
Leonard M. Braman
Assistant Corporation Counsel

To: Roy Den Hollander, Esq.
Petitioner Pro Se
545 East 14th Street, 10D
New York, New York 10009

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33

-----X
In the Matter of the Application of Roy Den Hollander,

Index No.: 100299/13

Petitioner,

-against-

The City of New York Commission on Human Rights
Respondent.
-----X

Order and Judgment
UNFILED JUDGMENT

This 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 141B).

HON. ALEXANDER W. HUNTER, JR.

Two separate applications, an Article 78 petition and a motion to dismiss, were filed in this matter under motion sequences #1 and #2. Both applications will be decided herein.

Petitioner's application for an order pursuant to CPLR Article 78, reversing the Final Determination and Order, dated January 11, 2013, of the City of New York Commission on Human Rights, and finding that petitioner was unlawfully discriminated against because of his age by Amnesia J.V. LLC, and David L.N.U., is denied and the proceeding is dismissed without costs and disbursements to either party. Respondent's motion to dismiss the petition is granted.

On or about January 10, 2010, petitioner filed a verified complaint with the New York State Division of Human Rights (the "Division") charging Amnesia J.V. LLC ("Amnesia"), a night club, with an unlawful discriminatory practice relating to public accommodations because of sex in violation of Article 15, Executive Law (the "Human Rights Law"). Petitioner alleged that on January 9, 2010, petitioner and a male friend stood on a line in front of Amnesia but was refused admittance by doorman David Last Name Unknown ("L.N.U."), unless petitioner and his friend agreed to purchase a \$350 bottle of alcohol. Petitioner and his friend declined, stepped out of the line, and subsequently observed women entering the night club without having to purchase a \$350 bottle of alcohol.

On September 16, 2010, the Division issued a Determination and Order After Investigation, dismissing petitioner's complaint and ordering the file closed for lack of probable cause. The Division investigated petitioner's complaint and noted *in dicta* that petitioner "is significantly older than [Amnesia's] patrons, and age discrimination is beyond the jurisdiction of the Division with regards to public accommodation."

On October 22, 2010, petitioner filed a verified complaint with respondent the City of New York Commission on Human Rights (the "Commission") charging that Amnesia discriminated against him based upon his age. On July 27, 2012, respondent issued a Determination and Order After Investigation, dismissing petitioner's complaint concluding that (1) respondent was statutorily barred from considering petitioner's discrimination claim because he had previously filed a discrimination complaint with the Division based on the same incident

and (2) probable cause did not exist to infer that Amnesia had engaged in age discrimination (the "July 27, 2012 Administrative Closure").

On August 17, 2012, petitioner appealed the July 27, 2012 Administrative Closure whereby petitioner raised various legal and factual objections. On January 11, 2013, respondent issued a Final Determination and Order After Review upholding its July 27, 2012 Administrative Closure (the "January 11, 2013 Final Determination").

On February 8, 2013, petitioner commenced the instant special proceeding, seeking an order reversing the January 11, 2013 Final Determination of respondent, and finding that petitioner was unlawfully discriminated against because of his age by Amnesia and David L.N.U. Petitioner avers that (1) respondent's finding of no probable cause was not based on the evidence as a whole or substantial evidence; (2) respondent's July 27, 2013 Administrative Closure relied on misrepresentations in finding no probable cause; and (3) respondent conducted an abbreviated and one-sided investigation. On March 1, 2013, petitioner filed a verified supplement to his petition to add a Fourteenth Amendment procedural due process claim against respondent.

In opposition, respondent moves to dismiss, as petitioner's claims are barred under New York City Administrative Code ("Admin. Code") §8-109(f)(iii) and Executive Law ("Exec. Law") §297(9). Respondent avers that petitioner is prohibited from bringing successive discrimination complaints based upon the same incident.

A court may not disturb an administrative decision unless the agency's action was arbitrary and capricious, was in violation of lawful procedures, or was made in excess of its jurisdiction. See CPLR 7803(3); Pell v. Board of Education of Union Free School District No. 1 of the Towns of Scarsdale and Mamaroneck, Westchester County, 34 N.Y.2d 222 (1974). The Commission's no probable cause determinations will not be overturned unless they are arbitrary or capricious, or lack a rational basis. See Matter of Soo Ching Wu v. New York City Commn. on Human Rights, 84 A.D.3d 823 (2nd Dept. 2011).

New York City's Human Rights Law (the "City Human Rights Law") contains an election of remedies provision that requires a petitioner to choose between an administrative remedy and a judicial one. "[A]ny person claiming to be aggrieved by an unlawful discriminatory practice... shall have a cause of action in any court of competent jurisdiction... unless such person has filed a complaint with the city commission on human rights or with the state division of human rights..." Admin. Code §8-502(a). Moreover, the City Human Rights Law does not have jurisdiction to entertain a complaint if there was a previous dismissal by either a court of competent jurisdiction or the Division "with respect to the same grievance which is the subject of the complaint." Admin. Code. §8-109(f).

Similarly, the Human Rights Law provides for an election of remedies. See Exec. Law §297(9). Exceptions to the election of remedies bar applies when the complaint was dismissed on the grounds of (1) administrative convenience; (2) untimeliness; or (3) annulment of the election of remedies. Id.

Controlling case law construes the doctrine of election of remedies to preclude subsequent complaints based on the same alleged incident, same underlying course of conduct, or same operative events. See Emil v. Dewey, 49 N.Y.2d 968 (1980); Benjamin v. New York City Dept. of Health, 57 A.D.3d 403 (1st Dept. 2008); Higgins v. NYP Holdings, Inc., 836 F. Supp. 2d 182 (S.D.N.Y. 2011). “The facts need not be perfectly identical, and merely adding some additional facts and/or re-labeling the claim will not prevent the application of the doctrine of election of remedies.” Benjamin v. New York City Dept. of Health, 17 Misc. 3d 1122(A) (NY Sup Ct 2007), citing Bhagalia v. State of New York, 228 A.D.2d 882 (3rd Dept. 1996). Petitioner’s age discrimination claim “constitutes the same cause of action as the formerly litigated [gender] claim,” as it arose out of the same transaction or occurrence from January 9, 2010. Troy v. Goord, 300 A.D.2d 1086, 1087 (4th Dept. 2002); see also Smith v. Russell Sage Coll., 54 N.Y.2d 185, 192-194 (1981); Tsabbar v. Delena, 300 A.D.2d 196, 197 (1st Dept. 2002). Accordingly, petitioner’s application for an order reversing the Commission’s January 11, 2013 Final Determination is denied pursuant to Admin. Code §§8-502(a); 8-109(f)(iii); and Exec. Law §297(9).

No further review is warranted in this matter, however were this court to review the January 11, 2013 Final Determination, this court would find that the above mentioned determination was rationally based. Contrary to petitioner’s contention, Amnesia’s decision for requiring \$350 bottle service was based upon a nondiscriminatory, legitimate reason of “limited space and the goal of furthering the image of [Amnesia’s] establishment,” as determined by the Division. This finding, and the lack of any credible basis in the record before the Commission to find age discrimination, provides a rational basis for this court to affirm the Commission’s January 11, 2013 Final Determination.

There is no merit to petitioner’s contention that the Commission failed to conduct an adequate inquiry into his complaint, as the Commission has “broad discretion in determining the method to be employed in investigating a claim.” Wu v. N.Y.C. Commn. on Human Rights, 84 A.D.3d 823, 824 (2nd Dept. 2011), quoting Matter of Levin v. N.Y.C. Commn. on Human Rights, 12 A.D.3d 328, 329 (1st Dept. 2004); see also Stern v. N.Y.C. Commn. on Human Rights, 38 A.D.3d 302, 302 (1st Dept. 2007). It cannot be said that the Commission conducted a one-sided or abbreviated investigation, as it: conducted an intake interview prior to the filing of his complaint; served petitioner’s complaint on his behalf; demanded and obtained a Verified Answer from Amnesia; gave petitioner an opportunity to submit a Rebuttal; obtained and reviewed the Division’s entire file on petitioner’s previous discrimination complaint; attempted to locate David L.N.U.; and attempted to obtain Amnesia’s surveillance video. Consequently, respondent’s investigation was not so one-sided to render it arbitrary or capricious.

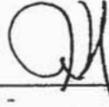
Petitioner’s Fourteenth Amendment procedural due process claim is dismissed, as petitioner was afforded constitutional minimum due process of notice and the opportunity to be heard. See Mathews v. Eldridge, 424 U.S. 319 (1976). Furthermore, petitioner had an adequate post-deprivation opportunity to be heard in this Article 78 proceeding. See Velella v. N.Y.C. Local Conditional Release Commn., 13 A.D.3d 201, 202 (1st Dept. 2004).

Accordingly, it is hereby,

ADJUDGED that petitioner's application pursuant to CPLR Article 78, reversing the Final Determination and Order, dated January 11, 2013, of the City of New York Commission on Human Rights, and finding that petitioner was unlawfully discriminated against because of his age by Amnesia J.V. LLC, and David L.N.U., is denied and the proceeding is dismissed without costs and disbursements to either party. Respondent's motion to dismiss the petition is granted.

Dated: July 30, 2013

ENTER:



J.S.C.

ALEXANDER W. HUNTER JR



CLERK

FILED

AUG -6 2013

COUNTY CLERK'S OFFICE
NEW YORK

Index No. 100299/2013

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

In the Matter of the Application of

ROY DEN HOLLANDER,

Petitioner,

- against -

THE CITY OF NEW YORK COMMISSION ON
HUMAN RIGHTS,

Respondent.

JUDGMENT

MICHAEL A. CARDOZO

*Corporation Counsel of the City of New York
Attorney for Respondent The City of New York
Commission on Human Rights
100 Church Street, Room 20-101
New York, N.Y. 10007*

*Of Counsel: Leonard M. Berman
Tel: (212) 356-2294
Law Manger No. 2013-005235*

FILED

AUG - 6 2013

AT 11:20 A M
N.Y., CO. CLK'S OFFICE

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

-----X
In the Matter of the Application of

Index No. 13-100299

ROY DEN HOLLANDER,

VERIFIED PETITION

Petitioner,

-against-

THE CITY OF NEW YORK COMMISSION ON
HUMAN RIGHTS,

Respondent.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK:

The verified petition of Roy Den Hollander respectfully shows this Court as follows:

Parties

1. Petitioner Roy Den Hollander resides at 545 East 14th Street, Apartment 10D, New York, N.Y. 10009.
2. The Respondent is the City of New York Commission on Human Rights (“Commission”) located at 40 Rector Street, 10th Floor, New York, N.Y. 10006.

Proceedings

3. The Commission issued a final Determination and Order After Review (“Final Order”) (Ex. A) on January 11, 2013, (served on January 15, 2013, Ex. B) that upheld its July 27, 2012, Administrative Closure (Ex. C), which dismissed an age-discrimination complaint filed by Den Hollander.
4. The Administrative Closure, titled “Determination and Order After Investigation” found that “[a]fter investigation, the Commission has determined that there is NO PROBABLE CAUSE to believe” that the nightclub Amnesia and its doorman David “L.N.U.” unlawfully discriminated against Den Hollander and a friend of his because of their ages.

Facts

5. On Saturday, January 9, 2010, at approximately 11:05 PM, Den Hollander and his friend, both older, middle-aged males, stood on a line in front of the nightclub Amnesia in order to enter the club, which opened at 11 PM. Two individuals immediately in front of them, who appeared to be in their 20s or 30s approached the Amnesia doorman, David “L.N.U.,” who checked their identification and then allowed them to enter the club without any further requirement. When Den Hollander and his friend approached David “L.N.U.,” he told them they must agree to buy a bottle of alcohol for \$350 in order to enter the club. Den Hollander and his friend declined and were asked to step out of the line, which they did. Den Hollander and his friend then witnessed another pair of individuals, who appeared to be in their 20s or 30s, enter the club without having to agree to buy a bottle of alcohol for \$350.

6. The following week of January 10, 2010, Den Hollander filed a complaint with the New York State Division of Human Rights for what he believed at the time was sex discrimination. (Ex. D, *State Human Rights Division Complaint*).

7. The State Human Rights Division issued a decision on September 16, 2010, in which it concluded that the discrimination against Den Hollander and his friend was not based on sex but probably because of their age. (Ex. F. *State Determination and Order After Investigation* at p. 2). The State, however, was powerless to remedy the situation because age discrimination in public accommodations is outside its jurisdiction:

“Based on observations made during the field visit, the vast majority of the patrons of the nightclub [Amnesia] appeared to be under the age of 30 years. Respondent [Amnesia] asserts that, when the nightclub is crowded, respondent employs an admissions strategy to limit the number of individuals, male and female, who do not have the appearance respondent desires to maintain the image of the nightclub. A photo on complainant’s website suggests that he is significantly older than respondent’s patrons, and age discrimination is beyond the jurisdiction of the Division with regards to public accommodation.”

(Ex. F, *State Determination and Order After Investigation* at p. 2, second full paragraph).

8. On receiving the State’s decision, Den Hollander immediately made an October 15, 2010, appointment with the New York City Commission on Human Rights, which does have jurisdiction over age discrimination, in order to initiate the process of filing a complaint against Amnesia for age discrimination.

9. On October 22, 2010, the Commission issued a verified complaint against AMNESIA J.V. LLC, and David “L.N.U.” (Ex. E), which the Commission subsequently dismissed for lack of probable cause in its Administrative Closure of July 27, 2012.

Arguments

The Commission’s finding of “No Probable Cause” was **not** based on substantial evidence.

10. The determination of probable cause by the Commission requires “that an unlawful discriminatory practice has been . . . committed by a respondent where a reasonable person, looking at the **evidence** as a whole, could reach the conclusion that it is more likely than not that the unlawful discriminatory practice was committed.” 47 RCNY §1-51 (emphasis added).

11. The evidence relied on by the Commission must be “substantial evidence”; otherwise, the Commission’s findings will not be conclusive, and this Court may then substitute its judgment for that of the Commission. *See* N.Y.C. Admin. Code §8-123(e); *Okoumou v. Community Agency for Senior Citizens, Inc.*, 17 Misc.3d 827, 833, 842 N.Y.S.2d 881, 887, 2007 N.Y. Misc. LEXIS 6756 *13 (2007).

12. There are four important requirements concerning “substantial evidence.”

13. First, substantial evidence does not require a showing of ongoing practices of discrimination—evidence of a onetime act is sufficient. *Silver Dragon Restaurant v. City*

Commission on Human Rights, N.Y.L.J., March 31, 2004, p. 24, col. 3 (Sup. Ct. Kings Co.)(on one occasion a black lady was required to pay for food before it was served while others who were white were served first and then paid); *Joseph v. N.Y. Yankees Partnership*, N.Y.L.J., October 24, 2000, p. 35, col. 5 (S.D.N.Y.)(on one occasion a black lady was refused admission to the Stadium Club unless she changed attire, which she did, but inside she saw that white ladies did not have to wear the same type of attire).

14. The Commission's Administrative Closure arbitrarily ratchets up the standard for substantial evidence by requiring "discriminatory practices" in the plural, Ex. C at p. uno, or continuing discrimination. (The Administrative Closure document of July 27, 2012 has no page numbers, so the Petitioner inserted numbers for citation purposes).

15. Second, for information to be used as evidence requires that:

[the] [e]ssential attributes are relevance and probative nature. Such evidence is marked by substance and the ability to inspire confidence. It does not arise from bare surmise, conjecture, speculation or rumor.

Pace University v. Commission on Human Rights, 611 N.Y.S.2d 835 (A.D. 1 dept 1994), *rev'd on other grounds*, 85 N.Y.2d 125 (1995).

16. Third, the evidence for establishing facts can only be provided by a person in a position to know the facts. *Penn Troy Mach. Co., Inc. v. Dept. Gen. Services*, OATH Index No. 478/93 (March 2, 1993).

17. Fourth, hearsay is treated skeptically, *Triborough Bridge and Tunnel Auth. v. Simms*, OATH Index No. 1303/97 (May 30, 1997), because the person making the original statement or writing the document does not present himself for assessment of his demeanor and credibility, does not submit to cross examination in which the certainty of his perceptions, his

motivations, his biases, the reliability of his memory, and his character may be tested by one with a motive to test vigorously.

18. The Commission instead relies on two Internet blogs as evidence that Amnesia not only required the Petitioner and his friend to buy a \$350 bottle in order to enter but required the younger patrons to buy a bottle as well. (Ex. C, *Admin. Closure* at p. cuatro).

19. The problem with the Commission's reliance is that the blogs are not only hearsay, unreliable, unauthenticated, untrustworthy, but they do not even concern the incident complained of in the verified complaint.

20. The Commission did not know whether the two bloggers were who they claimed to be, were sober enough that their perceptions and memories were accurate, were actually at Amnesia, or whether the first blogger cited was not allowed in without buying a bottle not because of her youth but because she was with gray haired ladies or for some other reason.

21. The second blogger does not even mention bottles, just that younger folk were "lining up at the downstairs bar," which is inside the club. The Commission presents no evidence that these clubbers were lining up to buy bottles and its conjecture that they were is wrong. People in clubs who buy bottles place their orders while sitting at tables because waitresses are the ones who serve the bottles along with cantors of mixer and glasses—customers don't line up at bars for bottles but individual drinks.

22. Another problem with the Commission's reliance on the two blogs is that they do not concern the events that occurred to Den Hollander and his friend on January 9, 2010, and a single instance—that instance—is all that is necessary to find discrimination. *Silver Dragon Restaurant*, N.Y.L.J., March 31, 2004, p. 24, col. 3; *Joseph*, N.Y.L.J., October 24, 2000, p. 35, col. 5.

23. The Commission also inappropriately assumed “upon information and belief” that the doorman who required the purchase of a bottle by Den Hollander and his friend was an independent contractor. (Ex. C, *Admin. Closure* at p. uno).

24. There is no evidence that he was or was not because the Commission never interviewed him or requested or subpoenaed any of Amnesia’s records.

25. Even assuming the doorman was an independent contractor, Amnesia is still liable for the discrimination if (1) the doorman was carrying out his duties when he discriminated, which he obviously was, since he decided who entered and who did not, and (2) Amnesia knew about it. N.Y.C. Admin. Code §8-107(13)(c).

26. Amnesia had to know that the doorman was discriminating because it admitted to the State Human Rights Division, which the Commission quotes, that Amnesia “employs an admission strategy to limit the number of individuals . . . who do not have the appearance [Amnesia] desires to maintain the image of the nightclub.” (Ex. C, *Admin. Closure* at p. dos). In other words, the back of the bus can hold just so many members of a disfavored group before they are no longer admitted even though there is plenty of room in the front of the bus.

27. The Commission also tries, in this non-Truman era, to pass the buck to Den Hollander for the unavailability of what it considers the key evidence from the night in question—Amnesia’s video surveillance of the club on the outside.

28. The Commission blames Den Hollander for the absence of this video because he did not file his complaint within 30 days of the incident, which would have prevented the self-erasing of the video “every 30 days.” (Ex. C, *Admin. Closure* at p. cuatro).

29. The City’s Human Rights law requires that any complaint be filed within three years of when the discrimination occurred. *Alimo v. Off Track Betting Corp.*, 685 N.Y.S.2d 180

(A.D. 1 Dept. 1999). The Commission, however, unilaterally reduced that to 30 days for nightclubs or however long a nightclub's surveillance tape lasts.

30. In *Dept. of Correction v. Whitehead*, OATH Index No. 1152/97 (October 10, 1997), no adverse inference was drawn because the complainant was responsible for loss of interview tapes of witnesses, since the witnesses were still available.

31. There are three people who know exactly what happened on January 9, 2010: Den Hollander, his friend, and the doorman. The Commission has Den Hollander's sworn statement, Ex. E, *Verified Complaint*, but its investigation never bothered to contact Den Hollander's friend and never tracked down the doorman.

32. All three witnesses to the discrimination in this case were available, but the Commission chose to ignore the evidence from two in favor of a non-existent silent video.

33. Even if the silent video still existed, all it would show is that two young people approach the doorman, there's some discussion and the doorman looks at something they give him, which he gives back to them, and they enter the door. Cannot tell whether the doorman required them to buy a bottle and they agreed because there's no audio. Then Den Hollander and his friend approach the doorman, there's some discussion and the two step out of line. Cannot tell whether they were told to step out of line because the doorman required them to buy a bottle and they refused because there's no audio. Finally, two young people approach the doorman, there's some discussion and he looks at something they give him, which he gives back to them, and they enter the door. Cannot tell whether the doorman required them to buy a bottle and they agreed because the video is still silent.

34. For these proceedings, the petitioner includes an affirmation from Den Hollander's friend who was with him on the night in question. (Ex. H, affirmation of attorney Robert M. Ginsberg).

The Commission relied on misrepresentations in finding "No Probable Cause."

35. The Commission's Administrative Closure misrepresents that in the complaint filed with the New York State Human Rights Division, Den Hollander "submitted a sworn statement that he was denied access to Respondent Amnesia unless he purchased a bottle of alcohol, and **the reason for the denial was because he was a male.**" (Ex. C, *Admin. Closure* at p. dos (emphasis added)).

36. That is intentionally misleading because the complaint actually states "**I believe** I was discriminated against because of my: sex." (Ex. D, *State Human Rights Division Complaint* at p. 4 (emphasis added)).

37. As it turned out, Den Hollander's belief was wrong, which, as he made clear to the Commission on October 15, 2010, he did not realize until the State's decision on September 16, 2010, which concluded that age discrimination was probably involved.

38. If the State Human Rights Division had jurisdiction over age discrimination, Den Hollander would have then amended his complaint rather than approaching the Commission.

39. The Commission, however, unlike any court or other administrative agency, requires that once pleadings are submitted, and regardless of jurisdiction, the pleadings are written in stone and can never be amended no matter what facts are subsequently revealed.

40. Such is contrary to the very purpose of courts and administrative agencies liberally allowing amendments to complaints in order to further justice. The Commission's rule harkens back to the 19th century when "the pretrial functions of notice-giving, issue formulation,

and fact revelation were performed primarily, and inadequately, by the pleadings,” *Hickman v. Taylor*, 329 U.S. 495, 500 (1947), and “pleading was a game of skill in which one misstep by counsel may be decisive to the outcome,” *Conley v. Gibson*, 355 U.S. 41, 48 (1957).

41. In another misrepresentation used to discredit the State Human Rights Division’s finding of probable age discrimination, the Commission falsely says that the State’s investigation was limited to “observation[s] on the patrons who were actually inside the club, and not those who were waiting outside [on] the club’s line and denied entrance.” (Ex. C, *Admin. Closure* at p. dos). The State, however, specifically states that its investigation included observing the people in line as well as inside the club. (Ex. F, *State Determination and Order After Investigation* at p. 2).

42. By ignoring the State Human Rights Division’s actual words, the Commission is able to wrongly conclude that “Because [Den Hollander’s] allegations specifically refer to those waiting on line, the [State’s] observations of the customers inside the club have relatively little weight.” (Ex. C, *Admin. Closure* at p. dos).

43. The Commission also misrepresented that N.Y. Executive Law §279(9) prevents the filing of a complaint with the Commission when a prior discrimination complaint was filed with the State Human Rights Division and was dismissed for lack of the State’s jurisdiction. (Ex. C, *Admin. Closure* at p. tres).

44. N.Y. Executive Law §279(9) states that a person alleging discrimination has the choice of either going to court or filing a complaint with a human rights agency, but not both.

45. Den Hollander never involved the courts with this discrimination prior to the filing of this Special Proceeding.

46. The Commission finally misrepresents the legal meaning of the word “grievance” by concluding that it means the “fact situation” in which rights are violated rather than the actual violation of a right.

47. The Commission makes this misrepresentation so that it can conclude that because Den Hollander filed a complaint with the State Human Rights Division concerning the fact situation that occurred at Amnesia, he cannot file a complaint concerning the same fact situation with the Commission, even though the complaints allege violations that impact different rights—one for sex discrimination and the other for age discrimination.

48. The Commission’s misrepresentation allows it to wrongly rely on N.Y.C. Admin. Code §8-109(f)(iii), which states that after the State Human Rights Division makes a decision on a “grievance,” the Commission cannot make a decision on the “same grievance.” (Ex, C, *Admin. Closure* at p. tres).

49. The legal question then is what does “grievance” mean?

50. The City’s Human Rights Law states that “[a]ny person **aggrieved** by an unlawful discriminatory practice” can file a complaint, N.Y.C. Admin. Code §8-109(a)(emphasis added), and that an unlawful discriminatory practice means subjecting a person to different treatment that denies him the advantages, privileges, and facilities of a public accommodation because of his “race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation **or** alienage or citizenship status . . . ,” N.Y.C. Admin. Code §8-107(4)(a)(emphasis added).

51. The disjunctive “or” means that discriminating against a person for say “alienage,” is one unlawful discriminatory practice and discriminating against a person for say

“color” is another separate unlawful discriminatory practice, which indicates that each unlawful discriminatory practice gives rise to a separate grievance.

52. According to Black’s Law Dictionary, “grievance” means “an injury, injustice, or wrong that gives ground for a complaint.” Without the violation of a right, there is no wrong and no complaint, so the violation of a right, no matter what the factual circumstances, is the requirement.

53. The U.S. Supreme Court has ruled that “[a] cause of action does not consist of facts, but of the unlawful violation of a right which the facts show.” *Baltimore S.S. Co. v. Phillips*, 274 U.S. 316, 321 (1927). When the “violations of two individual rights have occurred,” even though “both violations spring from a common fact, a single occurrence” there are two injuries, not one. *Herrmann v. Braniff Airways, Inc.*, 308 F.Supp. 1094, 1099-1100 (S.D.N.Y. 1969).

54. Were the Commission’s definition of “grievance” to be upheld, it would create traps in the law leaving a person discriminated against without a City or State remedy:

- a. A person complains to the State Human Rights Division about discrimination by a public accommodation because of race, creed, color, national origin, sex, disability, marital status, sexual orientation, or military status, but the State dismisses the complaint because it finds the discrimination was based on age, partnership status, alienage, or citizenship and the State has no jurisdiction over those practices. N.Y. Exec. Law §296(2)(a); or
- b. A person complains to the Commission about discrimination by a public accommodation because of race, creed, color, national origin, age, sex, disability, marital status, partnership status, sexual orientation, alienage, or

citizenship, but the Commission dismisses the complaint because it finds the discrimination was based on military status and the Commission has no jurisdiction over that. N.Y.C. Admin. Code 8-107(4).

55. By creating such traps, the Commission's definition of "grievance" actually eliminates in certain circumstances the legislative intent of providing a remedy for discrimination.

56. Under the law, and not the Commission's re-writing of it, when Amnesia refused to let Den Hollander and his friend enter the club unless they paid \$350 for a bottle, that occurrence gave rise to two potential injuries, injustices, or wrongs: unlawful sex and unlawful age discrimination. The State Human Rights Division made a final determination only on the sex discrimination grievance, which left the age discrimination grievance undecided.

The Commission conducted an abbreviated and one sided investigation.

57. While "[t]he Commission has broad discretion in determining the method to be employed in investigating a claim, its determination will be overturned when the record demonstrates that its investigation was abbreviated or one sided." See *Okoumou v. Community Agency for Senior Citizens, Inc.*, 17 Misc. 3d 827, 833, 842 N.Y.S.2d 881, 887, 2007 N.Y. Misc. LEXIS 6756 *13 (2007).

58. The Commission conducted an abbreviated and one sided investigation, which violated its own rule requiring an accurate and thorough fact-finding, 47 RCNY §1-31, by:

- a. Ignoring that one act of discrimination violates the human rights law;
- b. Failing to interview two of the three persons who were in a position to know what actually occurred;
- c. Relying on unreliable, irrelevant Internet blogs;

- d. Speculating that the Amnesia doorman was not an employee;
- e. Blaming Den Hollander for the absence of a video tape that lacked probative value because it had no audio;
- f. Misrepresenting what Den Hollander knew and when he knew it;
- g. Misrepresenting the State Human Rights Division’s findings; and
- h. Misrepresenting City, State and the common law.

59. Lastly, Den Hollander, in his August 17, 2012, application for review of the Administrative Closure to the Commission, requested that in accordance with 47 RCNY §1-34, he be allowed to examine the factual documentation in the Commission’s investigatory file. The Commission did not respond to that request.

60. So, on January 20, 2013, he repeated the request in a letter to the Commission, Ex. G, to which the Commission responded on January 25, 2013, stating that once it “prepared the file,” it would contact him “to arrange a mutually convenient time” for the examination, Ex. I.

61. Given the short time frame in which these Special Proceeding papers have to be filed—30 days—the examination may take place in time for Den Hollander’s Reply.

WHEREFORE, the Petitioner requests that this Court reverse the final Determination and Order, dated January 11, 2013, by the Respondent, find that the Petitioner was unlawfully discriminated against because of his age by AMNESIA J.V. LLC, and DAVID “L.N.U.,” and for such other and further relief as this Court may deem just and proper.

VERIFICATION

State of New York)
) ss:
 County of New York)

A 31

Roy Den Hollander, being duly sworn, deposes and says that I am the petitioner in this proceeding, have written the foregoing petition and know the contents of, which are true to my knowledge, and to those matters that I believe to be true.

Sworn to before me on
5th day of February 2013

/S/

/S/

Notary Public

Roy Den Hollander
Petitioner and attorney
545 East 14 St., 10D
New York, NY 10009
(917) 687 0652
rdhhh@yahoo.com

First Supplement to Petition dated February 28, 2013 [A32-A36]

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

-----X

In the Matter of the Application of

Index No. 13-100299

ROY DEN HOLLANDER

SUPPLEMENT TO PETITION

Petitioner,

-against-

THE CITY OF NEW YORK COMMISSION ON
HUMAN RIGHTS,

Respondent.

-----X

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, Roy Den Hollander, being duly sworn, depose and say:

1. This verified supplement is submitted to add a Fourteenth Amendment procedural due process claim in the special proceeding brought against the City of New York’s Commission on Human Rights (“City HR”), which proceeding requests the reversal of a decision by the City HR that found no probable cause for the Petitioner Den Hollander being discriminated against because of his age by the nightclub Amnesia.

2. A Fourteenth Amendment procedural due process claim requires a two-part inquiry to “determine whether [plaintiff] was deprived of a protected interest, and, if so, what process was his due.” *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982).

3. Den Hollander has a property interest in his discrimination claim against Amnesia because it stems from a violation of unlawful discriminatory practices under the New York City Human Rights Law, N.Y.C. Admin. Code § 8-107(4). *Rosu v. The City of New York*, 2012 U.S. Dist. Lexis 178875 * 9, Case No. 11 Civ. 5437.

4. City HR investigation procedures are sufficient to satisfy procedural due process—so long as the procedures are followed.

5. The City HR’s procedure for investigating a complaint is that “After a complaint has been filed, a neutral fact-finder, the investigator or attorney, will interview the parties and witnesses, review the respondent’s answer and supporting documentation, issue interrogatories and document requests, and conduct field visits and tests where appropriate. At the conclusion of the investigation, the Commission makes a determination of ‘probable cause’ or ‘no probable cause. Where there is insufficient evidence to establish that discrimination occurred, the Commission will issue a ‘no probable cause’ determination and the case will be dismissed. If the case receives a ‘probable cause’ determination, it will be prosecuted.” City HR website, Processing the Complaint, <http://www.nyc.gov/html/cchr/html/processing.html>.

6. “[N]ot properly conducting an investigation in accordance with the [City HR’s] procedures would mean that Defendants did not afford sufficient process” *Ruso* at 14.

7. In response to a Freedom of Information Law request, Den Hollander examined Velez’s investigation file, which was 98% complete except for attorney work product and privileged documents. (As of the date of this Supplement, the pertinent documents are being copied by the City HR and Den Hollander has not received any of them).

8. Velez did not interview witnesses—there were no notes of witness interviews in his investigation file, he did not issue interrogatories—there were no interrogatories or answers in the file, and he did not obtain authenticated documents relevant to the alleged age-discrimination by Amnesia.

9. There were no telephones logs in Velez's investigation file indicating he failed to even contact potential witnesses, such as Den Hollander's attorney friend who witnessed the discrimination or Amnesia's doorman who refused to allow them admission.

10. The investigation file also shows that Velez failed to interview persons familiar with Amnesia's admission policy.

11. There were letters from Velez to Amnesia and its doorman that included Den Hollander's age-discrimination complaint, but those letters were returned as undeliverable to Velez.

12. There is no indication that Velez then had the letters personally served.

13. There were no letters or emails to Den Hollander's attorney friend who witnessed the discrimination.

14. There were no emails to any officials at Amnesia or the doorman.

15. There is no indication that Velez contacted anyone at Amnesia to determine what happened the night of the discrimination or what Amnesia's policies were in admitting persons.

16. Velez did make a Freedom of Information Law request for a copy of the New York State Division of Human Rights investigation, but the copy, if ever received, was not in the file.

17. So no interviews with eye-witnesses or Amnesia officials, no interrogatories of anybody, and no requests for documents other than the State's Division of Human Rights investigation, which was apparently never received.

18. Velez—a la Inspector Clouseau—ferreted out irrelevant, untrustworthy, and hearsay bits of information on the Internet that comprised the bulk of his investigation into the facts.

19. Displayed in a prominent position in Velez's investigation file was an Internet article titled "NYC Attorney Out To Reclaim Ex-Wife From Feminism's Clutches, Get Laid Easier," written by some unknown person using the pseudonym "Jezebel," whom Velez never interviewed, and who resorts to naming-calling as a substitute for logical argument.

20. Velez also relied for his so-called facts on "Yelp.com" blogs concerning Amnesia of which only one came close to being relevant. That blog from an unknown person using the moniker Kelly R. Paris France stated that she entered Amnesia around the same time, on the same night as Den Hollander and his friend were required to buy a bottle for entry. The blogger says that "It wasn't crowded inside!" Next to the blog printout is handwritten, "Same date & time as Mr. Hollander." Presumably, the writing is Velez's.

21. Velez ignored the Kelly R. Paris France blog apparently because it refuted a finding he relied on from the State Division of Human Rights *Determination and Order* that infers one reason Amnesia did not discriminate based on age was that the club was crowded and room at a premium, so the requirement for Den Hollander and his friend to purchase a bottle was justified. Velez's *Order* at Dos, quoting the State's *Determination and Order*, states "[Amnesia] asserts that when the nightclub is crowded, [Amnesia] employs an admissions strategy to limit the number of individuals, male and female, who do not have the appearance [Amnesia] desires to maintain the image of the nightclub."

22. Velez, however, did not ignore two other blogs also from "Yelp.com" that he prevaricated and stretched into supporting his *Order*.

23. Velez used a blog from "Tasty 1027," as evidence that Amnesia required both older and younger patrons to buy a bottle for admission. Velez wrote, "an alleged patron of [Amnesia], whom based on her posted picture appears to be in her 20's or 30's, expressed her

frustration on yelp.com about the difficulty in gaining entry into the club, stating ‘ . . . of course the only way to get in was if we bought bottles.’ (Velez *Order* at Cuarto, Ex. C of the Verified Petition).

24. What Velez intentionally left out of Tasty’s blog was that “[I]n the end my party of 12 made it in” This may indicate that her party entered without buying a bottle, or maybe there were older folks in her party and they had to buy a bottle, or maybe everyone was in her age group and they still had to buy a bottle. We don’t know because Velez never contacted her. Further, all nightclubs are reluctant to allow such large parties in unless they have reservations. So, if Tasty’s party bought a bottle, the reason may just have been because of the size of her party and they had no reservations. Once again, we do not know because Velez never determined whether Amnesia requires large groups to buy a bottle.

25. The second “Yelp.com” blogger, “Maria W. NY,” said that “Different groups were dancing and lining up at the downstairs bar, people in their 20’s, 30’s, 40’s.” This blogger, however, makes no mention of her or anyone in those age groups having to purchase a bottle to gain admission.

26. Another problem with Velez’s reliance on the unknown and un-interviewed persons Tasty and Maria is that neither entered Amnesia on the night that Den Hollander and his friend were discriminated against.

/S/

Roy Den Hollander

Sworn to before me on the
28th day of February 2013

/S/

Notary Public

N.Y.C. Human Rights Commission Answer dated April 4, 2013 [A37-A45]

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

----- x
In the Matter of the Application of
ROY DEN HOLLANDER,

VERIFIED ANSWER

Index No.: 100299 / 2013

Petitioner,

-against-

(Part 33; Hunter, J.)

THE CITY OF NEW YORK COMMISSION ON
HUMAN RIGHTS,

Respondent.
----- x

Respondent City of New York Commission on Human Rights (the “Commission”) by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, respectfully answers the verified petition (the “Petition”) and supplement to the petition (the “Supplemental Petition”) of petitioner Roy Den Hollander (“Petitioner”) as follows:

ANSWER TO PETITION

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Petition.
2. Admits that the Commission is named as a respondent in this special proceeding and is located at 40 Rector Street, 10th Floor, New York, New York 10006.
3. Admits that the Commission issued a Determination and Order After Review (the “Order After Review”) on January 11, 2013, which was served on January 15, 2013, upholding the Commission’s July 27, 2012 Determination and Order After Investigation (the “Order After Investigation”), which dismissed Petitioner’s complaint alleging age discrimination. Denies the remaining allegations in paragraph 3 of the Petition.

4. States that the Commission's Order After Investigation speaks for itself, and denies the remaining allegations in paragraph 4 of the Petition.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Petition, and states that the relevant facts are set forth in the record before the Commission on which the Commission based its determination.

6. Admits that on or about January 13, 2010, Petitioner filed a discrimination complaint with the New York State Division of Human Rights (the "State DHR"). Denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 6 of the Petition, and states that the relevant facts are set forth in the record before the Commission on which the Commission based its determination.

7. Admits that on or about September 16, 2010, the State DHR issued a decision dismissing Petitioner's discrimination complaint. Denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 7 of the Petition, states that the State DHR's decision speaks for itself, and further states that the relevant facts are set forth in the record before the Commission on which the Commission based its determination.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Petition, and states that the relevant facts are set forth in the record before the Commission on which the Commission based its determination.

9. Admits that Petitioner filed a verified complaint with the Commission on October 22, 2010 against Amnesia J.V. LLC and David "L.N.U.," and that the Commission issued a decision dismissing the complaint on July 27, 2012. Denies the remaining allegations in paragraph 9 of the Petition, states that the complaint and the Commission's decision speak for

themselves, and further states that the relevant facts are set forth in the record before the Commission on which the Commission based its determination.

10. Paragraphs 10 through 17 of the Petition contain legal conclusions, legal arguments, and characterizations to which no response is required. To the extent a response is required, denies the allegations in paragraphs 10 through 17 of the Petition.

11. Paragraphs 18 through 25 of the Petition contain legal conclusions, legal arguments, and characterizations to which no response is required. To the extent a response is required, denies the allegations in paragraphs 18 through 25 of the Petition, states that the Commission's Order After Investigation speaks for itself, and further states that the relevant facts are set forth in the record before the Commission on which the Commission based its determination.

12. Paragraph 26 of the Petition contains legal conclusions, legal arguments, and characterizations to which no response is required. To the extent a response is required, denies the allegations in paragraph 26 of the Petition, states that State DHR's decision and the Commission's Order After Investigation speak for themselves, and further states that the relevant facts are set forth in the record before the Commission on which the Commission based its determination.

13. Paragraphs 27 through 30 of the Petition contain legal conclusions, legal arguments, and characterizations to which no response is required. To the extent a response is required, denies the allegations in paragraphs 27 through 30 of the Petition, states that the Commission's Order After Investigation speaks for itself, and further states that the relevant facts are set forth in the record before the Commission on which the Commission based its determination.

14. Paragraphs 31 through 33 of the Petition contain legal conclusions and characterizations to which no response is required. To the extent a response is required, denies the allegations in paragraphs 31 through 33 of the Petition, and states that the relevant facts are set forth in the record before the Commission on which the Commission based its determination.

15. Admits that the Petition attaches as an exhibit an affirmation of Robert M. Ginsberg. Denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 34 of the Petition, and states that the relevant facts are set forth in the record before the Commission on which the Commission based its determination.

16. Paragraphs 35 through 40 of the Petition contain legal conclusions, legal arguments, and characterizations to which no response is required. To the extent a response is required, denies the allegations in paragraphs 35 through 40 of the Petition, states that the complaint before the State DHR and the Commission's Order After Investigation speak for themselves, and further states that the relevant facts are set forth in the record before the Commission on which the Commission based its determination.

17. Paragraphs 41 through 42 of the Petition contain legal conclusions, legal arguments, and characterizations to which no response is required. To the extent a response is required, denies the allegations in paragraphs 41 through 42 of the Petition, states that the State DHR decision and the Commission's Order After Investigation speak for themselves, and further states that the relevant facts are set forth in the record before the Commission on which the Commission based its determination.

18. Paragraphs 43 through 58 of the Petition contain legal conclusions, legal arguments, and characterizations to which no response is required. To the extent a response is required, denies the allegations in paragraphs 43 through 58 of the Petition.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59 of the Petition, and states that Petitioner's application for review of the Commission's Order After Investigation speaks for itself.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 of the Petition, and states that Petitioner's correspondence with the Commission speaks for itself.

21. Paragraph 61 of the Petition contains legal conclusions, characterizations, and statements to which no response is required. To the extent a response is required, denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61 of the Petition.

22. Denies that Petitioner is entitled to any of the relief requested in the "Wherefore" clause or elsewhere in the Petition.

23. Denies any allegation or inference not specifically admitted herein.

ANSWER TO SUPPLEMENTAL PETITION

24. Paragraphs 1 through 4 of the Supplemental Petition contain legal conclusions, legal arguments, characterizations, and statements to which no response is required. To the extent a response is required, denies the allegations in paragraphs 1 through 4 of the Supplemental Petition.

25. Paragraph 5 of the Supplemental Petition contains legal conclusions, characterizations, and statements to which no response is required. To the extent a response is required, denies the allegations in paragraph 5 of the Supplemental Petition, and states that the Commission's website speaks for itself.

26. Paragraph 6 of the Supplemental Petition contains legal conclusions, legal arguments, and characterizations to which no response is required. To the extent a response is required, denies the allegations in paragraph 6 of the Supplemental Petition.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Supplemental Petition.

28. Paragraphs 8 through 26 of the Supplemental Petition contain legal conclusions, legal arguments, and characterizations to which no response is required. To the extent a response is required, denies the allegations in paragraphs 8 through 26 of the Supplemental Petition, and states that the relevant facts are set forth in the record before the Commission on which the Commission based its determination.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in the Addendum of Exhibits to the Supplemental Petition.

FIRST AFFIRMATIVE DEFENSE

The Petition and Supplemental Petition fail to state a cause of action.

SECOND AFFIRMATIVE DEFENSE

The Order After Investigation, which dismissed Petitioner's complaint before the Commission and which was affirmed in the Order After Review, was not arbitrary and capricious, and was supported by substantial evidence in the record considered as a whole.

THIRD AFFIRMATIVE DEFENSE

The Commission's investigation of the Petitioner's complaint before the Commission was not abbreviated, biased, or one-sided.

FOURTH AFFIRMATIVE DEFENSE

The Commission's Order After Investigation and Order After Review are in accordance with applicable law.

FIFTH AFFIRMATIVE DEFENSE

The Commission's Order After Investigation and Order After Review were lawful exercises of agency discretion.

SIXTH AFFIRMATIVE DEFENSE

The claims in the Petition are barred under N.Y.C. Admin. Code § 8-109(f)(iii), N.Y. Exec. Law § 297(9), and/or the doctrine of election of remedies.

SEVENTH AFFIRMATIVE DEFENSE

The claims in the Petition are barred by res judicata and/or collateral estoppel.

EIGHTH AFFIRMATIVE DEFENSE

The Commission has not violated any of Petitioner's rights, privileges or immunities under the Constitution or laws of the United States, the State of New York, or any political subdivision thereof.

NINTH AFFIRMATIVE DEFENSE

The Commission and its employees and officials acted reasonably and in the proper and lawful exercise of their discretion. As such, the Commission is entitled to governmental immunity.

TENTH AFFIRMATIVE DEFENSE

30. Petitioner has failed to comply with the Notice of Claim provisions of New York General Municipal Law §§ 50(e), (h), and (i), and N.Y.C. Admin. Code § 7-201.

WHEREFORE, the City of New York Commission on Human Rights respectfully requests that the Court issue an order dismissing the Petition and affirming the Commission's dismissal of Petitioner's complaint, and ordering such other and further relief as the Court deems just and proper.

Dated: April 4, 2013
New York, New York

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
*Attorney for Respondent City of New York
Commission on Human Rights*
100 Church Street, Room 20-101
New York, New York 10007
(212) 356-2294

By: 

Leonard M. Braman
Assistant Corporation Counsel

Carlos Velez Determination and Order dated July 27, 2012 [A46-A51]

DETERMINATION AND ORDER AFTER INVESTIGATION

CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

.....
In the Matter of the Complaint of:

ROY DEN HOLLANDER,

Complainant,

-against-

Complaint No: M-P-A-11-1024266

AMNESIA J.V. LLC, and DAVID
"L.N.U.,"

Respondents.

.....
On October 22, 2010, Roy Den Hollander ("Complainant") filed a Verified Complaint ("Complaint") with the New York City Commission on Human Rights ("Commission") charging Amnesia J.V. LLC ("Amnesia"), and David "L.N.U." (collectively, "Respondents") with discriminatory practices, in violation of Title 8 of the Administrative Code of the City of New York ("Code").

Respondents deny the allegations of discrimination.

After investigation, the Commission has determined that there is NO PROBABLE CAUSE to believe that Respondents engaged in the unlawful discriminatory practices alleged.

Complaint

Complainant, who is 63 years old, alleges that Respondents discriminated against him based upon his age by subjecting him to disparate treatment, and thus denying him the advantages, privileges and facilities of a public accommodation. Respondent Amnesia is a nightclub in New York City. Upon information and belief, Respondent David "L.N.U." was not employed by Respondent Amnesia, and instead was hired by a different company as a Promoter.

Complainant alleges that on or about January 9, 2010, at approximately 11:05 PM, he and his friend, who is in his 60's, stood on a line in front of Respondent Amnesia in order to gain access into its nightclub. Complainant further alleges that he and his friend witnessed two individuals in front of them, who appeared to be in their 20's and/or 30's, approach Respondent David "L.N.U.," who checked their identification and then allowed them to enter the club. Complainant alleges that when he and his friend approached Respondent David "L.N.U.," Respondent David "L.N.U." told them that they must agree to buy a bottle of alcohol for \$350 in order to enter the club.

Uno

.....

Complainant further alleges that he and his friend declined and stepped out of the line. Complainant further alleges that he and his friend then witnessed another pair of individuals, who appeared to be in their 20's and/or 30's, enter the club without having to buy a bottle of alcohol for \$350.

Discussion

New York State Division of Human Rights Complaint

Complainant filed a gender discrimination complaint shortly after his visit to Respondent Amnesia on January 9, 2010, with the New York State Division of Human Rights ("NYSDHR"). Specifically, he submitted a sworn statement that he was denied access to Respondent Amnesia unless he purchased a bottle of alcohol, and the reason for the denial was because he was male. Specifically, in his NYSDHR complaint, Complainant stated that he stood online with his male friend, and that the two women in front of them were allowed to enter the club without agreeing to purchase a bottle of alcohol for \$350, yet he and his male friend were required to buy a bottle as a condition of entry.

After its investigation, the NYSDHR found no probable cause to believe discrimination occurred by Respondent on the basis of Complainant's gender. In its decision, the NYSDHR wrote, however, that "Based on the observations made during the field visit, the vast majority of the patrons of the nightclub appeared to be under the age of 30 years. Respondent asserts that, when the nightclub is crowded, respondent employs an admissions strategy to limit the number of individuals, male and female, who do not have the appearance respondent desires to maintain the image of the nightclub." The NYSDHR appears to base this observation on the patrons who were actually inside the club, and not those who were waiting outside the club's line and denied entrance. The investigator from the NYSDHR does not state any observations in his determination regarding the ages of the patrons waiting on line to gain admission. Because Complainant's allegations specifically refer to those waiting on line, the NYSDHR's observations of the customers inside the club have relatively little weight.

Although the NYSDHR expressed these observations, the statements had no effect on its decision, because New York State's Executive Law does not cover age discrimination in public accommodations.

New York City Commission on Human Rights Complaint

After receiving the NYSDHR decision indicating that the majority of admitted patrons on the date of their visit "appeared to be under the age of 30 years," Complainant decided to come to the Commission to file a complaint of discrimination based upon age on October 22, 2010. Complainant's allegations in the NYSDHR case and in the instant Complaint are virtually identical, only substituting the reason for his denial of entrance from gender to age. If in fact Complainant believed he was also being discriminated against because of his age, Complainant could have come to the Commission instead of the NYSDHR immediately after the initial denial of entry.

Election of Remedies

Complainant is jurisdictionally barred from bringing the Complaint because of his prior filing with the NYSDHR on the same facts and circumstances as the instant matter. New York Executive Law § 297(9) states that any person with a discrimination complaint has a cause of action “in any court of appropriate jurisdiction for damages and such other remedies as may be appropriate, *unless* such person has filed a complaint” with the NYSDHR (emphasis added). The New York Court of Appeals interpreted New York Executive Law § 297(9) as precluding a subsequent action that is “based upon the same incident” as the Agency complaint. *Emil v. Dewey*, 49 N.Y. 2d 968, 968 (1980). The NYSDHR’s only statutory exception to this election of remedies jurisdictional bar is when the State Human Rights Law claim is dismissed on the grounds of “administrative convenience,” “untimeliness” or when the “election of remedies is annulled.” N.Y. Exec. L. § 297(9).

Similarly, Section 8-109(f)(iii) of the Administrative Code of the City of New York specifies that the Commission does not have jurisdiction where, “The complainant has previously filed a complaint with the State Division of Human Rights alleging an unlawful discriminatory practice... with respect to the *same grievance which is the subject of the complaint* under this chapter and a final determination has been made thereon” (emphasis added). A Complainant cannot avoid the election of remedies bar by changing the legal theory of relief relied upon, or split claims, if they all arise out of the same course of conduct. *Bhagalia v. State*, 228 A.D.2d 882, 883 (N.Y. App. Div., 3rd Dept., 1996); *see also Benjamin v. New York City Dept. of Health*, 2007 WL 3226958 at *5 (N.Y. App. Div., 2nd Dept. 1994); *Rosario v. New York City Dept. of Education*, 2011 U.S. Dist. LEXIS 41177 at * 4 (S.D.N.Y. 2011).

In this case, Complainant previously filed a complaint with the NYSDHR alleging gender discrimination because a nightclub refused him entry unless he purchase bottle service, and the NYSDHR issued a “no probable cause” final determination in the matter. Complainant then came to the Commission and filed an age discrimination complaint on the exact same facts. The Commission, therefore, does not have jurisdiction in this matter because Complainant already elected his remedy with the NYSDHR.

The Commission’s Investigation

Complainant is a self-professed advocate for men’s rights who identifies himself as an “anti-feminist lawyer” on his website, www.roydenhollander.com. He has filed a number of lawsuits against bars and clubs that have “Ladies Nights,” and admits in several online publications that he is “bitter” from an ex-wife who used him for his US citizenship and money. Complainant’s description of himself is consistent with his pattern of filing several gender discrimination suits.

Complainant’s delay in filing the Complaint with the Commission rendered the Commission unable to secure tape surveillance of the night in question. It is the Commission’s practice in these types of cases to seek video surveillance when aggrieved individuals come to the Commission almost immediately after the alleged discriminatory conduct, just as

Complainant did in filing his initial gender discrimination case with the NYSDHR on January 9, 2010. Complainant filed the Commission Complaint over nine months after the incident occurred, thereby effectively denying the Commission the ability to compel Respondents to preserve its surveillance video, which Respondents state self-erases every 30 days.

Notwithstanding the above, circumstantial evidence exists to show that Respondent Amnesia also required younger individuals to purchase a bottle of alcohol in or around the date Complainant visited the club on January 9, 2010. Patrons of Respondent Amnesia can post reviews of its club on yelp.com, a website that provides reviews for restaurants, bars, and other establishments in New York City and other locations in the country.¹ On April 25, 2010, just over three months after Complainant visited the club, an alleged patron of Respondent Amnesia, whom based on her posted picture appears to be in her 20's or 30's, expressed her frustration on yelp.com about the difficulty in gaining entry into the club, stating, "... of course the only way to get in was if we bought bottles." This comment was posted four months after Complainant filed his NYSDHR case, which was dismissed, and five months before he filed his case with the Commission.

Another reviewer and alleged patron, who also appears to be in her 20's or 30's based on her posted picture, stated on yelp.com on December 11, 2009, "Different groups were dancing and lining up at the downstairs bar, people in their 20's, 30's, 40's. Interesting and eclectic crowd..." Based on the above-described comments regarding younger people being asked to purchase bottle service, it is more probable than not that Respondents did not discriminate against Complainant based upon his age.

As noted above, the Commission is barred from making a determination this case because Complainant filed a prior discrimination complaint concerning the same incident with the NYSDHR. Irrespective of this conclusion, because Commission was unable to obtain the surveillance video of the incident in question, and online postings from club patrons who appear to be in their 20's and 30's state that were required to buy bottle service in order to gain entry around the date Complainant visited Respondent Amnesia, the Commission cannot establish by a preponderance of the evidence that Respondents required Complainant to purchase bottle service to gain access to the club due to his age. The Complaint, therefore, is hereby dismissed.

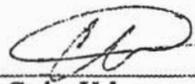
NO FURTHER TEXT ON THIS PAGE

¹ The Commission realizes that it could not interview any of these individuals but nevertheless finds the postings probative.

Complainant may apply for review by filing a request in writing within thirty (30) days after the date of the mailing of this order. The application should be addressed to the Office of the Chairperson, New York City Commission on Human Rights, 40 Rector Street, 10th Floor, New York, NY 10006, Attn: NPC Appeals. Please state reasons for applying for review.

DATED: New York, New York
July 27, 2012

CITY COMMISSION ON HUMAN RIGHTS

BY:  Carlos Velez
Carlos Velez
Executive Director
Law Enforcement Bureau

NOTICE TO:

Roy Den Hollander
545 East 14th Street, Apt .10D
New York, NY 10009

Counsel for Respondents:
Roger Griesmeyer
LaSasso Griesmeyer Law Group PLLC
80 Maiden Lane, Suite 2205
New York, NY 10038

Seis

N.Y.C. Human Rights Commission Final Determination and Order dated January 11, 2013 [A52-A53]

**THE CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS**

-----x
In The Matter of the Complaint of

ROY DEN HOLLANDER,

Complainant,

- against -

AMNESIA J.V. LLC., and DAVID "L.N.U.",

Respondents.
-----x

**DETERMINATION AND ORDER
AFTER REVIEW**

Complainant No.: M-P-A-11-1024266
GC No.: 12-901N

Complainant requests review of the Administrative Closure dismissing the above-captioned complaint.

In considering complainant's request, I have reviewed the following: the complaint; the answer; comments from all parties (if submitted); the Notice of Administrative Closure; and complainant's request for review.

Upon review of these materials, I hereby affirm the Administrative Closure dismissing the complaint.

Pursuant to Section 8-123(h) of Title 8 of the Administrative Code of the City of New York, complainant has thirty (30) days after service of this Order to seek review in the New York State Supreme Court.

Dated: New York, New York
January 11, 2013

**IT IS SO ORDERED
NEW YORK CITY COMMISSION
ON HUMAN RIGHTS**


PATRICIA L. GATLING
Commissioner/Chair

To:

Roy Den Hollander
Attorney at Law
545 East 14th Street, #10D
New York, New York 10009

Roger Griesmeyer
LaSasso Griesmeyer Law Group PLLC
80 Maiden Lane, Suite 2205
New York, New York 10038

Carlos Velez
Managing Attorney
Law Enforcement Bureau
New York City Commission on Human Rights
40 Rector Street – 10th Floor
New York, New York 10006

N.Y. State Division of Human Rights Determination and Order After Investigation dated September 16, 2010 [A54-A56]



DAVID A. PATERSON
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS on the Complaint of	
ROY DEN HOLLANDER, ESQ.,	Complainant,
v.	
AMNESIA J.V. LLC,	Respondent.

DETERMINATION AND
ORDER AFTER
INVESTIGATION

Case No.
10138862,

On 1/13/2010, Roy Den Hollander, Esq. filed a verified complaint with the New York State Division of Human Rights ("Division") charging the above-named respondent with an unlawful discriminatory practice relating to public accommodation because of sex in violation of N.Y. Exec. Law, art. 15 (Human Rights Law).

After investigation, and following opportunity for review of related information and evidence by the named parties, the Division has determined that there is NO PROBABLE CAUSE to believe that the respondent has engaged in or is engaging in the unlawful discriminatory practice complained of. This determination is based on the following:

The record is not supportive of complainant's allegations of sex discrimination.

Complainant, who is male, alleges that he was required to purchase a \$350.00 bottle of alcohol in order to gain entry into respondent's nightclub, while women were not required to make this purchase to enter.

The record suggests, however, that respondent required complainant to purchase a bottle for the non-discriminatory reasons of limited space and the goal of furthering the image of

respondent's establishment. There is a lack of evidence that respondent's treatment of complainant was based on his sex.

During the course of the investigation, a field visit to respondent's nightclub was made by a male Division investigator accompanied by a male. Both males and females were observed gaining admission to respondent's nightclub in approximately equal proportion. The investigator did not observe respondent's staff asking males or females to purchase bottles of alcohol to gain admission, despite the fact that there were long lines for admission to the club. Although respondent required the male investigator to pay a \$30 cover charge, the investigator observed one of respondent's employees informing others, including females, that they would have to pay the \$30 cover charge to gain admission. Once inside the nightclub, the investigator observed males and females in roughly equal proportion. Although there were several tables for individual bottle service throughout the nightclub, the investigator did not see any patrons, male or female, sitting at these tables.

Based on observations made during the field visit, the vast majority of the patrons of the nightclub appeared to be under the age of 30 years. Respondent asserts that, when the nightclub is crowded, respondent employs an admissions strategy to limit the number of individuals, male and female, who do not have the appearance respondent desires to maintain the image of the nightclub. A photo on complainant's website suggests that he is significantly older than respondent's patrons, and age discrimination is beyond the jurisdiction of the Division with regards to public accommodation.

Our investigation failed to uncover sufficient evidence to establish a causal nexus between respondent's treatment of complainant and his sex. The record does not support a determination of probable cause in this case.

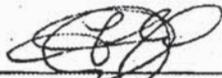
The complaint is therefore ordered dismissed and the file is closed.

PLEASE TAKE NOTICE that any party to this proceeding may appeal this Determination to the New York State Supreme Court in the County wherein the alleged unlawful discriminatory practice took place by filing directly with such court a Notice of Petition and Petition within sixty (60) days after service of this Determination. A copy of this Notice and Petition must also be served on all parties including General Counsel, State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx,

New York 10458. DO NOT FILE THE ORIGINAL NOTICE AND PETITION
WITH THE STATE DIVISION OF HUMAN RIGHTS.

Dated: SEP 16 2010
New York, New York

STATE DIVISION OF HUMAN RIGHTS

By: 
Leon C. Dimaya
Regional Director

A 57

Letter to N.Y.C. Human Rights Commissioner Gatling dated October 15, 2010 [A57-A58]

ROY DEN HOLLANDER
Attorney at Law

545 East 14th Street, 10D
New York, N.Y. 10009

Tel: (917) 687-0652
rdhhh@yahoo.com

October 15, 2010

Patricia L. Gatling, Commissioner
New York City Commission on Human Rights
40 Rector Street, 10th Floor
New York, NY 10006

Dear Ms. Gatling:

One of your supervisors, Carlos Velez, refused to accept an age discrimination complaint concerning an incident that occurred on Saturday, January 9, 2010, at the nightclub Amnesia J.V. LLC, located in Manhattan.

At around 11:00 pm, Amnesia required that a friend of mine and I, both male and middle aged, pay \$350 for a bottle in order to enter the nightclub. Amnesia did not require other people who were in their twenties to buy a bottle for \$350 in order to enter the club.

I filed a complaint with the New York State Division of Human Rights, which found there was no sex discrimination but probably age discrimination. "A photo on complainant's website suggests the he is significantly older than [Amnesia's] patrons...." *Determination and Order After Investigation*, No. 10138862, N.Y.S. Human Rights Division, p. 2, Leon C. Dimaya, Regional Director (copy is attached). Since the N.Y.S. Human Rights Division does not have jurisdiction over age discrimination in a public accommodation, it dismissed the complaint.

The New York City Commission on Human Rights, however, does have jurisdiction over public accommodations that discriminate based age. Although I was trying to file an age discrimination complaint with your Commission, supervisor Velez concluded based on the State's *Determination and Order After Investigation* that the incident really involved sex discrimination, and not age discrimination as indicated by the State. Since I had already filed a complaint with the State about sex discrimination, I could not file another one with the City. Supervisor Velez simply changed my allegations so your Commission would not have to deal with the complaint. So the State says "age discrimination don't bother us" and your Commission says "sex discrimination so the State has to deal with it."

Supervisor Velez also communicated through one of your employees that there was no discrimination at all because Amnesia was only charging older males \$350 for admission and was therefore not barring us from entering. Years ago in Montgomery, Alabama, people with relatively darker skin color could enter a public bus, but they would have to sit in the back. By supervisor Velez's reasoning, such conduct is not discriminatory because those with a different skin complexion were not barred from riding the buses.

A 58

Supervisor Velez, also through an employee, communicated that I should appeal the State's *Determination and Order After Investigation*. That requires bringing an Article 78 action in the New York State Supreme Court, which will cost almost as much as paying \$350 for a bottle to enter Amnesia.

So what ever happen to President Harry Truman's philosophy concerning passing the buck?

Thank you for your time.

Sincerely,

/S/

Roy Den Hollander

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

FRANK STERN,

Index No. 110668/05

Petitioner,

- against -

**DECISION AND
JUDGMENT**

NEW YORK CITY COMMISSION
ON HUMAN RIGHTS

Respondent.

Nicholas Figueroa, J.:

Petitioner, pursuant to New York City Administrative Code §8-123(e), seeks to reverse respondent's July 1, 2005 final determination affirming respondent's March 30, 2005 dismissal of petitioner's complaint. Respondent found that there was no probable cause to credit petitioner's allegation of an unlawful discrimination practice.

Petitioner's complaint alleged that the New York City Department of Finance violated the New York City Human Rights Law (New York City Administrative Code Title 8, Chapter 1), by dismissing him as a Parking Violations Bureau Administrative Law Judge because he is homosexual.

The Department of Finance, in opposing the administrative complaint, argued that it refused to allow petitioner to continue acting as an Administrative Law Judge because he made harassing sexual advances to two security guards working at the Parking Violations Bureau. Petitioner denied harassing the security guards and characterized their complains as "homoerotic" and "gay bait[ing]." He added that he was disparately treated because two heterosexual administrative Law Judges were not discharged, despite the sexual harassment claims against them.

In rebutting petitioner's disparate treatment allegation, the Department of Finance submitted affidavits from the two Administrative Law Judges stating that there had been no sexual harassment claims against them. It also submitted the incident reports and affidavits in which the complaining security guards described petitioner's conduct, as well as the affidavit of the Department's Equal Opportunity officer's affidavit in which she recounted her interview with the guards and concluded that they were credible.

In rejecting petitioner's contention that he was treated differently than other employees, respondent noted that its investigator telephoned the woman whom petitioner alleged made the complaint against one of the two Administrative Law Judges. She informed the investigator that she had not made a sexual harassment complaint. Respondent also noted the other Administrative Law Judge's affidavit stating that no complaint had been lodged against him.

Respondent found that the Department of Finance removed petitioner because of his misconduct, not sexual orientation. Respondent found that petitioner did not suffer disparate treatment, as the heterosexual Administrative Law Judges he referred to had not been the subjects of sexual harassment complaints.

Petitioner asks this court to reverse respondent's determination and grant him an evidentiary administrative hearing. He asserts that he was denied his "constitutional right to be heard" because respondent did not hold a hearing and that respondent's finding of no probable cause was not supported by substantial evidence.

Petitioner also claims that respondent's staff attorney, Paul Plotsker, whom petitioner refers to as "my attorney", told him that his superiors had been "pressuring" him to "drop my case"; however, Plotsker, according to petitioner, did not name those superiors. Petitioner alleges that he assumes the pressure came from respondent's Commissioner. Petitioner does not provide any

support for this new allegation.

This proceeding is not a CPLR Article 78 proceeding, (see *Matter of Maloff v. City Commission on Human Rights*, 45 AD2d 834). Therefore, in reviewing respondent's determination, the court must follow the applicable provisions of the Administrative Code of the City of New York and the Rules of the City of New York.

In determining whether probable cause exists, respondent's "...Law Enforcement Bureau shall find probable cause exists to credit the allegations of a complainant that an unlawful discrimination practice has been or is being committed by a respondent where a reasonable person, looking at the evidence as a whole, could reach the conclusion that it is more likely than not that the unlawful discrimination practice was committed" (Rules of the City of New York Commission on Human Rights [47 RCNY] §1-51)

Under the New York City Human Rights Law [Administrative Code of the City of New York §8-123(e)], "The findings of the commission as to the facts shall be conclusive if supported by substantial evidence on the record considered as a whole."

Before determining whether respondent's determination was based on substantial evidence, the court must decide petitioner's claim that respondent deprived him of due process by adjudicating his claim on submissions, without a hearing. This argument is incorrect.

Respondent met its obligation to give petitioner a full opportunity to present his claim. Petitioner was able to present evidence in his behalf, particularly evidence that he was subjected to disparate treatment because of his sexual orientation. Respondent, in determining this question, examined the proof both sides submitted, including affidavits by the allegedly favorably treated individuals, and the person petitioner named as a complainant against one of them. Respondent acted within its discretion in "the method...employed in investigating [petitioner's] claim" (see

Matter of McFarland v. New York State Division of Human Rights, 241 AD2d 108, 112). The court may not substitute its judgment for the agency's "as to its investigative methods" (*id.* at 112, 113). Moreover, respondent was under no legal obligation to conduct a hearing (see *Matter of Chirogis v. Mobil Oil Corporation*, 128 AD2d 400, 403).

Respondent, based on its legally sufficient investigation, correctly found no probable cause to credit petitioner's claim. The evidence as a whole (47 RCNY §1-51, *supra*), reveals that there was no factual basis for petitioner's claim of improper treatment. Rather, the record demonstrates that petitioner sexually harassed two persons. Petitioner's unsupported claim that two heterosexual Administrative Law Judges were not removed despite sexual harassment charges against them was rebutted by proof that they were never charged with sexual harassment.

Petitioner's claim, which he raises for the first time on this proceeding, that respondent's staff attorney was pressured into deciding against him, is frivolous. Petitioner implicitly accuses the attorney of acting improperly by basing his determination on other than a lawful review of the record. Petitioner, who is an attorney, presumably is aware that such an unsupported attack on the integrity of an adjudicatory officer is improper (DR 8-102 [22 NYCRR §1200.43]).

Accordingly, it is

ADJUDGED that the petition is denied and the proceeding dismissed.

This constitutes the decision and judgment of the court

Dated: December 2, 2005

FILED
JAN 06 2006
COUNTY CLERK'S OFFICE
NEW YORK

ENTER
/ /
J.S.C.

Norman Qualman
Clerk

Jezebel Article, NYC Attorney Out To Reclaim His Ex Wife From Feminism's Clutches, Get Laid Easier [A63-A64]

ROY DEN HOLLANDER

NYC Attorney Out To Reclaim His Ex Wife From Feminism's Clutches, Get Laid Easier

BY MEGAN CARPENTIER

AUG 18, 2008 5:00 PM

Share

27,811

Like 16

GET OUR TOP STORIES
FOLLOW JEZEBEL

Like 135973 likes. Sign Up to see what your friends like.

About eight years ago, Roy Den Hollander was living the high life. He'd just returned to New York from a decade working in Russia with a pretty, young, docile Russian bride in tow and was set to live the high life. Then he found out what all his friends and acquaintances in Russia knew but hadn't told him (and I know, because I called some of them and asked): that she'd married him for her green card and his money and set on about divorcing him. He admits that he's still bitter [*quelle surprise*], which is why he spends all his time these days filing "antifeminist" lawsuits, to try to rid the world of feminism so that in twenty years he can marry a wife untainted by some foolish idea



that she is his intellectual equal or better and so that, in the mean time, he can get laid more cheaply. Yeah, he's the same guy that filed lawsuits against bars and clubs that have "Ladies Nights." Oh, brother. At least Hollander admitted to the *New Yorker* that he's got better luck with women when he can talk to them rather than when they get a look at his mug — though he refused to cop to his age, his résumé suggests he turned 50 since his divorce. He says, post-divorce, "I tend to be attracted to black and Latin chicks, and Asian chicks," so all you ladies of color out there, he likes to hang out at the Copa and salsa dance, which I'm sure he's, like, totally good at. But to today's tall tale of woe from the man that feminists forgot — or tried to, anyway. He looks like that creepy guy that used to go to the 19+ clubs in college and stare at all the girls who wouldn't fuck him. But, obviously, that's not *his* fault for being a creepy bastard trying too recapture his lost youth by boning drunk chicks half his age, it's Feminism's fault for convincing drunk chicks half his age that they could do better. Way better. And where does feminism inculcate women to eschew boning creepy old dudes that will divorce you in 10 years for the younger model because there will always be a younger model? Why, Columbia University, where Roy Den did his M.B.A. If you can't get laid at *Columbia* as a 40 year old asshole-y MBA student, really, it's the fault of the goddamned Women's Studies Department. So he's suing them for "using government aid to preach a 'religionist belief system called feminism.'" Feminism, as we all know, teaches us to hate Men, "spreading prejudice and fostering animosity and distrust toward men with the result of the wholesale violation of men's rights due to ignorance, falsehoods and malice." Also, it "demonizes men and exalts women in order to justify discrimination against men based on collective guilt." Thus, since Feminism is a religion dedicated to violating the God-given rights of men, Columbia's program violates the Constitution of the United States and must die a litigious death. Look, I took a women's study class in college, with a woman who considered herself a prominent first-wave feminist. If there was any class that taught me to dislike and take with a grain of salt any first-waver who said she was out there to help me, it was that class with that arrogant, undermining, fake-nice woman who gave me the lowest grade in the class (despite the highest marks throughout) for daring to disagree with her policy prescriptions and political philosophy during class discussion. I got my feminism from my dad, jerk-face, who taught me that I am any man's equal and many men's better and that I don't have to and never should kowtow to a man for anything, including sex, money, love or support. So, look, I would almost feel bad for you that your ex-wife conned you into marrying her so she

could get her green card, but you're such a jerk I kind of don't. But your friends in Russia said that if you're so damned desperate to get back to a society in which women are considered 2nd-class citizens and the "rights" of men are respected by the courts over the rights of women (especially in cases of date rape, which you so lovingly advocate in your *New Yorker* profile as the way things ought to be), you can always go back to Russia. I'm sure we'd even take up a collection to help buy you a plane ticket. Roy Den Hollander's Résumé [Roydenhollander.com] Lawyer Files Antifeminist Suit Against Columbia [NY Times] Hey La-a-a-dies [New Yorker]

Contact Megan Carpentier:

EMAIL THE AUTHOR COMMENT

RELATED STORIES

- Court Rules Ladies' Nights To Be Acceptable, Of Course
- Free Drinks And Ladies' Night: Is The Whole Thing Sexist?
-

DISCUSSION THREADS

FEATURED ALL START A NEW THREAD

SHOW EARLIER DISCUSSIONS

out

JEZEBEL



PHOTOGRAPH BY [unreadable]



lifehacker



3:23:57 AM [unreadable]



109



JANUARY



SIZMODO



Names
ious

Acts as
fen

er of
e in



MITT ROMNEY
Mitt Romney Laughs
Uncomfortably as Woman
Interrupts Press Conference to Call Him a Racist

nough
nough



BREAKING
Jessica Simpson's Epic Pregnancy
Comes to an End

am
l



BAG TRADE
Linda Evangelista's \$46k Child
Support Lawsuit Is Going To Court



POLITICS
The Curious Case of Why We Give a

CRIME

Handwritten mark resembling the number 7

Profile

Show us on



+ Add Event

+ Add Venue



Search

CLUBS

NEWS

MUSIC

EVENTS

PHOTOS

COMMUNITY

PLAN YOUR PARTY

HALLOWEEN

current city: **NEW YORK**

most popular cities: **LAS VEGAS | MIAMI | LOS ANGELES | ATLANTIC CITY |**

US > New York > Members > Tasty1027



Send a Message | Friend Request

Tasty 1027

I Love to Go Out Dancing & Basically Just Have a Good Time.

Date of Birth: Apr 26

Joined: 06.10.2008

Looking For: Friends

EVENTS

PHOTOS

WHERE I PARTY

REVIEWS

LEAVE A NOTE ON TASTY1027'S PAD

Leave a note on Tasty1027's pad

View all members: [log in](#)
(Members may edit their comments.)
or [log out](#) or [enter your comment below](#).

Showing comments 1 to 2 out of 2 comments

[Tasty1027](#) says:

(06.11.2008)

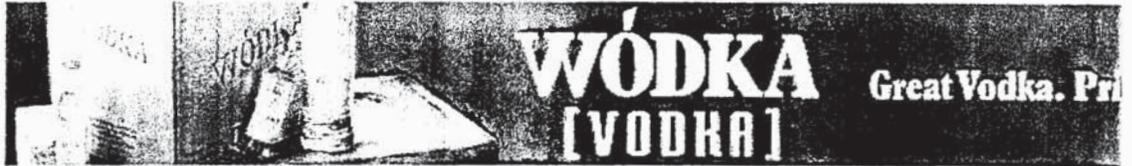
THANKS FOR THE ADDITION..

Follow us on



+ Add Event

+ Add Venue



Search

CLUBS NEWS MUSIC EVENTS PHOTOS COMMUNITY PLAN YOUR PARTY HALLOWEEN

current city: NEW YORK

most popular cities: LAS VEGAS | MIAMI | LOS ANGELES | ATLANTIC CITY |

US > New York City > Nightclubs > Amnesia Nightclub > Reviews

Amnesia Nightclub New York

< Back to Amnesia Nightclub New York



REVIEWS FOR AMNESIA NIGHTCLUB NEW YORK

Submit a Review

Clubplanet members: [login](#)

Guests: Please [create an account](#) or enter your review below
(only registered users can edit their reviews)

Name:*

Title:*

Review:*

3F4P43

enter text above

Submit

Sony® Intern

Showing reviews 11 to 13 out of 13 reviews for Amnesia Nightclub New York

[enjoy](#) says: (04.30.2010)

choose scene

This is the worst false advertisement I have ever seen. DJ Clue never came and they should called it Latin thursdays at amnesia. WTF

If you are non Latin looking they wil not let you in.

[The Party](#) says: (04.25.2010)

Beware of RSVP's !!

I made & confirmed reservations for my bday this past wknd & they basically had no clue about what was going on. first they said u couldn't get in unless u were on a list which i was except to them it wasn't valid even w showing them my confirmation which i got off their website. they were complete pricks about the whole thina & of course onlv way to get



TODAY'S



in was if we bought bottles, go figure !!
in the end my party of 12 made it in but after the hassle they gave me & my friends at the door quite frankly i wouldn't bother to go back. there are plenty of places to party in nyc u don't need to go somewhere & be treated like a jerk for no reason.

janice21 says: (04.25.2010)

DO NOT GO TO THIS CLUB!!!!

I rsvp to attend this club & when me & my friend get there the bouncer asked if i was on the guestlist i said "yes" & the name of it... this prick say "NO I CANT LET YOU IN" not your not on the guestlist or you have to pay to come in... I was completely offended & outraged because the only reason i think he didnt let us in was because of our skin color racist bastard! Because i'm not white & have blonde hair & 120lbs therfore i would NOT recommend this anyone & I hope the police shut the club down!

First Previous 1 2

DIRECTV® For Bars
76% Of Bar Subscribers Say That NFL SUNDAY TICKET™ Increases Business

Ads by Google



Sony® Inter

Learn More >

HALLOWEEN
10/31/10

Shop these costumes and more at our stores or online! Save 15% if you buy the entire look →

+ADD VENUE
+ADD EVENT

USA
CANADA

[Change City]

PLACES TO GO

Clubs Lounges Bar & Restaurants All Venues Advanced Search

EVENTS

Event Calendar Guestlists Tickets New Years Eve Search By Type Search By Location

COMMUNITY

Friends Promoters Message Boards Links

ARTICLES

Nightlife Music Style

PHOTOS

Nightlife Hotties Most Popular Latest Galleries My Photos Upload Photos

VIDEOS

Clubland Miami My Videos Submit A Video

Search
bar
Find
to
Re
d
N
B
B
C
S
L
g
P

upset with them. We ended up breezing through right after she came out, because I'm pretty sure they didn't want to upset her (Holly's currently one of the models on Project Runway this season, so her "it" factor is pretty high right now).

Holly's party made up a majority of the people there -- so it was basically models. The rest of the crowd was pretty weird, but I don't know how it is on a normal night.

The venue is a really cool space. Very open and clubby, lots of mood lighting, and there are silks hanging from the ceiling, where acrobats perform a couple of times later in the night. There are three tiers -- the open main floor with some lounge couches and a couple of small tables in the middle, and a long bar area on the left; the second tier has more tables and a semi-circular dance floor; the top tier is VIP and has exclusive tables. This place has potential to become a real hotspot, especially since it's in the meatpacking district, steps from cielo and kiss & fly. However, if the rest of the crowd was what I saw, I wouldn't return.

Was this review ...? Useful (3) Funny (2) Cool (1)



Maria W.
NY

Elite '10
384
385

12/11/2009

Put your party pants on and get ready! Last night was the opening for the Thursday party at Manhattan's newest big danceclub, Amnesia.

No relation to Amnesia Ibiza, this venue resides in the space formally held by Sol. A tri-level club, there is a bar on the main floor and another on the third floor, (wo)manned by beautiful staff. Upstairs is the roped off VIP section, with comfy stuffed chairs and couches with a few tables interspersed. It's a crows nest view that takes up one side of the club and makes for a good people watching perch if you don't find the company you're with interesting enough.

Most people were standing rather than sitting in the VIP section, mixing together and making new friends, well lubricated by the flowing cocktails. The main floor was busy, more seating found there with benches that face each other and short knee high tables in between. Different groups were dancing and lining up at the downstairs bar, people in their 20's, 30's, 40's. Interesting and eclectic crowd, let's see if it stays that way without the bs model and bottle service parties that used to be the tired old Sol formula.

DJ Vice on the decks, spinning in a booth above, looking down onto second level center stage opposite the upstairs VIP area. The crowd was filling up the dance areas with their drinks in hand compliments of Belvedere Vodka. The music was pounding and there were a lot of happy friendly people celebrating the season and the new space.

This looks to be the beginnings of a hot Thursday night party. In these days when more places are closing than opening, it's very good to have a new venue to club in the city.

Was this review ...? Useful (5) Funny Cool (2)



Clint H.

NY

Elite '10
90
115

2/10/2010

(Written on 1/27/10, then posted in the wrong section!)

So I went here last Thursday and it was a great night out...

Right from the outset, I thought I was at Quo tho! It's weird because at the entrance of it, you

actually think you are going inside the Quo/Retox/Mist club space. Even when you enter, you feel like you're inside Quo, but Quo it is not.

Thursday night they had great DJs out playing, so the music was on point. The space is really nice. You walk in and there's tables rite from the start, but don't fret dancers, there's PLENTY of dance space to go around. There are 2 bars but Thursday night it only really needed 1, it wasnt very pakked, which was nice.

There's an upstairs section, VIP i would guess, with extra tables (that are quite comfortable). The decor is like a low lite blue, with these really cool lights up at the ceiling that lite up every so often in different colors of a rainbow. It has a warehouse feel to it, and it's big, but not Mansion sized. Not to mention, there's dancers, but not your usual gogo dancers (like at Quo)...the dancers here dance on silks!!! Swinging bakk and forth 30 feet above the ground...pretty impressive i must say...

I was at a table up in the bakk, so I'm not very sure as to how much everything costs, but my guess would be basic club price...so i would say medium to pricey...A problem I had with the club however, is the location...it is WAYYYYYY west, almost in the water by the time you reach the venue, but if you don't mind to walk, it's a great place to party!!! See you there!

Was this review ...? Useful (3) Funny (1) Cool



Maria T.
New York, NY

Elite 10
45
116

2/10/2010

I feel like this is one of the clubs that is really easy to get in to...

Maybe I'm being bias, but I have only been here once- their grand opening. Interior design was okay- its huuge! Exposed brick wall, and the girls swinging from fabric is a nice touch.

The crowd- again, anyone can get in kind of club..so enough said.

Music was slow when it first started, but it slowly picked up.

Overall I would say go to just say you've tried it out, but not something I would make a regular spot.

Was this review ...? Useful (3) Funny Cool



Kelly R.
Paris
France

Elite 10
7
123

1/17/2010 1 photo

I went there on Saturday, January 9th at 10:45. We were on a promoter's list, but they would not let us skip the line. The line was NOT MOVING. Finally, the promoter got there right before 11, and then they let him bring in like 20 people at once, including us. It wasn't even crowded inside! They were just making people stand outside to make it look like a cool club. I don't appreciate bullshit like that. About an hour later, the club was as full as it would get for the night, but it was a comfortable amount of people. I did get jostled every few minutes, but it's not a total nightmare like it can get at other clubs.

The DJ was GREAT. Loved it. Danced all night long. The bathroom sinks are really cool.

I had bottle service at the promoter's table, so I can't speak for the skill of the bartenders. Also, I don't know how much anything cost. Oh, but the guys who were with us had to pay \$20 cover.

*Same date +
Time as
Mr. Holler's*

When we came in, I was like, "What? Why are there sheets hanging from the ceiling? What ugly and awkward decorations." BUT they were for these ladies wearing vintage-looking lingerie who climbed up and did Cirque de Soleil type stuff! Swinging around and spinning and twisting, all above the main floor of the club, with people dancing below them. It was pretty cool. They did it once around maybe 11:30 and then again maybe at around 1am. Definitely unique! Way better than just having girls in skanky outfits dancing on platforms.

Was this review ...? Useful (6) Funny (3) Cool



Joe R.
New York, NY

7/13/2010

What a terrible place, extremely expensive for what it is, the crowd is sketchy, the bouncers are despicable, there was only one good/friendly bartender....
I will never go there again. Don't waste your time/money, there are so many other places to go instead of this, don't bother.

Was this review ...? Useful Funny Cool



L W.
New York, NY

7/8/2010

If you're looking for your typical situation in the nightlife at certain clubs where you'll encounter a great deal such as the pull of (NO COVER CHARGE ALL NIGHT or UNTIL 12 if you RSVP) then are asked to pay \$20- \$40 since "there is no list" after being forced to wait outside of the door for 2 hours...Amnesia is that place!

If it wasn't for running into someone who had a connection, we would have continued walking away trying to "forget" that night.

Once inside, we actually had fun. The place looks nice and all and the dj that night was good, but with the "bait and switch" methods that a lot of these clubs use, it reminded me of why I stopped going to clubs in the first place.

It's unfortunate what people feel they need to do to other people to feel they have power and to take people's money unfairly. DUH, it's called, get everybody in so they can buy drinks! That still means more revenue. Don't piss off the consumer. The consumer is the only reason why you'd exist. Ugh.

Despite this huge TYPICAL flaw in the nightlife scene, I had a much needed fun night out with the ladies.

Was this review ...? Useful Funny (1) Cool



Amy U.
New York, NY

12/12/2009 1 photo

This club caters to everyone...singles, couple, groups....all types of music. The club is huge you won't be shoulder to shoulder like othe places.. You never know what performers they have...
World renowned Dj
Check it out you won't be disappointed....

Was this review ...? Useful Funny Cool

5/22/2010

N.Y. State Division of Human Rights Information for Complainants [A71-A73]



NEW YORK STATE
DIVISION OF HUMAN RIGHTS
20 EXCHANGE PLACE, 2ND FLOOR
NEW YORK, NEW YORK 10005

(212) 480-2522
Fax: (212) 480-0143
www.dhr.state.ny.us

DAVID A. PATERSON
GOVERNOR

GALEN D. KIRKLAND
COMMISSIONER

INFORMATION FOR COMPLAINANTS **CONCERNING COMPLAINT PROCEDURES OF** **NEW YORK STATE DIVISION OF HUMAN RIGHTS**

The New York State Division of Human Rights is a State agency mandated to receive, investigate and resolve complaints of discrimination under N.Y. Executive Law, Article 15 ("Human Rights Law"). The Division's role is to fairly and thoroughly investigate the allegations in light of all evidence gathered.

YOUR RIGHTS AND RESPONSIBILITIES AS A COMPLAINANT

- You have a right to obtain a private attorney at any time, but you are not required to do so.
- If you experience any further conduct by the Respondent that you believe is discriminatory, or is in retaliation for filing your complaint, you should immediately report it to the Division of Human Rights.
- You must notify the Division of any change in your address or telephone number. If the Division cannot contact you, we may not be able to proceed with your case. Inability to locate you will result in the eventual administrative dismissal of your case.
- Your complaint may voluntarily be withdrawn in writing by you at any time. The withdrawal form must be signed by you or your attorney (original or fax will be accepted). A withdrawal form may be obtained from the Division.
- Conciliation or settlement is possible at all points in the proceeding, and the Division may provide assistance with conciliation or settlement at the request of any party.
- You, or your attorney, may review the Division's file in this matter, and may copy by hand any material in the file, or obtain photocopies at a nominal charge. The Respondent in this matter has the same right to review the file.

WHAT IS THE INVESTIGATIVE PROCEDURE?

The Division represents neither the Complainant nor the Respondent. The Division pursues the State's interest in the proper resolution of the matter in accordance with the Human Rights Law. Upon receipt of a complaint, the regional office will:

- Notify the Respondent(s). (A Respondent is a person or entity about whose action the Complainant complains.)
- Resolve issues of questionable jurisdiction.

INFORMATION FOR COMPLAINANTS
CONCERNING COMPLAINT PROCEDURES OF THE NYS DIVISION OF HUMAN RIGHTS
Page 2

- Forward a copy of the complaint to the U.S. Equal Employment Opportunity Commission (EEOC) or the U.S. Department of Housing and Urban Development (HUD), where applicable. Such federal filing creates a complaint separate and apart from the complaint filed with the Division, and protects your rights under federal law, although in most cases only one investigation is conducted pursuant to work-sharing agreements with these federal agencies.
- Investigate the complaint through appropriate methods (written inquiry, field investigation, witness interviews, requests for documents, investigatory conference, etc.), in the discretion of the Regional Director. The investigation of the complaint is to be objective.
- Allow the parties to settle the matter by reaching agreement on terms acceptable to the Complainant, Respondent and the Division. The Division will allow settlement from the time of filing until the matter reaches a final resolution.
- Determine whether or not there is probable cause to believe that an act of discrimination has occurred, if the matter cannot be settled prior to that Determination. The Division will notify the Complainant and Respondent in writing of the Determination.

WHAT IS THE DIVISION'S POLICY ON ADJOURNMENTS AND EXTENSIONS?

It is the Division's policy to investigate all cases promptly and expeditiously. Therefore, you are expected to cooperate with the investigation fully and promptly. No deadlines will be extended at any time during the investigation, unless good cause is shown in a written application submitted at least five (5) calendar days prior to the original deadline.

WHAT IS THE PROCEDURE FOLLOWING THE INVESTIGATION?

If there is a Determination of no probable cause, lack of jurisdiction, or any other type of dismissal of the case, the Complainant may appeal to the State Supreme Court within 60 days.

If the Determination is one of probable cause, there is no appeal to court. The case then proceeds to public hearing before an Administrative Law Judge. Under Rule 465.20 (9 N.Y.C.R.R. § 465.20), the Respondent may ask the Commissioner of Human Rights within 60 days of the finding of probable cause to review the finding of probable cause.

WHAT IS A PUBLIC HEARING?

A public hearing, pursuant to the Human Rights Law, is a trial-like proceeding at which relevant evidence is placed in the hearing record. It is a hearing de novo, which means that the Commissioner's final decision on the case is based solely on the content of the hearing record. The public hearing is presided over by an Administrative Law Judge, and a verbatim transcript is made of the proceedings.

The hearing may last one or more days, not always consecutive. Parties are notified of all hearing sessions in advance, and the case may be adjourned to a later date only for good cause.

The Complainant can retain private counsel for the hearing, but is not required to do so. If Complainant is not represented by private counsel, the Division's counsel prosecutes the case in support of the complaint. Respondent can retain private counsel for the hearing, and, if Respondent is a corporation, is required to be represented by legal counsel. Attorneys for the parties or for the Division may issue subpoenas for documents and to compel the presence of witnesses.

INFORMATION FOR COMPLAINANTS
CONCERNING COMPLAINT PROCEDURES OF THE NYS DIVISION OF HUMAN RIGHTS
Page 3

At the conclusion of the hearing sessions, a proposed Order is prepared by the Administrative Law Judge and is sent to the parties for comment.

A final Order is issued by the Commissioner. The Commissioner either dismisses the complaint or finds discrimination. If discrimination is found, Respondent will be ordered to cease and desist and take appropriate action, such as reinstatement, training of staff, or provision of reasonable accommodation of disability. The Division may award money damages to Complainant, including back pay and compensatory damages for mental pain and suffering, and in the case of housing discrimination, punitive damages, attorney's fees and civil fines and penalties. A Commissioner's Order may be appealed by either party to the State Supreme Court within 60 days. Orders after hearing are transferred by the lower court to the Appellate Division for review.

WHAT IS A COMPLIANCE INVESTIGATION?

The compliance investigation unit verifies whether the Respondent has complied with the provisions of the Commissioner's Order. If the Respondent has not complied, enforcement proceedings in court may be brought by the Division.

NOTICE PURSUANT TO PERSONAL PRIVACY PROTECTION LAW

Pursuant to the Human Rights Law, the Division collects certain personal information from individuals filing complaints and from those against whom a complaint has been filed. The information is necessary to conduct a proper investigation; failure to provide such information could impair the Division's ability to properly investigate the matter. This information is maintained in a computerized Case Management System maintained by the Division's Director of Information Technology, who is located at One Fordham Plaza, Bronx, New York, (718) 741-8365.

GENERAL INFORMATION

For a more detailed explanation of the process, see the Division's Rules of Practice (9 N.Y.C.R.R. § 465) available on our website www.dhr.state.ny.us. If you have any additional questions about the process, the investigator assigned to the case will be available to answer most questions.

A 74

Certification of Record on Appeal, CPLR 2105 [A74]

Certification of Record on Appeal to the Appellate Division First Department

I, Roy Den Hollander, the petitioner-appellant and attorney in this action, certify, pursuant to CPLR § 2105, that the foregoing printed papers on appeal have been personally compared by me with the originals on file in the office of the Clerk of the County of New York and found to be true copies of those originals of the record on appeal, consisting of the notice of appeal, relevant portions of the pleadings and their relevant exhibits, and the reviewable orders in the case now on file in the office of the Clerk of the County of New York.

Dated: December 24, 2013
New York, N.Y.

By: Roy Den Hollander, Esq.
Petitioner-appellant
545 East 14 St., 10D
New York, NY 10009
(917) 687-0652
Roy17den@gmail.com

A 75

Certification Pursuant to CPLR 2105 (for Appendix to Court of Appeals) [A75]

Certification of Record on Appeal to the Court of Appeals

I, Roy Den Hollander, attorney and petitioner-appellant in this action, do hereby certify, pursuant to CPLR 2105, that the foregoing printed papers on appeal have been personally compared by me with the originals on file in the office of the clerk of the County of New York and found to be true and complete copies of those originals, and the whole thereof, of the record on appeal, consisting of the notice of appeal, relevant exhibits and reviewable orders of the Appellate Division, First Department and the New York County Supreme Court appealed from, and the papers and other exhibits upon which the orders were founded now on file in the office of the clerk of the County of New York.

Dated: October 20, 2014
New York, N.Y.

Roy Den Hollander, Esq.
Petitioner-Appellant
545 East 14 St., 10D
New York, N.Y. 10009
(917) 687-0652
roy17den@gmail.com