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

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In the Matter of the Application of

ROY DEN HOLLANDER

Petitioner,

-against-

THE CITY OF NEW YORK COMMISSION ON HUMAN RIGHTS,

Respondents.

----------X

Index No. 13-100299

NOTICE OF MOTION TO SUPPLEMENT PETITION

PLEASE TAKE NOTICE that upon the affidavit of Roy Den Hollander, sworn to on July 31, 2013, and the affidavit exhibit of the verified second supplemental petition, and upon all the pleadings and proceedings herein, the undersigned will move in the Supreme Court of the State of New York, located at 60 Centre Street, New York, in the Submissions Part, Room 130, on the 28th day of August, 2013, at 9:30 a.m., pursuant to CPLR 3025(b), for an order granting this motion for leave to supplement the verified petition by (1) adding 42 U.S.C. § 1983 equal protection and substantive due process causes of action and (2) adding as a defendant Carlos Velez, Executive Director of Law Enforcement for the Commission on Human Rights, in his individual capacity.

The above entitled special proceeding seeks judicial review of the City of New York Commission on Human Rights' deprivation of the petitioner's federally protected rights under the Fourteenth Amendment to the U.S. Constitution and review of its determination that the petitioner was not discriminated against by the Amnesia nightclub because of his age.

Dated: July 30, 2013
New York, N.Y.

Respectfully,

/S/

_____

Roy Den Hollander, Esq.
Petitioner and Attorney
545 East 14th Street, 10D
New York, N.Y. 10009
917-687-0652
rdhhh@yahoo.com

To: Respondent
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-l0l
New York, New York 10007
(212) 356-2294

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

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In the Matter of the Application of

ROY DEN HOLLANDER

Petitioner,

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THE CITY OF NEW YORK COMMISSION ON HUMAN RIGHTS,

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Index No. 13-100299

AFFIDAVIT IN SUPPORT OF MOTION TO SUPPLEMENT PETITION

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

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

1. I submit this affidavit in support of my motion for leave to supplement the verified petition by (1) adding 42 U.S.C. § 1983 equal protection and substantive due process causes of action and (2) adding as a defendant Carlos Velez, Executive Director of Law Enforcement for the Commission on Human Rights, in his individual capacity.

2. The Second Supplement Petition is attached as Exhibit A.

3. Respondent declined to agree to the filing of the second supplement petition.

/S/
_____
Roy Den Hollander

Sworn to before me on the
30th day of July 2013

/S/
_____
Notary Public
LILIANA B ARCE NOTARY PUBLIC-STATE OF NEW YORK, No. 01AR6268645,Qualified in Queens County
My Commission Expires Seprember 17. 2016

Exhibit A

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

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In the Matter of the Application of

ROY DEN HOLLANDER,
Petitioner,

-against-

THE CITY OF NEW YORK COMMISSION ON HUMAN RIGHTS,
Respondent.

----------X

Index No. 13-100299

SECOND SUPPLEMENT TO PETITION

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

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

1. This verified second supplement petition is submitted to add (1) Fourteenth Amendment equal protection and substantive due process claims pursuant to 42 U.S.C. § 1983 and to add (2) Carlos Velez ("Velez"), Executive Director of Law Enforcement for the Commission on Human Rights, as a Respondent in his individual capacity, in this special proceeding brought against the City of New York and its Commission on Human Rights ("City HR").

2. This proceeding requests the reversal of a decision by City HR that found no probable cause for Petitioner Roy Den Hollander ("Den Hollander") being discriminated against because of his age when the nightclub Amnesia demanded he buy a $350 bottle for admission.

3. City HR and Velez intentionally discriminated against petitioner Den Hollander for a number of reasons, one of which is that Den Hollander is a Euro-American of protestant ancestry. Then again, maybe the City HR and Velez discriminated against Den Hollander for being an African-America. After all, everyone's ancestors originated in Africa.

4. Anyway, the intentional discrimination occurred when Velez conducted an investigation, or more accurately the lack of an investigation, into an age-discrimination complaint filed by Den Hollander against the Manhattan nightclub Amnesia.

5. The Club Med manner of Velez's investigation was motivated by bigotry against a Euro-American of protestant ancestry and to punish petitioner Den Hollander for complaining about Velez to his boss (see paragraph 29) and to punish Den Hollander for exercising his First Amendment right to speak, to decide his marital status, and to engage in litigation as a means for defending his rights when it did not comport with Velez's political-correctionalist ideology.

6. Basically, Velez failed to adequately investigate Den Hollander's age-discrimination claim and dismissed the complaint because Den Hollander does not bow and scrap to feminist ideology, is a divorced male of Euro-American protestant ancestry who has nothing good to say about his ex-wife and is uppity for expressing ideas of which Velez and the effete eastern bureaucratic elite disapproves.

7. Velez issued a Determination and Order After Investigation, also known as an Administrative Closure, ("*Order*," Ex. A) that dismissed the age-discrimination complaint.

8. Velez's *Order* was based on various extra-legal and bigoted reasons that expose impermissible considerations and impermissible motivations by Velez in investigating, writing, and issuing the *Order*.

9. Bureaucratic bigotry, even against Euro-Americans, has no placed among civilized men and violates equal protection as to ancestry, a suspect classification.

10. Punishing an individual for exercising his fundamental constitutional rights concerning beliefs, speech, marriage and whom to sue violates equal protection.

11. Even alleged human rights officials cannot legally act by personal whim or caprice no matter what superficially defined group they belong to or what comeuppance they believe members of other groups deserve. Two wrongs don't make a right, or they didn't use to.

12. Velez's investigation and *Order* were arbitrary and irrational since they relied on adherence to the modern-day demonizing of divorced, outspoken Euro-American males, which demonstrates a deliberate indifference to the constitutional rights of Euro-American males, such as Den Hollander, and violates substantive due process.

13. Velez had plenty of time to deliberate, over a year and a half, but was deliberately indifferent to Den Hollander's constitutional rights, which violates substantive due process.

14. Velez's investigation and resulting *Order* were adopted and approved without change by the Commissioner/Chairperson of City HR—a municipal policymaker according to *Rosu v. City of New York*, 2012 U.S. Dist. Lexis 178875 at *21-22—as the City's final decision concerning Den Hollander's age-discrimination complaint. That makes the City liable for Velez's unconstitutional actions that violated Den Hollander's federally protected rights. *Pembaur v. Cincinnati*, 475 U.S. 469, 483 (1986). (Ex. B, *Determination and Order After Review*, "*City HR Order*").

15. A single act by a policymaker that ratifies a subordinate's actions is sufficient for municipal liability to arise under § 1983. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479-80 (1986); *Back v. Hastings on Hudson Union Free School District*, 365 F.3d 107, 128 (2d Cir. 2004).

16. From the early stages of the City HR proceedings (October 15, 2010) until the final review of the age-discrimination complaint (January 11, 2013), the Commissioner was on notice about the challenged conduct of Velez.

17. Specifically, City HR and Velez violated Den Hollander's clearly established constitutional rights under the Fourteenth Amendment's equal protection and substantive due process:

a. Not to be discriminated against based on his ancestry, or national origin, which is a suspect classification under equal protection of the 14th Amendment, *Graham v. Richardson*, 403 U.S. 365, 372 (1971);

b. To speak and write as he chooses provided such does not create an imminent danger of harm, such as yelling "bomb" in Times Square, or defaming someone. *Terminiello v. Chicago*, 337 U.S. 1 (1949). Freedom of speech is a fundamental right under substantive due process of the 14th Amendment that along with equal protection protects speech from arbitrary municipal action intended to punish it;

c. To petition a court for redress of grievances—even against the preferential treatment of females. *NAACP v. Button*, 371 U.S. 415 (1963). Freedom of speech includes the right to file lawsuits, which is a fundamental right under substantive due process of the 14th Amendment that along with equal protection protects litigation from arbitrary municipal action intended to punish it; and

d. To marry or divorce as the heart, or stupidity, dictates and to express opinions about such, which are fundamental rights under substantive due process of the 14th Amendment that along with equal protection protects such from arbitrary municipal action intended to punish it. *Loving v. Virginia*, 388 U.S. 1 (1967).

18. Upon information and belief, City HR and Velez treated Den Hollander differently than others who filed age-discrimination complaints with City HR.

19. City HR and Velez irrationally and arbitrarily punished Den Hollander for exercising his rights to speak, to sue, and to marry by using his exercising of those rights as a reason to find no age discrimination by Amnesia, which amounts to both a substantive due process and equal protection violation.

Facts

20. The age-discrimination complaint against the nightclub Amnesia was filed with the City HR after the New York State Division of Human Rights ("State HR") concluded that Amnesia did not discriminate against Den Hollander and his attorney friend based on their sex but probably their age. The State HR, however, does not have jurisdiction over age discrimination by nightclubs, so Den Hollander immediately contacted City HR, which does have jurisdiction, to initiate the process for filing a complaint based on age discrimination.

21. Right from the beginning, Velez, a City official, who under the law is suppose to act as a neutral fact-finder, demonstrated his prejudice toward Den Hollander on multiple levels.

22. On October 15, 2010, at an appointment with a staff attorney for City HR, Velez notified the staff attorney that he would not allow Den Hollander to file an age discrimination complaint against the nightclub Amnesia.

23. Amnesia had refused to allow Den Hollander and his attorney friend, both of them male and older than the other club patrons, to enter the club unless they paid $350 for a bottle of watered-down, brandless vodka while others in their twenties and thirties were admitted without having to buy a bottle.

24. Velez told the City HR staff attorney that there was no discrimination because had Den Hollander and his friend agreed to buy a $350 bottle, they could have entered the nightclub.

25. 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 Velez's bigoted reasoning, such conduct was not discriminatory because those with a different skin complexion were not barred from entering and riding the buses as long as they sat in the back.

26. The U.S. Supreme Court disagreed in *Browder v. Gayle*, 352 U.S. 903 (1956), which found that allowing blacks to enter a bus, but requiring them to sit in the back was unconstitutional discrimination. In a different case, the U.S. Supreme Court also ruled that a discrimination injury can be the existence of a "barrier [read $350 bottle of brandless vodka] that makes it more difficult for members of one group [read older guys] to obtain a benefit [read chasing young ladies] than it is for members of another group [read younger guys]." *Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville*, 508 U.S. 656, 666 (1993).

27. So, contrary to the U.S. Supreme Court but in accordance with Velez's own brand of law, since Den Hollander and his friend could enter the club [get on the bus], but once inside, they would have to buy a bottle [sit in the back], there was no discrimination.

28. There is nothing comical about this type of rationalization used by Velez and the Ku Klux Khan of the Deep South in another century. It makes clear a mindset driven by prejudices, which in Velez's case are directed toward Den Hollander and people like him who exercise their rights in a similar fashion.

29. A letter by Den Hollander to the City HR's Commissioner, Exhibit C, touching on the above arguments resulted in Velez being required to accept the case, but it didn't reign in his prejudice for Den Hollander's ancestry and the rights he exercised, which colored Velez's investigation, decision making, and his *Order*.

30. The name "Den Hollander," which means "the Dutchman," and photographs of him on his website, which Velez refers to in his *Order*, Ex. A at p. Tres, brand Den Hollander as belonging to that currently disfavored group—Euro-American males. (For some reason, Velez failed to put page numbers on his *Order*, so Den Hollander has supplied them for citation purposes in the *de facto* second, soon to become the first language of America, *see* Ex. A, *Order*).

31. Den Hollander's ancestry is obviously Dutch and almost as obviously protestant, specifically Huguenot protestant.

32. In the 16th and 17th centuries, 200,000 to a million Huguenots fled Catholic France to places such as the Dutch Republic and later New Amsterdam, now New York City, because Roman Catholic bureaucrats and rulers deprived Huguenots of the rights allowed others and targeted them for massacres. The most infamous occurred over two months called the St. Bartholomew's Day massacre in which 25,000 Huguenots in Paris[1] and thousands more in the countryside were butchered. The government subsequently granted amnesty to the butchers.

33. Velez's prejudices against the likes of Den Hollander—Euro-American, protestant ancestry, divorced male, who fights for his rights in court—drove Velez to conduct a joke of an investigation and dismiss the complaint against Amnesia.

34. On information and belief, Velez is Latin-American and Catholic. As often happens when members of previously disfavored groups in America achieve a modicum of power, some of those members abuse that power to vent revenge for discrimination they suffered—both real and imagined.

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[1] Paris' population at the time was just over 600,000.

35. Velez likely believes that white-Saxon-protestant-males, sometimes referred to as "Aryans," have discriminated against him; therefore, he is justified in settling the score by using his power against whom he perceives as a member of that group. Even if Velez's career was hampered by discrimination, it was not Den Hollander who did such.

36. For this § 1983 petition supplement, Den Hollander also considered accusing Velez of violating the Fourteenth Amendment by discriminating based on color, since Den Hollander is "white," when not using the micro-wave tanning salon down the street, and Velez is of a darker complexion, according to his Internet photo, assuming the f-stop was correct.

37. But since Den Hollander lives in one of the few remaining *de facto* communist territories on the planet—Manhattan, and many, but not all, of the judges here are lefties, feminists, and political correctionalists who will use any Orwellian argument to further their ideology, he assumed it not so far-fetch that they would rule "white" not a color but an absence of color, so no illegal discrimination based on the superficial characteristic of color.

38. Den Hollander is also obviously a male and as Velez criticizes in his *Order*, "a self-professed advocate for men's rights who identifies himself as an 'anti-feminist lawyer' on his website . . . . He has filed a number of lawsuits against bars and clubs that have 'Ladies Nights,' . . . ." (Ex. A, *Order* at p. Tres).

39. Such, however, does not indicate that Velez illegally discriminated against Den Hollander based on sex under the Fourteenth Amendment, but it is discrimination based on Den Hollander exercising his First Amendment rights, which include the right to file lawsuits to fight for the rights he foolishly thought the U.S. Constitution guaranteed him. *NAACP v. Button*, 371 U.S. 415, 429 (1963).[2]

[2] The right to file a lawsuit is a form of communication embraced by the First Amendment which "'protects vigorous advocacy, certainly of lawful ends, against governmental intrusion." *NAACP v. Button*, 371 U.S. at 429.

40. Velez's discrimination against Den Hollander for being an "anti-feminist lawyer"—assuming he's just referring to the "anti-feminist" part and not the "lawyer" part—is prohibited by the Constitution, and is the same tactic so commonly used throughout history by small minded conformists and two-bit totalitarians: justify violating human rights because the individual does not believe, speak, or act as "right minded" people do, or in this case "left minded," and therefore he belongs to a disfavored group. In Den Hollander's case, one of the last remaining 200 Euro-American men, or perhaps more accurately African-American men, in this country who are willing to fight the feminists and political correctionalists efforts to impose their own brand of totalitarianism.[3]

41. While Velez's disapproval of Den Hollander's jihada against the Feminists (that's jihad with an "a"—wouldn't want to be accused of gender insensitivity) is irrelevant to the age discrimination complaint filed with the City HR, it makes clear that Velez's disapproval of Den Hollander exercising his First Amendment rights is also driven by his effort to curry favor with the Feminist Establishment,[4] a.k.a. "Feminarchy America," by adding to his reasons for ruling against Den Hollander the classification that Den Hollander is an "anti-feminist."

42. When City HR dismisses a complaint for "no probable cause," it is required to issue a written order listing the reasons. 47 RCNY § 1-52. Velez included the paragraph describing Den Hollander's anti-feminist activities in his Order; therefore, Den Hollander's

[3] Whoa! "Totalitarianism" is a strong term. But according to the late Professor Howard Zinn, "To exalt as an absolute is the mark of totalitarianism, and it is possible to have an atmosphere of totalitarianism in a society that has many of the attributes of democracy." Believing that a particular political ideology is "correct" is as nuts as believing a particular religion is the "true" religion—look at the carnage that caused throughout history.

[4] The Establishment today is a Feminist Establishment—a unitary belief system held by enough influential persons so that it dominates over other beliefs in this society, such as the principles of the Declaration of Independence and the Constitution.

beliefs, speech, and lawsuits concerning such are a reason for the dismissal. Otherwise, why include the remarks.

43. Velez's *Order*, which was ratified by the City HR Commissioner, demonstrates that he and City HR, like so many self-righteous government officials today, believe America is now a country similar to the former Soviet Union where legal decisions should be made based on whether a person subscribes to the popular, trendy ideology of the day. Those who dissent are not disserving of the rule of law because they are so inferior to the "in crowd," or the effete, Eastern, intellectual, white-washed elite that they have no rights for the law to protect. Today, all that is needed to justify the stripping of a man's rights is to label him an "advocate for men's rights" or "anti-feminist." (Ex. A, *Order* at p. Tres). In the 1950s, the label was "fellow traveler" or "commie sympathizer."

44. Municipalities and officials acting under color of law are supposed to be blind, not just to race (true there has not been another hominid race on this planet since the Neanderthals died out, although some apparently still linger in the government), but to ancestry and to a person's beliefs and speech. In this democracy, legal decisions are not supposed to be determined by the popularity of such beliefs or speech.

45. Velez also based his dismissal on Den Hollander's "marital status," which is also prohibited under the First Amendment. "Choices about marriage, family life . . . are among associational rights [the Supreme] Court has ranked as 'of basic importance in our society.'" *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996)(citation omitted).

46. Velez writes, "[Den Hollander] admits in several online publications that he is 'bitter' from an ex-wife who used him for his US citizenship and money." (Ex. A, *Order* at p. Tres). That's an understatement! The ex-wife—a Russian mafia prostitute, former mistress to a

Chechen warlord, self-proclaimed black-magic witch, and devotee of the anti-Christ—secretly fed Den Hollander drugs so that he would believe the euphoria he experienced in her presence was the delusion of love—that's as a noun not a verb.

47. Thanks to the perversion of state domestic relations laws by the Feminists, the Queens Family Court issued an *ex parte* temporary order of protection against Den Hollander based on perjury by his ex-wife, except for the part of Den Hollander bruising her arm by using a little martial arts to disarm her wheedling an oversized steak knife in an effort to slice him into a steak sandwich. Her perjury left out the stuff about the knife—naturally.

48. That protection order still results in U.S. Customs detaining Den Hollander when he re-enters the country even though the order was dismissed long ago. Perhaps he should resort to entering the land of his birth with the other illegals.

49. Also, thanks to the Feminists' creation of the Violence Against Women's Act, Homeland Security made findings of fact that Den Hollander, who had no opportunity to oppose or refute its findings, committed "battery," or "extreme cruelty" or "an overall pattern of violence" against his alien ex-wife.

50. Okay, so Velez got something right, Den Hollander is "bitter" toward his ex-wife and her feminist allies, but what does that have to do with an age-discrimination complaint against a New York City nightclub? Nothing, but it has everything to do with showing that Velez is bigoted toward Den Hollander for who he is, what he believes, and what he says.

51. The same bigotry is evident in Velez ruling that "[Den Hollander's] description of himself [an anti-feminist] is consistent with his pattern of filing several gender discrimination suits." (Ex, A, *Order* at p. Tres).

52. Den Hollander pleads guilty, but so what? Is Velez actually saying that any person or organization that sues in court for human rights guaranteed by the U.S. Constitution can be summarily discriminated against because they brought prior suits? By that reasoning, had Velez been on the U.S. Supreme Court in 1954, he would have ruled against the NAACP in *Brown v. Board of Education*, 347 U.S. 483, because the NAACP had a history of fighting in the courts for human rights.

53. Would Velez rule the same way on actions brought by the National Council of LaRaza? Not likely, but consistency rather than arbitrary decision making driven by prejudices would required that LaRaza lose before Judge Velez.

Remedies

54. One of the purposes of 42 U.S.C. 1983 is to deter future constitutional violations by municipalities and their officials. *Owen v. City of Independence*, 445 U.S. 622, 651 (1980).

55. Petitioner Den Hollander continues to frequent New York City nightclubs, some of which deny him admission because of his apparent age. Assuming this Court requires City HR to stop discriminating against Petitioner, he will file additional complaints for age discrimination against these clubs, such as "Avenue."

56. Den Hollander, therefore, requests that this Court under CPLR 7806 order the City of New York to have its Human Rights Commission implement in its operations anti-discrimination policies that prevent unlawful discriminatory acts by its employees against Euro-Americans of protestant origin, divorced husbands, and any man who chooses to fight for his rights by suing or otherwise petitioning the government for a redress of grievances.

57. In addition under CPLR 7806, the City require the Executive Director for Law Enforcement of its Human Rights Commission be required to undergo sensitivity training to

mitigate or at least enable him to control his prejudice toward Euro-Americans of protestant ancestry, divorced husbands, and men who choose to fight for their rights by suing or petitioning the government for a redress of grievances.

58. Further under CPLR 7806, Den Hollander requests nominal damages from the City plus compensatory damages in the amount of the disbursements for bringing this action and incidental punitive damages from Velez in his personal capacity for the amount of $3,000 due to Velez's callous disregard for Den Hollander's constitutional rights:

a. Not to be discriminated against based on his ancestry;

b. To speak and write as he chooses provided such does not create an imminent danger of harm or defame;

c. To petition a court for redress of grievances; and

d. To marry or divorce as he can and to express his opinions on such.

59. Den Hollander requests a jury trial for these equal protection and substantive due process issues.

60. Den Hollander requests such other and further relief that this Court deems just and proper.

Verification

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

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
26th day of July 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.

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.

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
Executive Director
Law Enforcement Bureau

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 17, 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

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 you 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.

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

---------- x

In the Matter of the Application of

ROY DEN HOLLANDER,

Petitioner,

-against-

THE CITY OF NEW YORK COMMISSION ON HUMAN RIGHTS,

Respondent.

---------- x

MEMORANDUM OF LAW

Index No.: 100299 / 2013

(Part 33; Hunter, J.)

MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S MOTION FOR LEAVE TO SUPPLEMENT THE PETITION

The New York City Commission on Human Rights (the "Commission") submits this memorandum of law in opposition to Petitioner Roy Den Hollander's ("Petitioner") motion for leave to supplement the Petition. For the reasons set forth below, Petitioner's belated motion to amend a Petition that the Court has now dismissed should be denied.

PRELIMINARY STATEMENT

Petitioner's meritless motion to supplement the Petition should be denied because it is both procedurally and substantively deficient.

Petitioner's motion is procedurally improper because it was filed more than two months after the Petition and the Commission's motion to dismiss were fully submitted on May 20, 2013, and Petitioner does not even attempt to show good cause for such delay. All of the facts on which Petitioner's proposed supplement are based were well known to Petitioner before he filed his initial Petition. Moreover, Petitioner did not file his motion to supplement until July 30, 2013, the day this Court issued its Order and Judgment (the "Order") granting the Commission's

motion to dismiss the Petition. Because the Petition has now been dismissed, there is no longer any operative pleading in this case to be supplemented, and Petitioner's motion to supplement should be denied on that basis alone.

Petitioner's proposed supplement to his Petition is also subject to dismissal on its merits. Although now clothed in the language of "equal protection and substantive due process" (2d Supp. Pet. ¶ 1), the entire gravamen of Petitioner's proposed Second Supplement, like that of his now-dismissed original Petition and first Supplement to the Petition, is that the Commission insufficiently investigated Petitioner's complaint and improperly dismissed it. Both of these claims were squarely rejected by the Court in its Order, and Petitioner offers no basis for the Court to reconsider its prior rulings. Because this Court has already held that the Commission (and the Executive Director of its Law Enforcement Bureau, Carlos Velez) acted properly in investigating Petitioner's complaint and in dismissing it on both jurisdictional and substantive grounds, Petitioner cannot state any claim for a constitutional violation. *See Velella v. N.Y.C. Local Conditional Release Comm'n*, 13 A.D.3d 201, 202 (1st Dep't 2004); *York v. Ass'n of the Bar of the City of N.Y.*, 286 F.3d 122, 128 (2d Cir. 2002). The motion for leave to supplement should therefore be denied.

PROCEDURAL BACKGROUND

In January 2010, Petitioner filed a complaint with the New York State Division of Human Rights (the "State DHR") against a nightclub known as Amnesia, alleging that he and a male friend were refused entry to the club unless they agreed to purchase bottle service for $350, while two women on line in front of them were allowed in without buying bottle service. The State DHR investigated and dismissed the complaint for lack of probable cause, finding that

Amnesia required complainant to purchase a bottle for legitimate, non-discriminatory reasons. (Order, Ex. 1 at 1, 3).[1] The State DHR noted in *dicta* that Petitioner is older than the majority of the club's patrons, but that in any event age discrimination in public accommodations is beyond the State DHR's jurisdiction. (*Id.* at 1).

Subsequently, Petitioner filed a complaint with the Commission based on the same incident at Amnesia and alleging essentially identical facts, but now asserting discrimination based on age rather than gender. After investigating, the Commission's Law Enforcement Bureau ("LEB"), like the State DHR, found no probable cause to believe that Amnesia had discriminated against Petitioner. Moreover, the LEB held that Petitioner's claims were barred under section 8-109(f)(iii) of the City Human Rights Law and section 297(9) of the State Human Rights Law, which prohibit bringing successive discrimination complaints based on the same incident. Petitioner appealed the dismissal of his complaint to the Commission's Chairperson, who affirmed the decision. Petitioner's appeal brief, styled an "Appeal and Complaint," accused the LEB's Executive Director, Carlos Velez, of intentional discrimination against Petitioner "motivated by Velez's prejudice . . . against Euro-Americans." (Ex. 2 at 1).[2]

Petitioner then filed a special proceeding in this Court seeking review of the Commission's decision. Petitioner alleged that the Commission's dismissal of his discrimination complaint was improper and that its investigation of his complaint was insufficient. Petitioner subsequently filed a "Supplement to Petition" and an "Addendum of Exhibits to the Supplemental Petition," asserting that the Commission had violated Petitioner's constitutional

[1] "Ex." refers to exhibits attached to the accompanying affirmation of Leonard M. Braman.

[2] Petitioner provided no basis for this accusation of prejudice against "Euro-American[s]" other than that "[o]n information and belief, Velez is Latin-American and Catholic." (Ex. 2 at 4).

right to due process by insufficiently investigating his complaint. The Commission moved to dismiss the Petition. The Petition and the Commission's motion to dismiss were marked fully submitted on May 20, 2013.

On July 30, 2013, this Court issued its Order granting the Commission's motion to dismiss. In the Order, the Court agreed with the Commission that Petitioner's complaint before the Commission was barred by the doctrine of election of remedies "pursuant to Admin. Code §§ 8-502(a); 8-109(f)(iii); and Exec. Law § 297(9)." (Ex. 1 at 3). The Court further held that "were this court to review the [Commission's determination], this court would find that the above mentioned determination was rationally based." (*Id.*). The Court went on to hold that "[t]here is no merit to petitioner's contention that the Commission failed to conduct an adequate inquiry into his complaint." (*Id.*) Finally, the Court held that "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," and "[f]urthermore, petitioner had an adequate post-deprivation opportunity to be heard in this Article 78 proceeding." (*Id.*).

Simultaneously with the issuance of the Order, on July 30, Petitioner served and filed the instant motion to supplement the Petition. The motion states that it is made "pursuant to CPLR 3025(b)" (Notice of Mot. at 1), a provision governing pleadings in an action, not in a special proceeding, which are governed by CPLR 402. The motion seeks "leave to supplement the verified petition by (1) adding 42 U.S.C. § 1983 equal protection and substantive due process causes of action and (2) adding as a defendant Carlos Velez, Executive Director of [the LEB], in his individual capacity." (*Id.*). In support of the motion, Petitioner submits an affidavit attaching his proposed "Second Supplement to Petition." (Aff. Supp. Mot. ¶ 2). Petitioner's affidavit does

not offer any explanation for why the claims in this Second Supplement could not have been brought before the Petition and the Commission's motion to dismiss were fully submitted.[3]

ARGUMENT

I. Petitioner's Belated Motion for Leave to Supplement the Petition Is Procedurally Improper

As an initial matter, Petitioner cannot "supplement" his Petition in the instant special proceeding at this stage, now that the Commission's motion to dismiss the Petition has been granted and "the proceeding is dismissed." (Order, Ex. 1 at 4). It is not clear how Petitioner could "supplement" a dismissed pleading in a terminated proceeding.

In any event, Petitioner's motion for leave to supplement the Petition should be denied because it was filed more than two months after the Petition and the Commission's motion to dismiss were fully submitted for the Court's consideration. Petitioner filed his Petition on February 8, 2013. Subsequently, Petitioner filed a "Supplement to Petition" in which he purported to "add a Fourteenth Amendment procedural due process claim" (Ex. 3 ¶ 1), as well as an "Addendum of Exhibits to the Supplemental Petition." (Ex. 4). By stipulation of the parties, the Commission served an Answer and a Motion to Dismiss on April 5, Petitioner served a Reply on his Petition and an Opposition to the Motion to Dismiss on May 3, and the Commission served a Reply in support of its Motion to Dismiss on May 17, 2013. (Ex. 5). The return date stipulated by the parties was May 20, 2013, and the proceeding was marked fully submitted in Room 130 as of that date. It was not until July 30, over two months later, that Petitioner sought to file his Second Supplement.

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[3] Petitioner has also filed a motion for leave to reargue the dismissal of his Petition, citing as the sole basis for reargument his filing of the instant motion to supplement. The Commission is concurrently submitting a separate opposition to Petitioner's motion to reargue.

A special proceeding such as this one under Article 4 of the CPLR, like a motion, has a return date by which all of the parties' submissions must be filed with the Court for its consideration. *See* CPLR 409(a) ("Upon the hearing, each party shall furnish to the court all papers served by him.") (emphasis added); *cf.* CPLR 2214 (on a motion, "[t]he moving party shall furnish at the hearing all other papers not already in the possession of the court necessary to the consideration of the questions involved" and "[o]nly papers served in accordance with the provisions of this rule shall be read in support of, or in opposition to, the motion unless the court for good cause shall otherwise direct"). The instant special proceeding and the Commission's motion to dismiss were fully submitted long ago – and indeed, have already been decided – yet Petitioner has not even attempted to show "good cause" for his delay in supplementing the Petition. Indeed, Petitioner cannot show any legitimate reason for failing to assert the claims in his Second Supplement previously, as its baseless claims of intentional discrimination are nearly identical to the claims he made in his August 2012 "Appeal and Complaint" before the Commission, and rely on no new facts. (*Compare, e.g.*, 2d Supp. Pet. ¶¶ 1-3 *with* Ex. 2 at 1).

II. Petitioner's Proposed Supplement to the Petition Is Futile

Petitioner's motion to supplement his dismissed Petition should also be denied because it is futile. A court should deny leave to amend a pleading when "repleading would be futile," such as where, as here, the alleged wrongful conduct is "not actionable as a matter of law." *Rappaport v. VV Publ. Corp.*, 223 A.D.2d 515, 516 (1st Dep't 1996). Here, the Court has already determined that the Commission properly dismissed Petitioner's complaint under the election of remedies doctrine; that the Commission's determination on the merits of Petitioner's complaint "was rationally based"; that "[t]here is no merit to petitioner's contention that the Commission failed to conduct an adequate inquiry into his complaint;" and that Petitioner's procedural due

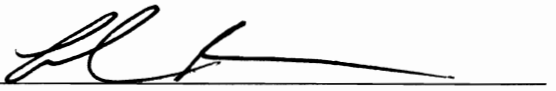
process claim fails because "petitioner was afforded constitutional minimum due process." (Ex. 1 at 3). Thus, Petitioner cannot state any claim for violation of his constitutional right to substantive, as opposed to procedural, due process because, under the Court's clear holding, he cannot possibly meet his burden to show that "the [Commission's] action 'was wholly without legal justification.'" *Velella*, 13 A.D.3d at 202 (quoting *Bower Assoc. v. Town of Pleasant Val.*, 2 N.Y.3d 617, 627 (2004)). Similarly, as to his equal protection claim, Petitioner does not and cannot offer any argument to show that "the valid statutory and code schemes" under which the Commission properly dismissed his complaint on jurisdictional grounds and on the merits "in any way fail constitutional guarantees of due process or equal protection." *York*, 286 F.3d at 128 (dismissing equal protection and due process claims where plaintiff's discrimination complaint was properly dismissed under election of remedies doctrine). Nor does Petitioner offer any valid basis for the Court to reconsider its prior rulings. Because Petitioner's proposed Second Supplement to the Petition fails to state a claim for relief, supplementing the Petition would be futile, and Petitioner's motion should be denied on that basis as well.

CONCLUSION

For the foregoing reasons, Petitioner's motion for leave to supplement the Petition should be denied.

Dated: August 16, 2013
New York, New York

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Respondents
100 Church Street, Room 20-101
New York, New York 10007
(212) 356-2294

By: 
Leonard M. Braman
Assistant Corporation Counsel

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

Index No. 13-100299

MEMORANDUM OF LAW

(Part 33; Hunter, J.)

REPLY MEMORANDUM OF LAW TO RESPONDENT'S OPPOSITION TO MOTION TO SUPPLEMENT THE PETITION

Roy Den Hollander ("Petitioner") submits this memorandum of law in reply to the New York City Commission on Human Rights' ("City HR") opposition to the motion to supplement the Petition. For the reasons set forth below, the motion to supplement the Petition should be granted.

ARGUMENT

Petitioner's motion for leave to supplement the Petition is permitted under the rules of procedure.

Respondent does not tell the whole story when it recounts the timing of the serving and filing of the motion to supplement.

The parties had previously agreed to provide each other with courtesy copies of all papers by email. (Exhibit A). On July 25, 2013, Petitioner sent via email a copy of the proposed Second Supplement of the Petition to the Respondent and requested of its attorney consent to file

the Second Supplement.[1] Petitioner also requested that Respondent get back to him by Tuesday, July 30, 2013. (Exhibit B). On Monday, July 29, 2013, Respondent denied consent (Exhibit C), and Petitioner immediately served the motion to supplement by U.S. Post on July 30, 2013. On the same day, Tuesday, July 30, 2013, Petitioner filed the motion with the Motion Support Office. The Motion Support Office checked its computer for the status of the case and accepted the motion.

Unknown to the Petitioner, Respondent and apparently the Motion Support Office, Justice Hunter would issue or had issued a decision in the Article 78 proceeding that same day. Justice Hunter's Order and Judgment are dated July 30, 2013, but it is unclear whether the motion to supplement was made before his decision to dismiss was issued or after. Respondent argues that the motion to supplement was served and filed after the Article 78 proceeding was "terminated," so "there [was] no longer any operative pleading in this case to be supplemented." The truth, however, is that no one really knows. (City HR Memo. Law Opposition to Motion to Supplement at 2, 5).

Even if this court assumes that the motion to supplement was filed after Justice Hunter issued his decision, CPLR 3025(b) provides that a motion to supplement can be made "at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just . . . ." (Emphasis added).

Respondent wrongly argues that this provision does not apply to Article 78 Special Proceedings. CPLR 402 provides that the pleadings in a special proceeding shall be dealt with in the same manner as in an action initiated by a complaint:

[1] The First Supplement was necessitated by the time constraints for filing an Article 78 and City HR's delay in responding to a Freedom of Information Law request to examine the City HR investigation file under 47 RCNY § 1-34. The request was originally made August 17, 2012, but City HR failed to allow access until February 21, 2013—well after it made its final decision on January 11, 2013 and after the Petition was filed on February 8, 2013. After reviewing the file, Petitioner filed the First Supplement as of right, which added a procedural due process allegation.

> There shall be a petition, which shall comply with the requirements for a complaint in an action, and an answer where there is an adverse party. . . . The court may permit such other pleadings as are authorized in an action upon such terms as it may specify.

After trying to discredit the application of CPLR 3025 to Article 78 proceedings, the Respondent then turns around and argues by analogy to CPLR 2214 that once the return date for the proceeding passes that is the end of the matter—no other motions are allowed. That is just not the case. This Court has more power than that.

Further, Respondent argues that collateral estoppel applies to Petitioner's motion to supplement. However, when Justice Hunter considered the conduct of Carlos Velez, City HR Law Enforcement Executive, there were no allegations before him of equal protection and substantive due process violations by Velez. Now there are, and the motion to reargue requests the Justice to revisit the case in light of those accusations of civil rights violations.

CONCLUSION

For the foregoing reasons, Petitioner's motion to supplement the petitioner is procedurally appropriate and should be permitted.

Dated: New York, New York
August 20, 2013

_____

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

Exhibit A

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.

STIPULATION OF ADJOURNMENT

Index No.: 100299 / 2013

(Part 33; Hunter, J.)

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned that the return date for the Petition in this action, presently scheduled for March 11, 2013, shall be adjourned to **May 20, 2013**, or as soon thereafter as the parties may be heard;

IT IS FURTHER STIPULATED AND AGREED that: (1) Respondent's Answer and any motion with respect to the Petition shall be served by **April 5, 2013**; (2) Petitioner's Reply and opposition to any motion shall be served by **May 3, 2013**; (3) Respondents' reply in support of any motion shall be served by **May 17, 2013**; and (4) the parties shall provide the opposing party a courtesy copy of all papers by e-mail at the time such papers are served;

IT IS FURTHER STIPULATED AND AGREED that facsimile signatures on this Stipulation shall have the same force and effect as original signatures.

Dated: New York, New York
February 25, 2013

Roy Ben Hollander, Esq.
Petitioner and Attorney
545 East 14th Street, 10D
New York, NY 10009
917-687-0652

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Respondent Commission on Human Rights

By: Leonard M. Braman, Esq.
100 Church Street, Room 20-101
New York, NY 10007
(212) 356-2294

So Ordered,

Judge
ALEXANDER W. HUNTER JR.

Exhibit B

Gmail

Roy Den Hollander <roy17den@gmail.com>

Den Hollander v. City of NY, 13-100299

Roy Den Hollander <roy17den@gmail.com> Thu, Jul 25, 2013 at 1:07 PM
To: "Braman, Leonard M" <lbraman@law.nyc.gov>

Dear Mr. Braman,

I am going to file a motion for leave of the Court to file a Second Supplement Petition unless, of course, you consent to the filing.

An un-executed, but final version of the supplement is attached.

I would appreciate you informing me by next Tuesday as to whether you consent or not.

Thank you for your time.

—
Roy Den Hollander
Attorney at Law and Business Consultant
New York, N.Y.
rdhnh@yahoo.com
(917) 687-0652

1983 EP 2d Supp Pet.docx
36K

Exhibit C

Gmail by Google

Roy Den Hollander <roy17den@gmail.com>

Den Hollander v. City of NY, 13-100299

Braman, Leonard (Law) <lbraman@law.nyc.gov> Mon, Jul 29, 2013 at 4:27 PM
To: Roy Den Hollander <roy17den@gmail.com>

We do not consent.

Best,

Leonard M. Braman
Senior Counsel
Affirmative Litigation Division
New York City Law Department
100 Church Street
New York, NY 10007
(212) 356-2284
Fax: (212) 356-2038

From: Roy Den Hollander [mailto:roy17den@gmail.com]
Sent: Thursday, July 25, 2013 1:08 PM
To: Braman, Leonard (Law)
Subject: Den Hollander v. City of NY, 13-100299

[Quoted text hidden]

Gmail by Google

Roy Den Hollander <roy17den@gmail.com>

Den Hollander v. City of NY, 13-100299

Roy Den Hollander <roy17den@gmail.com> Mon, Jul 29, 2013 at 4:52 PM
To: "Braman, Leonard (Law)" <lbraman@law.nyc.gov>

Okay, thanks.

Best
[Quoted text hidden]