STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
OAL DOCKET NOS. CRT 07423-12 & CRT 07424-12
DCR DOCKET NOS. PB12HD-62293 & PB12HD-62027

Arthur Blossomgame, Complainant, v. New York Giants and New Meadowlands Stadium, Respondents.	)	Administrative Action **FINAL DECISION & ORDER**

APPEARANCES:

Arthur Blossomgame, Complainant, *pro se*.

Pamela Moore, Esq., and Sami Asaad, Esq., (McCarter & English, attorneys) for Respondents New York Giants and New Meadowlands Stadium.

Andrew Lee, Esq., for Respondent New Meadowlands Stadium.

BY THE DIRECTOR:

This matter comes before the New Jersey Division on Civil Rights (DCR) from two verified complaints filed by Arthur Blossomgame alleging that the New York Football Giants, Inc., and New Meadowlands Stadium Company, LLC, discriminated against him based on a disability, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. On February 28, 2014, Administrative Law Judge (ALJ) Caridad F. Rigo issued an initial decision dismissing both complaints and ordering Mr. Blossomgame to pay sanctions pursuant to N.J.A.C. 1:1-14.14. After evaluating the record, the DCR Director adopts the ALJ's dismissal of the matter but transfers the issue regarding sanctions to the Director of the Office of Administrative Law (OAL) for whatever actions she deems appropriate.

Procedural & Factual History

On February 2 and June 8, 2011, Blossomgame, a resident of Uniondale, New York, filed verified complaints with the DCR alleging that Respondents discriminated against him based on a disability, i.e., asthma. He alleged, among other things, that he was a season ticket holder and that Respondents refused to sell him an accessible parking permit, and that during a pre-season game on August 16, 2010, as he and a companion were sitting in a wheelchair accessible seating area, an usher asked them to move to different seats because he did not believe that Complainant had a disability. Complainant, who does not use a wheelchair, alleged that when he objected, he was ejected from the game.

Respondents denied the allegations of discrimination in their entirety. They stated that they offered to sell him a parking permit on multiple occasions but he never remitted payment. They stated that Complainant was asked to move so they could bring a wheelchair bound spectator into the wheelchair accessible section, and denied ever ejecting Complainant from a game. On May 29, 2012, while DCR's investigation was in progress, Complainant requested that both matters be transferred to the OAL pursuant to N.J.A.C. 13:4-11.1. On May 31, 2012, DCR transmitted both cases to the OAL, where they were consolidated into a single matter.

ALJ Rigo described the ensuing adjudication process as a "lengthy, tumultuous, and contentious" ordeal in which Complainant was "abusive and disrespectful" to court personnel and repeatedly refused to respond to discovery requests or comply with pre-hearing scheduling dates. (ID2.) In particular, the ALJ wrote that the OAL file was "replete with [Complainant]'s insults, baseless accusations, and abusive, obtrusive, and unreasonable behavior against all of the attorneys and two Administrative Law Judges." (ID4.) The ALJ set forth in detail the history of opportunities for Complainant to meet his obligations such as discovery demands (i.e., interrogatories, requests for the production of documents, and requests for admission) that were served on October 17, 2012, and November 9, 2012, a "lengthy pre-hearing telephone conference"

on November 29, 2012, an order to respond to discovery requests by December 14, 2012, a three-hour telephone pre-hearing conference on April 2, 2013, and a pre-hearing order dated April 16, 2013, which again ordered him to comply with the outstanding discovery demands by a certain date. The ALJ noted that she "started anew" when she took over the matter from the previously assigned ALJ, and that Complainant failed to comply with discovery demands and continued to flout OAL rules and deadlines even after being "admonished" during a pre-hearing conference "that the discovery schedule and the hearing dates would be strictly enforced." (ID2-3). For instance, she noted that the Complainant abandoned an April 2, 2013 telephone conference despite assuring the ALJ and counsel that he would return "within a few minutes." (ID2.)

When Complainant failed to appear at a peremptory hearing date on October 23, 2013, Respondents renewed their previously filed motions to dismiss. (ID4.) After conducting a "careful and lengthy review of the court file" and considering the arguments of counsel, the ALJ concluded that "since petitioner has not provided the requested and ordered discovery the only proper remedy in this matter is to suppress and dismiss petitioner's claim." (Ibid.)

Respondents also moved for monetary sanctions to recover out-of-pocket expenses because of what they viewed as Complainant's improper and/or disruptive conduct. They presented certifications attesting to the legal services purportedly rendered and costs incurred, i.e., $8,393.25 to McCarter & English, and $4,800 to Andrew Lee, Esq. (ID5.) In granting that application, the ALJ found, among other things, that Complainant's behavior was "wanton, willful, and disrespectful to this tribunal and the administrative law process," and that Complainant "attempted and succeeded to some extent to thwart the orderly process of litigating a matter" in the OAL by "unreasonably fail[ing] to comply with the Orders of two Administrative Law Judges," among other things. (ID 4.)

On March 12, 2014, Complainant asked DCR for a 45-day extension within which to file exceptions to the ALJ's initial decision arguing, in part, that his copy of the ALJ's initial decision did

not include the items referenced as Exhibits A through F. On March 14, 2014, DCR sent him copies of the documents that made up exhibits A through F and granted his request for a 45-day extension. See Letter from DCR Assistant Director Estelle Bronstein to Complainant, Mar. 14, 2014 ("Although your request is for a longer extension that is normally granted to file exceptions, your request has been granted."). Complainant also asked DCR for a second copy of the recording of the October 14, 2011 fact-finding conference, and a copy of a letter sent by Respondent's counsel to then-DCR Deputy Director Gary LoCassio on October 13, 2011. DCR provided those items to Complainant as well.[1] See Letter from DCR Chief of Staff Carlos Bellido to Complainant, May 2, 2014. In response to Complainant's request for the "complete case file from the OAL office," DCR twice provided Complainant with a copy of the items comprising the OAL record.[2] See Letter from Bellido to Complainant, May 19, 2014 (sending him a second copy despite UPS records indicating that the first package was delivered).

On May 5, 2014, Complainant's exceptions were due. On May 16, 2014, he asked DCR for a second extension of time within which to file his exceptions. Although the deadline had already passed, DCR faxed a letter to Complainant granting him another extension over Respondent's objections.

Analysis

On June 28, 2014, Complainant filed his exceptions to ALJ Rigo's initial decision arguing, among other things, that his circumstances are comparable to "the Rosa Parks incident" and that ALJ "Rigo and her office continues to show acts of racism against me as an Afro-American male." See Complainant's Letter Brief, Jun. 24, 2014, p. 1. On July 8, 2014, Respondents filed their

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[1] The LoCassio letter was provided over the objections of Respondents' counsel. In reviewing and evaluating the ALJ's initial decision, the Director placed no weight on the fact-finding conference or the LoCassio letter. Nor is there any indication that the ALJ placed any weight on those items.

[2] Complainant made the request to the OAL but subsequently asked DCR to provide the file, and DCR did so.

replies. After carefully considering the record, including the latest submissions by the parties, the Director finds as follows.

a. Dismissal

An agency head, upon review of the record submitted by the ALJ, can adopt, reject, or modify the initial decision. If the agency head rejects or modifies findings of fact, conclusions of law, or interpretations of agency policy, it must state clearly the reasons for doing so. N.J.A.C. 52:14B-10(c). An agency head can only reject or modify findings of act as to issues of credibility of lay witness testimony if it determines that those findings were arbitrary, capricious, or unreasonable, or not supported by sufficient competent, and credible evidence in the record. Ibid. Here, it is uncontested that Complainant did not appear at a peremptory hearing of which he had actual notice. The record indicates that in the period leading up to that hearing, Complainant did not comply with multiple discovery demands and court orders. Thus, the ALJ's factual findings appear to be supported by sufficient competent evidence in the record. Still, Complainant contends that the ALJ's decision to dismiss the complaints is unwarranted. Respondents, on the other hand, argue that Complainant publically accused them of illegal conduct, dragged them into an administrative proceeding, forced them to accrue legal costs to defend against meritless claims, and continues to demand to be rewarded by an administrative process for which he has shown nothing but contempt at every turn.

The ALJ noted that the "purpose of discovery is to reveal to the opposing party the information which the litigant petitioner intends to place into evidence" and that the "standard remedy is to exclude the evidence that petitioner failed to disclose in response to discovery requests." (ID 3.) Here, the ALJ found that the "discovery requested encompasse[d] all aspects of the petition," and that Complainant's apparent strategy was to disregard all discovery obligations and court orders, and be "threatening, abusive, offensive, disrespectful, and obtrusive." (Ibid.) ("Throughout the entire processing of this case petitioner's pattern was to delay and thwart every

attempt to litigate this matter with due process and civility.")

A similar matter was presented in Campbell v. Quest Diagnostics, 2010 N.J. Super. Unpub. LEXIS 2608 (App. Div. Oct. 12, 2010). There, a complainant alleging discrimination based on a disability, filed a verified complaint with the DCR, which was later transferred to the OAL as a contested case. The ALJ granted the respondent's motion for dismissal based on the Complainant's repeated failures to respond to discovery requests. The DCR Director adopted the ALJ's initial decision and dismissed the complaint with prejudice. The Appellate Division upheld that decision. In so doing, the Court noted that a "party who persists in failing to respond to discovery invites this extreme sanction by deliberately pursuing a course that thwarts persistent efforts to obtain the necessary facts." Id. at *6 (quoting Abtrax Pharm., Inc. v. Elkins-Sinn, Inc., 139 N.J. 499, 515 (1995)).

In his exceptions, Complainant argues that the ALJ and Respondents' counsel are being untruthful when they assert that he "did not submit the discovery on time." See Complainant's brief, supra, at 4-5, Exh. 12. He argues that he faxed a letter to Respondent's counsel on May 2, 2013, which contained his discovery responses. Ibid. However, the criticism of the letter was not focused on its timeliness, but its substance. In Respondents' initial motion to dismiss for failure to properly respond to discovery, they argued that the May 2, 2013 letter was:

> largely non-responsive and consists primarily of insults and baseless accusations against Respondents' counsel and others. Among other things, Complainant explicitly refused to answer 23 of Respondents' 28 interrogatories . . . Complainant produced no documents in response to Respondents' 15 Requests for Production. In responses to 12 of the 15 Requests, Complainant stated "Will not send for the following reasons," which "reasons" consisted of insults and wild accusations against everyone in any way connected with the proceeding.

See Respondents' Brief in Support of Motion to Dismiss, Aug. 7, 2013, p. 3-4. Respondents argued that the documents and materials sought were critical to their defense. Ibid. For example, they wrote, "Complainant alleges that he possesses audio tapes of conversations he had with representatives of the Giants, but he refuses to produce them." Id. at 5; see also Respondent's

Brief in Support of Motion to Dismiss, Jun. 12, 2013, p. 2 (arguing "Petitioner cannot proceed with his claim unless he affirmatively establishes that he has a disability, it would be a waste of judicial resources to proceed to a hearing on this matter in the absence of any evidence of such a disability.") The ALJ concurred with Respondents' characterization of the May 2, 2013, letter as inadequate and unfairly prejudicial to Respondents.

In their reply to Complainant's exceptions, Respondents note that ALJ Rigo, whom Complainant repeatedly accuses of harboring a racial animus against African-Americans, is African-American. See Respondents' brief, p. 2. Respondents argue that Complainant has "consistently engaged in delay tactics and derisive and defamatory accusations about the conduct of everyone involved in the matters, unnecessary increasing the defense costs." Id. at 4, and that "every accommodation and courtesy extended . . . to Complainant has been twisted by him and incorporated into his wild conspiracy theory in which everyone connected with these cases is part of an ever-widening sphere of alleged aggressors." Id. at 1. Respondents argue that Complainant's assertion, "Judge Rigo is not telling the truth that I did not return to a prehearing on April 2, 2013" (Complainant's brief at 3), is contradicted by the record and Complainant's own statements. See Respondent's brief, p. 3 (arguing, "The record is clear, however, (and Complainant admits at the top of page) that during the call, Complainant interrupted the discussion to state that he had an incoming call that he was going to take. He then left and never returned."). Respondents also argue, among other things, that Complainant "claims that he had a witness ready for the October hearing . . . [but] never produced a witness list as required by Judge Rigo's Order and failed to appear himself." Id. at 3.

The Director finds that the discovery demands that Complainant refused to answer were fairly standard and reasonably calculated to lead to the discovery of admissible evidence and/or facts supporting or opposing an asserted legal theory, e.g., seeking information to support Complainant's claims of disability, the identify of any relevant evidence or witnesses, identity of

medical providers, nature and extent of any limitations and necessary accommodations, etc. But rather than provide information supporting his allegations of discrimination, Complainant replied, for instance:

> Will not [respond] for the following reasons: Terrorist threats from [Respondents' counsel] Sami Asaad, Pamela Moore and Andree Lee [sic]. You, Assad [sic] and Lee have been threatening my family for personal information. You tried to harm a child for personal information and threaten to bomb my house. You are animals and we will work with law enforcement and the US Justice Dept to have you arrested. . . You and your law firm have interfered with the investigation of the New Jersey Divsion on Civil Rights. Both Moore and Lee continue to create acts of slander against me as an Afro-American. You have lied to Judge Leslie Celentano that I was abusive to you and Judge Celentano believed you without any proof. Judge Celentano has been removed by Judge Sanders who agreed that Judge Celentano was bias [sic] and acting as a racist against me as an Afro-American.
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> [See Letter from Complainant to Respondents's Counsel, May 2, 2013].

Although the Complainant partially responded to a small handful of discovery demands, such as an interrogatory asking that he state the amount of damages he was seeking, the Director finds no basis to disturb the ALJ's finding that the responses were insufficient to allow Respondents an opportunity to substantively address the underlying claims. Moreover, the Director is satisfied that Complainant had sufficient opportunity to fulfill his discovery obligations and comply with the ALJs' orders, but elected not do so. Thus, the Director finds no basis to disturb the ALJ's finding that the Complainant was obstructing the very process that he instituted.

Nor does the Director find any basis to reject the ALJ's finding that Complainant was threatening, abusive, and disrespectful to the tribunal and administrative law process. For example, Complainant wrote to ALJ Leslie Celentano, who was assigned to the matter before ALJ Rigo, and accused her of "bias, bogus and racist behavior" and asked for the names, addresses, and phone numbers of her staff members. See Letter from Complainant to Celentano, Dec. 17, 2013 ("This information must be submitted by January 5th, 2013. Subpoenas will be sent to them . . ."). That letter indicated that a copy was being sent to, among others, the "NJ Governor, US Justice Dept . . . NAACP, FBI Long Island Office." Ibid. In a separate letter to the OAL Director,

also purportedly copied to the Governor and U.S. Department of Justice, Complainant stated that ALJ Celentano was "**A LAIR** [sic] **and should resign**" and biased, "racist and rude," and he identified OAL administrative support staff whom he accused of threatening him and his family. See Letter from Complainant to CALJ Laura Sanders, Jan. 30, 2013 (capitals and boldface in original). In the May 2, 2013 letter referenced earlier, Complainant wrote that both ALJ Celentano and ALJ Rigo were racist with questionable competence. After reviewing the records contained in the OAL file, the Director accepts the ALJ's conclusion that Complainant's conduct in obstructing the proceedings was wanton and willful, and notes that in Complainant's exceptions, he continues to assail the character, professionalism, and integrity of the ALJs and Respondents' counsel rather than substantively address the finding that he unreasonably failed to comply with court orders and discovery requests. See e.g., Complainant's Brief at p. 3 & 4 ("My family and I have received death threats from Sami Assad [sic] and the other lawyers. Remarks of killing a child, and blowing up my home came from this number: . . . **used by Assad** [sic] and McCater [sic] and English . . . **My family and I will sue the State of New Jersey for interfering with a civil rights investigation and we will sue Ms. Moore, Mr. Lee and Mr. Asssah [sic] hard and heavy!**") (boldface in original). Thus, the Director finds that the ALJ's decision to dismiss the complainants is appropriate under the circumstances.

Complainant raised other arguments in his exceptions that did not persuade the Director that the initial decision should be rejected. For example, he argued that the fact that the OAL Director granted his request to reassign the matter proved that his allegations against ALJ Celentano were accurate. See Complainant's brief at 2 ("Judge Celetano [sic] was removed for lying against me and being a bigot and making racists comments against me . . . You don't remove a NJ State Judge unless you have good reasons to do so."). However, the OAL Director made clear to Complainant that the OAL's acquiescence to his demand to reassign the matter should not be construed as some sort of finding of wrongdoing. The Director wrote:

> Judge Celentano was not removed from your case because of any bias or racist approach toward you. In consultation with the Newark assignment judge, I made the determination to assign a new judge, because the point of a hearing at the OAL is to focus on the matter sent to the OAL for hearing, not to create an entirely new action arising out of the necessary interactions between judges and litigants. As I recall, a prior letter to you noted that an examination of the conduct of the staff member showed nothing inappropriate."
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> [See Letter from the Hon. Laura Saunders, CALJ, to Complainant, Apr. 10, 2013, p. 2.]

Elsewhere in his exceptions, Complainant argued, "On the second page, first paragraph of Judge Rigo's decision to close the cases she did not provide the correct information of the cases. This is her way of showing hate against me and retaliation. There are two separate cases." See Complainant's brief, at 1. Elsewhere, he argues that Respondents' counsel improperly persuaded DCR to stop its investigation of his complainants. Id. at 1. However, DCR stopped investigating his cases because he asked DCR to transfer both matters to the OAL. Elsewhere, he argues, "Both Judge Rigo and Judge Celenato [sic] ignored my request for documents from the lawyers in both cases." Id. at 2. However, the document demands at issue were not ignored, but rather denied by way of the April 16, 2013 Order. Elsewhere, he made other assertions that were not relevant to the underlying claim that he failed to respond to discovery obligations and deliberately pursued a strategy of delay and obfuscation, such as, "My family and I have received death threats from Sami Assad [sic] and the other lawyers," id. at 3, and his insistence that ALJ Celentano and attorney Moore are lying "racist white women who have an agenda against Afro-American men; especially to protect them from their own wrong doing." Id. at 2 (boldface omitted).

b. Sanctions

It is settled that the OAL has a "legitimate special interest in protecting the integrity of the administrative hearing process," Wood v. Dep't of Community Affairs, 243 N.J. Super. 187, 198-99 (App. Div. 1990), and may impose monetary sanctions, subject to certain safeguards, against litigants who defy court orders and discovery demands. See In re Timofai Sanitation Co., 252 N.J Super. 495 (App. Div. 1991).

However, it is equally settled that "[m]atters involving the administration of the [OAL] as a State agency are subject to the authority" of the OAL Director. N.J.A.C. 1:1-3.2. Jurisdiction for reviewing "[s]anctions under N.J.A.C. 1:1-14.4 or 14.14 and 14.15 consisting of the assessment of costs, expenses, or fines" lies with the OAL Director, not the DCR Director. N.J.A.C. 1:1-3.2(c)(4). Thus, although the Director finds nothing objectionable in the ALJ's decision to order sanctions under the circumstances, he is without sufficient jurisdiction to affirm that aspect of the initial decision (or to make any determination as to the reasonableness of the requested or awarded amounts).

ORDER

For the reasons discussed above, the Director affirms the ALJ's dismissal of the complaints and transmits the remaining issues regarding sanctions to the Director of the OAL for her review and consideration, or whatever action she deems appropriate, pursuant to N.J.A.C. 1:1-3.2(c)(4).

DATE: 7-10-14

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS