

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

JAMES FARAH,

Plaintiff(s),

Index No.: 522405/2023

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY POLICE
DEPARTMENT, ET AL.,

**MEMORANDUM OF
LAW**

Defendant(s).

Jimmy Wagner, Esq., the attorney for Plaintiff, JAMES FARAH, in the above-captioned matter, submits this Memorandum of Law in support of the Motion to Re-Argue.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR RE-
ARGUMENT**

QUESTIONS PRESENTED ON RE-ARGUMENT

1. Was it proper for the Supreme Court to convert this Summons and Complaint with 10 different causes of actions into an Article 78 proceeding, combine all Defendants together, and then dismiss the case on the four month Article 78 statute of limitations?

Answer: No

2. Did the Supreme Court correctly rule that the Plaintiff failed to state a cause of action for failure to accommodate because of religious discrimination pursuant to New York City Human Rights Law, New York Administrative Code §8-107(3)?

Answer: No

3. Did the Supreme Court correctly rule that Plaintiff failed to state a cause of action for failure to engage in cooperative dialogue pursuant to New York City Human Rights Law, see New York City Human Rights Law, New York Administrative Code § 8-107(28)(a)?

Answer: No

4. Did the Supreme Court correctly rule that the Defendants are not required to properly apply the correct legal standard when judging religious accommodations?

Answer: No

5. Did the Supreme Court correctly rule that Plaintiff is not entitled to a cause of action for violation of the Free Exercise Clause under the New York State Cause of Action?

Answer: No

6. Was the Supreme Court's decision correct in ruling that the plaintiff is not entitled to pursue a cause of action under the Free Exercise Clause due to the availability of alternative legal remedies?

Answer: No

7. Did the Supreme Court correctly rule that Plaintiff failed to state a cause of action for constructive termination?

Answer: Yes

8. Did the Supreme Court correctly rule that Plaintiff failed to state a cause of action for “aiding and abetting” pursuant to, New York City Human Rights Law, New York Administrative Code § 8-107(6)?

Answer: No

9. Did the Supreme Court correctly rule that Plaintiff failed to state a cause of action for intentional infliction of emotional distress?

Answer: No

PRELIMINARY STATEMENT

The underlying action at the center of this dispute involves the Plaintiff's request for a religious accommodation in response to the vaccine mandate implemented in October 2021. Plaintiff, James Farah ("Mr. Farah"), was treated differently and adversely for his religious beliefs and was forced to violate these beliefs, by receiving the COVID-19 vaccine, in order to retain his employment. Defendant's denial of Plaintiff's request for religious accommodation on December 14, 2021, occurred without any cooperative dialogue, and failed to provide any legal reasoning or basis for its denial even though the law demands every religious accommodation shall be granted. Defendant also failed to provide any support for the contention that providing an accommodation would create an undue hardship for the City of New York or any of the other Defendants. The law requires that an accommodation "shall" be granted and necessitates the development of a "new body of case law," rather than judges relying on outdated and inapplicable precedents. The City Council explicitly calls for judges to establish a body of case law that supports employees' rights.

The Court's decision lacks legal reasoning on the lawfulness of the Defendant's denial of the Plaintiff's accommodation request and the subsequent discrimination because: 1) the Defendants determination should have assessed whether providing an accommodation would pose an undue burden on the Defendant, FDNY, and whether the denial was motivated by religious discrimination; and 2) the Supreme Court failed to adequately evaluate whether the Citywide Panel adhered to the standards set forth in the New York City Human Rights Law

(NYCHRL) because the law state every religious accomodation shall be granted and the Defendants failed to follow the standards concerning cooperative dialogue. The Supreme Court's rulings on these matters, including the causes of action for aiding and abetting, intentional infliction of emotional distress, violation of the Free Exercise Clause of the New York Constitution, as well as requests for attorney's fees and declaratory judgment, were all fundamentally flawed in their legal reasoning. A court must follow the law, not ignore black letter law. Consequently, these errors necessitate that the decision be reversed.

STATEMENT OF FACTS

Plaintiff-Appellant James Farah was a police officer for the New York Police Department from July 1, 2004, at which time he was forced to resign. In the course of over fifteen (15) years of employment, the NYPD made no mention of the requirement to obtain any vaccines as a condition of employment. On October 20, 2021, the Commissioner of the Department of Health and Mental Hygiene (“DHMH”) announced a “Vaccine Only” mandate for City of New York Employees [R.]. One day after the issuance of the City Order, on October 21, 2021, the New York City Department of Citywide Administrative Services (“DCAS”) issued guidance in connection with the City Order, which included the “FAQ on New York City Employees Vaccine Mandate,” and a document entitled “Applying for a Reasonable Accommodation from the Covid-19 Vaccine Mandate” (collectively, “the Guidelines”). The guidelines state that a person with “a sincerely held religious, moral or ethical belief may be a basis for a religious accommodation.” (“Employees may apply for a Reasonable Accommodation to be exempt from this requirement.”).

On or around October 26, 2021, Plaintiff requested that the NYPD accommodate his religious observance with respect to the vaccine. At no point in time prior to the Defendant's

denial did anyone engage Mr. Farah about a reasonable accommodation or attempt to assess his religious needs. Instead, Plaintiff was told without any good faith process at all that his request was being denied. This caused a great deal of confusion and distress for Plaintiff because there were other employees who worked for NYPD who were provided accommodations. Were the accommodations being granted based on rank, based on the NYC Mayor friendship, or was there a fair process in place to determine the accommodations. Defendant gave no explanation how Plaintiff, specifically, could cause some undue hardship to NYPD, and why he was not being accommodated for his religious beliefs, but his co-workers were. Being denied an opportunity to examine defendants and granted discovery as to defendants, all the factual findings of the Court are wildly speculative and it is not Plaintiff's burden at this stage to prove his case only state the claim properly, which he did.

For all the reasons stated in this memorandum of law, Plaintiff disputes each and every of Defendant's arguments and the Decision and Order of the Supreme Court.

ARGUMENT
POINT I

A. Did the Supreme Court properly convert this proceeding into an Article 78 and then dismiss the case on a four month statute of limitations?

An article 78 proceeding does not handle discrimination claims under the New York State Constitution, the New York State Human Rights Law, or the New York City Human Rights Law. In addition, Article 78 proceedings cannot provide Plaintiff damages for the discrimination he suffered at the hands of his government employer. Lastly, CPLR 103(c) does not give the Court any authority to convert a pleading into a special proceeding to then dismiss the proceeding. The Court may only convert an action so that it "shall not be dismissed" not so it can dismiss it on statute of limitations.

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