

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: August 10, 2017

523310

JOHNATHAN JOHNSON,

Appellant,

v

MEMORANDUM AND ORDER

STATE OF NEW YORK,

Respondent.

Calendar Date: June 6, 2017

Before: McCarthy, J.P., Garry, Lynch, Rose and Devine, JJ.

Johnathan Johnson, Malone, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (Zainab A. Chaudhry of counsel), for respondent.

Devine, J.

Appeal from an order of the Court of Claims (DeBow, J.), entered March 28, 2016, which granted defendant's motion to dismiss the claim.

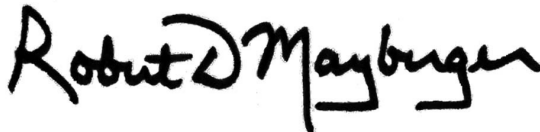
Claimant, an inmate at Upstate Correctional Facility, filed a claim alleging violations of both the state constitutional guarantee of freedom of religion and a directive of the Department of Corrections and Community Supervision regarding religious practice after he was precluded from registering as adherent to two different religions at the same time. Defendant answered and asserted numerous affirmative defenses, and subsequently moved for dismissal of the claim. Claimant failed to submit any papers in opposition to defendant's motion. The Court of Claims granted the motion and claimant appeals.

Claimant failed to respond in any manner to defendant's motion to dismiss and, therefore, the order is deemed to be entered upon default (see Matter of Susan UU. v Scott VV., 119 AD3d 1117, 1118 [2014]). As such, claimant is precluded from appealing the order of dismissal (see CPLR 5511) and his sole remedy is to move to vacate it (see CPLR 5015 [a] [1]; Johnson v State of New York, 140 AD3d 1561, 1562 [2016]; Johnson v State of New York, 140 AD3d 1558, 1558 [2016]; Matter of Susan UU. v Scott VV., 119 AD3d at 1118). Thus, the appeal must be dismissed.

McCarthy, J.P., Garry, Lynch and Rose, JJ., concur.

ORDERED that the appeal is dismissed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court