

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1787

September Term, 2015

HESMAN TALL

v.

PARTNERSHIP DEVELOPMENT
GROUP, *et al.*

Krauser, C.J.,
Nazarian,
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 5, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Hesman Tall, appellant, filed this appeal after the Circuit Court for Howard County dismissed his lawsuit against Maryland Division of Rehabilitation Services (DORS) and Partnership Development Group, appellees, alleging negligence, race discrimination, and disability discrimination based on DORS refusal to provide him with funding to start his business. Although Tall sets forth twenty-three “questions presented,” his questions can be reduced to two: (1) whether the trial court erred in not holding a hearing on appellees’ motions to dismiss and (2) whether the trial court erred in granting appellees’ motions to dismiss? For the reasons that follow, we affirm.

The trial court was not required to hold a hearing on appellees’ motions to dismiss Tall’s amended complaint because those motions, and Tall’s responses thereto, did not contain the heading “Request for Hearing” in their title. *See* Maryland Rule 2-311(f) (“A party desiring a hearing on a motion . . . shall request the hearing in the motion or response under the heading “Request for Hearing.” The title of the motion or response shall state that a hearing is requested.) Moreover, even if the circuit court erred by not holding a hearing, remanding the case would be an exercise in futility and a waste of judicial resources as Tall failed to exhaust his administrative remedies before filing his complaint in the circuit court. *See Express Auction Servs., Inc. v. Conley*, 127 Md. App. 447, 450, (1999) (noting that, although the circuit court committed error in granting summary judgment without holding a hearing, remanding the case to hold a hearing would nonetheless serve no practical purpose).

Pursuant to Section 722(c)(1) of the Federal Rehabilitation Act, DORS has established a comprehensive administrative review procedure for any “applicant for . . .

rehabilitation services who is dissatisfied with any determination made . . . concerning the . . . denial of rehabilitation services under the State plans.” See COMAR 13A.11.07.01. This procedure was appellant’s primary, if not exclusive, remedy to contest DORS’ decision to deny funding for his business. See generally *Zappone v. Liberty Life*, 349 Md. 45, 63 (1998) (noting that in the absence of specific statutory language indicating the type of administrative remedy, there is a rebuttable presumption that an administrative remedy was intended to be primary). Tall was therefore required to “invoke and exhaust the administrative remedy, and seek judicial review of an adverse administrative decision,” before the circuit court could adjudicate the merits of his amended complaint, which requested a judicial remedy. *Id.* at 60.

As part of the required administrative review procedure, Tall had the right to a hearing before an Administrative Law Judge (ALJ), in accordance with State Government Article, §10-205, see COMAR 13A.11.07.03D, and, if he was aggrieved by the ALJ’s decision, the right to file a civil action seeking review of that decision in either the Circuit Court for Howard County or in the appropriate Federal District Court. See COMAR 13A.11.07.03H. Although Tall initially filed a request for a hearing to challenge DORS’ funding decision, the ALJ subsequently dismissed his complaint because he failed to participate in a required prehearing telephone conference. Because Tall did not seek judicial review of that decision, he failed to exhaust his administrative and judicial review remedies before filing his complaint in the circuit court. Consequently, the circuit court did not err in dismissing his complaint.

Furthermore, even if Tall was not required to exhaust his administrative remedies, the trial court did not err in dismissing his amended complaint because it failed to state a claim upon which relief could be granted. All of Tall’s causes of action were based on alleged violations of Sections 20-801 and 20-901 of the State Government Article which collectively prohibit persons and State employees from aiding or abetting the commission of a “discriminatory act” or committing or attempting to commit a “discriminatory act.” “Discriminatory acts,” however, are defined as discrimination in public accommodations, employment practices, housing practices and accessibility, or real estate transactions, *see* Md. Code Ann., State Gov’t. Art. § 20-101(d), none of which are applicable to the facts alleged in appellant’s complaint. Moreover, to the extent appellant’s complaint could also be construed as raising a separate negligence claim, he failed to plead sufficient facts to establish that appellees’ owed him a legal duty. *See Pendleton v. State*, 398 Md. 447, 458 (2007) (“In the context of a negligence action, we have previously held that a sufficient pleading must ‘allege, with certainty and definiteness, facts and circumstances sufficient to set forth (a) a duty owed by the defendant to the plaintiff, (b) a breach of that duty and (c) injury proximately resulting from that breach.’” (citation omitted)).

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**