

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D28496
H/prt

_____AD3d_____

Argued - September 17, 2010

FRED T. SANTUCCI, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2009-09407

DECISION & JUDGMENT

In the Matter of Kenneth W. McDonald, petitioner,
v New York State Division of Human Rights, et al.,
respondents.

(Index No. 4854/09)

Wickham, Bressler, Gordon & Geasa, P.C., Mattituck, N.Y. (Eric J. Bressler of counsel), for petitioner.

Kaufman Dolowich Voluck & Gonzo, LLP, Woodbury, N.Y. (George F. Meierhofer of counsel), for respondent North Ferry Co., Inc.

Proceeding pursuant to Executive Law § 298 to review a determination of the Commissioner of the New York State Division of Human Rights dated December 12, 2008, which adopted the recommendation and findings of an administrative law judge dated October 27, 2008, made after a hearing, finding that the petitioner did not establish that the respondent North Ferry Co., Inc., discriminated against him based upon his age, and dismissed the administrative complaint.

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

The determination of the Commissioner of the New York State Division of Human Rights that the respondent North Ferry Co., Inc. (hereinafter the respondent), did not discriminate against the petitioner on the basis of his age when it changed his employment status from “part-time” to “casual” is supported by substantial evidence (*see Matter of Sauer v Donaldson*, 49 AD3d 656; *Stephenson v Hotel Empls. & Rest. Empls. Union Local 100 of AFL-CIO*, 6 NY3d 265, 271). The

October 5, 2010

Page 1.

MATTER OF McDONALD v NEW YORK STATE DIVISION OF HUMAN RIGHTS

respondent provided a nondiscriminatory reason for taking the action in question, and the petitioner failed to show that the reason was a pretext for discrimination (*see Matter of Sauer v Donaldson*, 49 AD3d at 657; *Rainer N. Mittl, Ophthalmologist, P.C. v New York State Div. of Human Rights*, 100 NY2d 326, 330).

SANTUCCI, J.P., BALKIN, BELEN and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court