

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

D32445  
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Submitted - September 16, 2011

PETER B. SKELOS, J.P.  
THOMAS A. DICKERSON  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT, JJ.

2009-07139

DECISION & JUDGMENT

In the Matter of Albert Dawson, petitioner,  
v New York State Division of Human Rights,  
et al., respondents.

(Index No. 43151/08)

Ciarelli & Dempsey, P.C., Riverhead, N.Y. (Patricia A. Dempsey of counsel), for petitioner.

Jackson Lewis LLP, Melville, N.Y. (Roger H. Briton of counsel), for respondent Greenman-Pedersen, Inc.

Proceeding pursuant to Executive Law § 298 and CPLR article 78 to review a determination of the Commissioner of the New York State Division of Human Rights dated October 1, 2008, which adopted the recommendations and findings of an administrative law judge dated August 19, 2008, made after a hearing, finding that the petitioner failed to establish that Greenman-Pedersen, Inc., discriminated against him in the terms, conditions, and privileges of his employment on the basis of his age.

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

“The determination of the State Commissioner of Human Rights must be confirmed if it is supported by substantial evidence” (*Matter of Consolidated Edison Co. v New York State Div. of Human Rights*, 77 NY2d 411, 417 [citation omitted]; *see 300 Gramatan Ave. Assocs. v State Div. of Human Rights*, 45 NY2d 176, 179-180). Substantial evidence “means such relevant proof as a

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reasonable mind may accept as adequate to support a conclusion or ultimate fact” (*300 Gramatan Ave. Assocs. v State Div. of Human Rights*, 45 NY2d at 179-180). Here, the conclusion of the Commissioner of the New York State Division of Human Rights (hereinafter the Commissioner) that the respondent Greenman-Pedersen, Inc. (hereinafter GP), did not discriminate against the petitioner on the basis of his age is supported by substantial evidence. While the petitioner established a prima facie case of age discrimination, GP credibly provided legitimate, nondiscriminatory reasons for terminating the petitioner’s employment, and the petitioner failed to show that GP’s proffered reasons constituted a pretext for discrimination (*see Stephenson v Hotel Empls. & Rest. Empls. Union Local 100 of AFL-CIO*, 6 NY3d 265, 271; *Matter of McDonald v New York State Div. of Human Rights*, 77 AD3d 668, 668; *Matter of Sauer v Donaldson*, 49 AD3d 656, 656-657). Accordingly, the Commissioner’s determination must be confirmed.

SKELOS, J.P., DICKERSON, LEVENTHAL and LOTT, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court