

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

1042

TP 10-00790

PRESENT: MARTOCHE, J.P., CARNI, GREEN, PINE, AND GORSKI, JJ.

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IN THE MATTER OF EVELYN H. MONSAY, PETITIONER,

V

MEMORANDUM AND ORDER

NEW YORK STATE DIVISION OF HUMAN RIGHTS,  
GALEN D. KIRKLAND, COMMISSIONER, NEW YORK  
STATE, STATE UNIVERSITY OF NEW YORK, AND  
STATE UNIVERSITY COLLEGE AT OSWEGO, RESPONDENTS.

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SUGARMAN LAW FIRM, LLP, SYRACUSE (LAURA L. SPRING OF COUNSEL), FOR  
PETITIONER.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (ZAINAB A. CHAUDHRY OF  
COUNSEL), FOR RESPONDENTS NEW YORK STATE, STATE UNIVERSITY OF NEW  
YORK, AND STATE UNIVERSITY COLLEGE AT OSWEGO.

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Proceeding pursuant to Executive Law § 298 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Oswego County [James W. McCarthy, A.J.], entered April 8, 2010) to review a determination of respondent New York State Division of Human Rights. The determination dismissed the complaint of discrimination based on age and sex.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: Contrary to the contention of petitioner, the determination that respondent State University College at Oswego (College) did not unlawfully discriminate against her on the basis of gender or age is supported by substantial evidence (*see generally Rainer N. Mittl, Ophthalmologist, P.C. v New York State Div. of Human Rights*, 100 NY2d 326, 331). Even assuming, arguendo, that petitioner established a prima facie case of gender or age discrimination, we conclude that the College rebutted the presumption of discrimination created by petitioner by presenting the requisite "legitimate, independent, and nondiscriminatory reasons to support its employment decision[s]" (*Matter of Miller Brewing Co. v State Div. of Human Rights*, 66 NY2d 937, 938).

Entered: October 1, 2010

Patricia L. Morgan  
Clerk of the Court