

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

1076

CA 16-02308

PRESENT: CARNI, J.P., LINDLEY, NEMOYER, CURRAN, AND TROUTMAN, JJ.

IN THE MATTER OF BASIL SZLAPAK,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

NEW YORK STATE DIVISION OF HUMAN RIGHTS AND
FORD MOTOR COMPANY, RESPONDENTS-RESPONDENTS.

LAW OFFICE OF LINDY KORN PLLC, BUFFALO (LINDY KORN OF COUNSEL), FOR
PETITIONER-APPELLANT.

KIENBAUM OPPERWALL HARDY & PELTON, P.L.C., BIRMINGHAM, MICHIGAN (ERIC
J. PELTON, OF THE MICHIGAN BAR, ADMITTED PRO HAC VICE, OF COUNSEL),
FOR RESPONDENT-RESPONDENT FORD MOTOR COMPANY.

Appeal from an order of the Supreme Court, Erie County (John L. Michalski, A.J.), entered March 7, 2016. The order denied the petition.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner commenced this proceeding pursuant to Executive Law § 298 challenging the determination of respondent New York State Division of Human Rights (SDHR), which dismissed, after an investigation, petitioner's employment discrimination complaint against respondent Ford Motor Company (Ford). SDHR determined that there was no probable cause to believe that Ford engaged in an unlawful discriminatory practice against petitioner. Supreme Court denied the relief sought by petitioner, thereby upholding SDHR's determination, and we affirm.

We conclude that SDHR conducted a proper investigation and afforded petitioner a full and fair opportunity to present evidence on his behalf and to rebut the evidence presented by Ford (see *Matter of Witkovich v New York State Div. of Human Rights*, 56 AD3d 1170, 1170, lv denied 12 NY3d 702), and we further conclude that the determination "is supported by a rational basis and is not arbitrary or capricious" (*Matter of Majchrzak v New York State Div. of Human Rights*, 151 AD3d 1856, 1857; see *Matter of Napierala v New York State Div. of Human Rights*, 140 AD3d 1746, 1747; see also *Matter of McDonald v New York*

State Div. of Human Rights, 147 AD3d 1482, 1483).

Entered: September 29, 2017

Mark W. Bennett
Clerk of the Court