

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

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TP 18-01839

PRESENT: SMITH, J.P., PERADOTTO, CARNI, LINDLEY, AND TROUTMAN, JJ.

IN THE MATTER OF CHRISTIAN CENTRAL ACADEMY,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

NEW YORK STATE DIVISION OF HUMAN RIGHTS,
RESPONDENT-PETITIONER,
AND KATHLEEN LYSEK, RESPONDENT.

BARCLAY DAMON LLP, SYRACUSE (MICHAEL J. BALESTRA OF COUNSEL), FOR
PETITIONER-RESPONDENT.

CAROLINE J. DOWNEY, GENERAL COUNSEL, BRONX (TONI ANN HOLLIFIELD OF
COUNSEL), FOR RESPONDENT-PETITIONER.

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, Erie County [Timothy J. Walker, A.J.], entered October 1, 2018) to review a determination of respondent-petitioner New York State Division of Human Rights. The determination found unlawful discrimination on the basis of familial status.

It is hereby ORDERED that the determination is unanimously confirmed without costs, the petition is dismissed, the cross petition is granted, and petitioner-respondent is directed to pay to the Comptroller of the State of New York the sum of \$3,000 for a civil fine and penalty, with interest at the rate of 9% per annum commencing May 16, 2018, and to comply with the remaining parts of the determination.

Memorandum: Petitioner-respondent (petitioner) commenced this proceeding pursuant to Executive Law § 298 seeking to annul the determination of respondent-petitioner New York State Division of Human Rights (SDHR) that petitioner had, through its hiring policy, unlawfully discriminated against respondent Kathleen Lysek on the basis of familial status. The determination, inter alia, assessed a \$3,000 civil fine and penalty, with statutory interest accruing from the date of SDHR's final determination, i.e., May 16, 2018. SDHR filed a cross petition seeking to confirm and enforce the determination. The matter was transferred to this Court pursuant to Executive Law § 298 to review petitioner's contention that SDHR's determination is not supported by substantial evidence. For reasons stated in the decision of SDHR, we confirm the determination, dismiss

the petition, grant the cross petition, and direct petitioner to pay to the Comptroller of the State of New York the sum of \$3,000 for a civil fine and penalty, with interest at the rate of 9% per annum commencing May 16, 2018, and to comply with the remaining parts of the determination. We write only to note that, contrary to petitioner's contention that the record lacks a sufficient basis for the imposition of that fine and penalty, we conclude that SDHR properly imposed the fine and penalty upon its determination that petitioner "committed an unlawful discriminatory act" (Executive Law § 297 [4] [c] [vi]; see generally *Matter of Stellar Dental Mgt. LLC v New York State Div. of Human Rights*, 162 AD3d 1655, 1658 [4th Dept 2018]).

Entered: May 3, 2019

Mark W. Bennett
Clerk of the Court