

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

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TP 25-00684

PRESENT: WHALEN, P.J., LINDLEY, CURRAN, SMITH, AND DELCONTE, JJ.

IN THE MATTER OF DONYALE BELL, PETITIONER,

V

MEMORANDUM AND ORDER

WILLIAM LONG, COUNTY OF ERIE, AND NEW YORK STATE
DIVISION OF HUMAN RIGHTS, RESPONDENTS.

SANDERS & SANDERS, BUFFALO (HARVEY P. SANDERS OF COUNSEL), FOR
PETITIONER.

HODGSON RUSS LLP, BUFFALO (JOSHUA FEINSTEIN OF COUNSEL), FOR
RESPONDENTS.

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 [Edward Pace, J.], entered April 23, 2025) to review a determination of respondent New York State Division of Human Rights. The determination, among other things, dismissed petitioner's complaint in its entirety.

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

Memorandum: In this proceeding pursuant to Executive Law § 298, petitioner seeks to annul the determination of respondent New York State Division of Human Rights (SDHR) dismissing her complaint. Our review of the determination, which adopted the findings of the Administrative Law Judge (ALJ) who conducted the public hearing, "is limited to consideration of whether substantial evidence supports the agency determination" (*Matter of Osorio v New York State Div. of Human Rights*, 236 AD3d 1472, 1473 [4th Dept 2025], lv denied 44 NY3d 909 [2026] [internal quotation marks omitted]; see *Matter of Hirsch v New York State Div. of Human Rights*, 232 AD3d 1248, 1249 [4th Dept 2024]). " 'Although a contrary decision may be reasonable and also sustainable, a reviewing court may not substitute its judgment for that of the Commissioner [of SDHR] if [the Commissioner's determination] is supported by substantial evidence' " (*Osorio*, 236 AD3d at 1473, quoting *Matter of Consolidated Edison Co. of N.Y. v New York State Div. of Human Rights*, 77 NY2d 411, 417 [1991], rearg denied 78 NY2d 909 [1991]).

Contrary to petitioner's contention, we conclude that the determination to dismiss her claim of quid pro quo sexual harassment was supported by substantial evidence (see generally *Matter of Jones v*

New York State Div. of Human Rights, 122 AD3d 1387, 1388 [4th Dept 2014]). Such a claim arises where unwelcome sexual conduct was used, "either explicitly or implicitly, as the basis for employment decisions affecting compensation, terms, conditions, or privileges of the complainant's employment" (*Matter of Father Belle Community Ctr. v New York State Div. of Human Rights*, 221 AD2d 44, 50 [4th Dept 1996], *lv denied* 89 NY2d 809 [1997]). Although the testimony at the hearing established the existence of a sexual relationship between petitioner and respondent William Long, the ALJ concluded, based on his assessment of various witnesses and their credibility, that the relationship predated petitioner's complaint by a number of years, that it was entirely consensual, and that it was unrelated to petitioner's employment. We will not disturb the ALJ's determination that the testimony of certain witnesses was more credible than that of petitioner (see *Jones*, 122 AD3d at 1388; *Matter of Bowler v New York State Div. of Human Rights*, 77 AD3d 1380, 1381 [4th Dept 2010], *lv denied* 16 NY3d 709 [2011]). Deferring again to the credibility determinations of the ALJ, who declined to credit petitioner's testimony that the sexual relationship was nonconsensual or that Long subjected her to other workplace harassment, we similarly reject petitioner's contention that the determination to dismiss her claim of hostile work environment was not supported by substantial evidence (see generally *Osorio*, 236 AD3d at 1474; *Jones*, 122 AD3d at 1388; *Bowler*, 77 AD3d at 1381).

Contrary to petitioner's further contention, there is also substantial evidence to support the determination dismissing her claim for retaliation (see generally *Osorio*, 236 AD3d at 1473-1474). " 'In order to make out [a] claim [for unlawful retaliation], [a petitioner] must show that (1) [the petitioner] has engaged in protected activity, (2) [the] employer was aware that [the petitioner] participated in such activity, (3) [the petitioner] suffered an adverse employment action based upon [such] activity, and (4) there is a causal connection between the protected activity and the adverse action' " (*id.*, quoting *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 312-313 [2004]). "Once that showing is made, the burden then shifts to [the employer] to present legitimate, independent and nondiscriminatory reasons to support [its] actions. Then, if [the employer] meet[s] this burden, [the petitioner] has the obligation to show that the reasons put forth by [the employer] were merely a pretext" (*Osorio*, 236 AD3d at 1474 [internal quotation marks omitted]). Consistent with the ALJ's determination after the hearing, we conclude that, although petitioner met her initial burden with respect to her retaliation claim, there is substantial evidence in the record to support the determination that respondent County of Erie presented legitimate, independent, and nondiscriminatory reasons to support its refusal to promote petitioner (see *id.*). Specifically, substantial evidence at the hearing established, as the ALJ found, that others were promoted over petitioner based on petitioner's lower scores during the interview process and various workplace performance concerns. We further conclude that petitioner failed to establish that the proffered reasons for the decision not to promote her were a pretext for unlawful retaliation (see *Matter of Mario v New York State*

Div. of Human Rights, 200 AD3d 1591, 1593 [4th Dept 2021], *lv denied* 38 NY3d 909 [2022]).

Entered: March 27, 2026

Ann Dillon Flynn
Clerk of the Court