

**Matter of Dean v State Div. of Human Rights**

2009 NY Slip Op 31720(U)

July 30, 2009

Supreme Court, New York County

Docket Number: 401042/2009

Judge: Carol R. Edmead

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. CAROL EDMEAD

PRESENT: \_\_\_\_\_

PART 35

Index Number : 401042/2009  
**DEAN, CHARLENE**  
 VS.  
**STATE DIVISION OF HUMAN RIGHTS**  
 SEQUENCE NUMBER : 001  
 ARTICLE 78

INDEX NO. \_\_\_\_\_  
 MOTION DATE \_\_\_\_\_  
 MOTION SEQ. NO. \_\_\_\_\_  
 MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

PAPERS NUMBERED \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion: Yes  No

**UNFILED JUDGMENT**  
 This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Upon the foregoing papers, it is ordered that this motion

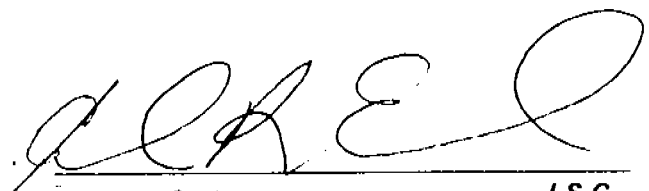
The instant motion and cross motion are decided in accordance with the annexed Memorandum Decision. It is hereby

ORDERED and ADJUDGED that the application of Petitioner Charlene Dean for an order and judgment pursuant to CPLR Article 78 annulling the determination dated October 10, 2008, by respondent the City of New York Human Resources Administration that dismissed and closed her file, **denied**; and it is further

ORDERED and ADJUDGED that the cross motion of Respondent HRA for an order and judgment, pursuant to CPLR §3211 (a)(5) and 7804(f) dismissing the Petition on the grounds that the proceeding is barred by the expiration of the four month Statute of Limitations set forth in CPLR §217, is **granted and the instant Petition is DISMISSED**; and it is further

ORDERED that counsel for respondent HRA shall serve a copy of this order with notice of entry within twenty days of entry on Petitioner.

Dated: 7/30/09



HON. CAROL EDMEAD J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 35

\_\_\_\_\_ x  
In the Matter of the Application of

CHARLENE DEAN,

Petitioner

Index No. 401042/2009

**DECISION/ORDER**

-against-

STATE DIVISION OF HUMAN RIGHTS, THE  
CITY OF NEW YORK HUMAN RESOURCES  
ADMINISTRATION,

Respondents.

\_\_\_\_\_ x  
EDMEAD, J.S.C.

**MEMORANDUM DECISION**

Petitioner Charlene Dean (“petitioner”) moves for an order and judgment pursuant to CPLR Article 78 annulling the determination dated October 10, 2008, by respondent the City of New York Human Resources Administration (“HRA”) that dismissed and closed her file.

Respondent HRA cross moves for an order and judgment, pursuant to CPLR §3211 (a)(5) and 7804(f) dismissing the Petition on the grounds that the proceeding is barred by the expiration of the four month Statute of Limitations set forth in CPLR §217.

*Petitioner’s Contentions*

Petitioner alleges that she became depressed after she was terminated. She was advised to contact HRA and told to file an EEOC complaint. None of the categories applied to her; the closest applicable category was discrimination.

Petitioner believes that she was wrongfully terminated and had no choice but to file a discrimination complaint.

Further, petitioner claims that her union representative failed to file papers on her behalf.

*Respondent's Contentions*

Petitioner alleges that her employment was terminated by HRA effective the close of business on March 24, 2006. Upon information and belief, on or about September 20, 2006, petitioner filed a complaint with respondent the New York State Division of Human Rights ("SDHR") charging HRA with an unlawful discriminatory practice relating to petitioner's disability. By Determination and Order after Investigation dated October 10, 2008 (the "Determination"), the SDHR issued its determination that there was no probable cause to believe that HRA discriminated against petitioner and dismissed petitioner's complaint. The instant Petition challenges the SDHR's Determination.

An examination of the court records shows that the instant Petition was filed on May 1, 2009. Pursuant to CPLR §217(1), petitioner was required to commence an Article 78 proceeding challenging the SDHR's finding of no probable cause and dismissal of her complaint within four months after the determination to be reviewed as issued.

Petitioner concedes receipt of the SDHR's Determination.

Analysis

An article 78 proceeding must be commenced within four months after the administrative determination to be reviewed becomes "final and binding upon the petitioner" (*Yarbough v Franco*, 95 N.Y.2d 342, 717 N.Y.S.2d 79 [2000]; CPLR 217[1]; *New York State Assn. of Counties v Axelrod*, 78 NY2d 158, 165, 573 NYS2d 25, 577 N.E.2d 16). An administrative determination becomes "final and binding" when the petitioner seeking review has been aggrieved by it. An administrative action is not final and binding within the contemplation

of CPLR 217 until it "has its impact" upon the petitioner (*Bludson v Popolizio*, 166 AD2d 346, 347, 561 N.Y.S.2d 14 [ Dept 1990], citing *Matter of Edmead v McGuire*, 67 NY2d 714, 716, 499 NYS2d 934, 490 NE2d 853). The Statute of Limitations does not begin to run until the petitioner receives notice of the determination (*Matter of Biondo v New York State Bd. of Parole*, 60 NY2d 832, 834, 470 NYS2d 130, 458 NE2d 371).

This action is barred by the Statute of Limitations. Petitioner did not file the instant Petition until May 1, 2009, nearly three months following the expiration of the Statute of Limitations. In fact, the Petition indicates that it was not verified until April 27, 2009.

#### Conclusion

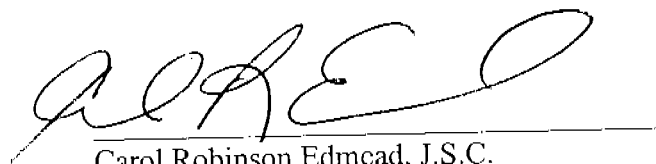
Based on the foregoing, it is hereby

ORDERED and ADJUDGED that the application of Petitioner Charlene Dean for an order and judgment pursuant to CPLR Article 78 annulling the determination dated October 10, 2008, by respondent the City of New York Human Resources Administration that dismissed and closed her file, **denied**; and it is further

ORDERED and ADJUDGED that the cross motion of Respondent HRA for an order and judgment, pursuant to CPLR §3211 (a)(5) and 7804(f) dismissing the Petition on the grounds that the proceeding is barred by the expiration of the four month Statute of Limitations set forth in CPLR §217, is **granted and the instant Petition is DISMISSED**; and it is further

ORDERED that counsel for respondent HRA shall serve a copy of this order with notice of entry within twenty days of entry on Petitioner.

Dated: July 30, 2009



Carol Robinson Edmead, J.S.C.

**HON. CAROL EDM EAD**

**UNFILED JUDGMENT**  
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