

London v New York State Div. of Human Rights

2009 NY Slip Op 33119(U)

December 17, 2009

Supreme Court, New York County

Docket Number: 109070/09

Judge: Marilyn Shafer

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

MARILYN SHAFER

PRESENT: _____

PART 8

Justice

Index Number : 109070/2009

LONDON, SUE

VS.

NYS DIV. 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

Upon the foregoing papers, it is ordered that this motion

decided pursuant to attached items

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

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NYS SUPREME COURT - CIVIL

MARILYN SHAFER
J.S.C.

Dated: 12/21/09

J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

SR 1103

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY - - PART 8

SUE LONDON,

Index No.: 109070/09

Petitioner,

against

NEW YORK STATE DIVISION OF
HUMAN RIGHTS and NEW YORK CITY
OFF TRACK BETTING CORPORATION,

DECISION/ORDER

Respondents.

SHAFER, MARILYN, J.:

In this Article 78 proceeding, petitioner seeks to annul a Determination and Order After Investigation of respondent New York State Division of Human Rights (NYSDHR), dated April 30, 2009, finding that there was no probable cause to support petitioner's claim that respondent New York City Off Track Betting Corporation (OTB) engaged in an unlawful discriminatory practice related to employment. The NYSDHR and OTB have answered, seeking dismissal of the proceeding. In its answer, the NYSDHR also states that, because petitioner and OTB "are the real parties in interest, [it] will not actively participate in the matter and is submitting on the record."

On August 28, 2008, Sue London, a betting agent employed by OTB, filed a complaint with the NYSDHR charging OTB with unlawful discriminatory practices related to employment, in violation of the New York State Human Rights Law (Executive Law § 296). The complaint alleged that respondent OTB failed to reasonably

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accommodate her disability, carpal tunnel syndrome, when it refused to transfer her to the "High Rollers" betting area, which petitioner claimed would allow her more time to rest her hands. The NYSDHR investigated the complaint and issued an order dismissing the complaint, finding that there was no probable cause to believe that OTB was unwilling to reasonably accommodate petitioner's medical condition.

"Where, as here, a determination of no probable cause is rendered without holding a public hearing pursuant to Executive Law § 297 (4) (a), the appropriate standard of review is whether the determination was arbitrary and capricious or lacking a rational basis." *Matter of McFarland v New York State Div. of Human Rights*, 241 AD2d 108, 111 (1st Dept 1998). "The DHR has broad discretion in determining the method to be employed in investigating a claim, and its determination will not be overturned unless the record demonstrates that its investigation was 'abbreviated or one-sided'." *Matter of Bal v New York State Div. of Human Rights*, 202 AD2d 236, 237 (1st Dept 1994); see *Matter of Pascual v New York State Div. of Human Rights*, 37 AD3d 215, 216 (1st Dept 2007). "As long as a petitioner has a full opportunity to present [her] claims, neither a hearing nor a confrontation conference is mandated." *Matter of Gleason v W.C. Dean Sr. Trucking, Inc.*, 228 AD2d 678, 679 (2d Dept 1996) (internal citations omitted). Further, the determinations of the

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NYSDHR "are entitled to considerable deference due to its expertise in evaluating discrimination claims." *Matter of Camp v New York State Div. of Human Rights*, 300 AD2d 481, 482 (2d Dept 2002). The court will not substitute its judgment for that of the agency "unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion." *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaronack, Westchester County*, 34 NY2d 222, 232 (1974) (emphasis in original) (internal quotation marks and citation omitted).

The NYSDHR's investigation file indicates that respondent OTB submitted a response to the complaint, with documents, and that petitioner was given an opportunity to reply to respondents' submission, in writing and at a fact-finding conference. Petitioner was given a full opportunity to present her case and to respond to OTB's case. Petitioner did not deny that OTB offered her several accommodations, although not the specific accommodation that she requested. The NYSDHR determined that OTB had engaged in an interactive process with petitioner in an attempt to provide her with a schedule that suited her needs. See *Phillips v City of New York*, 66 AD3d 170, 175 (1st Dept 2009). The NYSDHR also found that OTB had demonstrated a legitimate, non-discriminatory reason for denying petitioner her specific request, based on prior complaints against petitioner,

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which was not shown to be pretextual. Based on the evidence in the record, the NYSDHR determination had a rational basis and was not otherwise arbitrary and capricious. Further, as the petitioner had an opportunity to present her case, and the record shows that submissions by both sides were considered before the no probable cause determination was made, the determination was not arbitrary and capricious merely because no hearing was held. See *Matter of Gleason*, 228 AD2d at 679. Even if the investigation was not extensive, it was not so abbreviated and one-sided as to result in a record which did not provide a reasonable basis for the administrative determination. See *Matter of Tirino v Long Is. Jewish-Hillside Med. Ctr.*, 99 AD2d 513 (2d Dept 1984).

It is accordingly

ADJUDGED that the petition is denied and the proceeding is dismissed.

This constitutes the decision and judgment of the Court.

Dated: New York, New York
December 17, 2009

ENTER:


MARILYN SHAFER
MARILYN SHAFER C.
J.S.C.