

**Matter of Scott v New York State Div. of Human  
Rights**

2010 NY Slip Op 31593(U)

June 11, 2010

Supreme Court, New York County

Docket Number: 104114/2010

Judge: Cynthia S. Kern

Republished from New York State Unified Court  
System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

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

PRESENT: CYNTHIA S. KERN  
J.S.C. Justice

PART 52

Mariam Azo

INDEX NO. 104114/10

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

NYC Dept. of Education

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

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

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

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

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

IS DECIDED

IN ACCORDANCE WITH ATTACHED DECISION

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

**FILED**  
JUN 17 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 6/17/10

CSK  
CYNTHIA S. KERN J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 52

-----X  
In the Matter of the Application of

MARIATOU D. SCOTT,

Petitioner,

Index No. 104114/10

For an Order Pursuant to Article 78  
of the Civil Practice Law and Rules,

**DECISION/ORDER**

-against-

NEW YORK STATE DIVISION OF HUMAN  
RIGHTS AND NEW YORK CITY DEPARTMENT OF  
EDUCATION,

Respondents.

-----X  
HON. CYNTHIA S. KERN, J.S.C.

**FILED**  
JUN 17 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion  
for : \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Affirmations in Opposition to the Cross-Motion.....	<u>3</u>
Replying Affidavits.....	<u>    </u>
Exhibits.....	<u>4</u>

In this Article 78 proceeding, petitioner Mariatou Scott ("petitioner") seeks to annul the New York State Division of Human Right's ("NYSDHR") determination that there is no probable cause to support the allegation that the New York City Department of Education ("DOE") unlawfully discriminated against petitioner with regard to her employment based on

the fact that she is a black person of African national origin. This court denies the petitioner's request for the reasons set forth below.

In or around March 2007, petitioner obtained a DOE per diem substitute teaching license. Petitioner then registered with both the DOE's SubCentral office (to obtain per diem positions in the DOE's schools) and the DOE's Office of Adult Continuing Education (to obtain per diem positions in adult continuing education programs). That same month, the DOE hired petitioner as a per diem adult education substitute teacher to cover the majority of a computer literacy course at its Mid-Manhattan Adult Learning Center ("MMALC") until a full-time certified teacher could be hired. Petitioner was initially assigned to work fourteen hours per week. In or about October 2008, MMALC decreased petitioner's hours of employment as it had appointed certified teachers to fill some of the hours formerly covered by petitioner. On or about October 23, 2008, MMALC terminated petitioner's position as a per diem substitute teacher altogether because it had filled the position entirely with a certified teacher. Petitioner does not hold any regular teaching licenses and does not have a New York State teaching certification.

On or about October 23, 2008, petitioner filed a complaint with the NYSDHR charging the DOE with discriminatory practice relating to employment on the basis of petitioner's national origin and race/color, in violation of New York State Human Rights Law. Specifically, petitioner alleged that the DOE: (1) reduced her work hours, (2) paid her for fourteen hours of work per week when she actually worked fifteen hours, (3) denied her application for the Chief GED Examiner position and (4) terminated her employment at MMALC, all because petitioner is a black person of African national origin. On or about November 20, 2008, the DOE responded that petitioner's claims were without merit because petitioner was hired as a per

session substitute teacher with the expectation that the position would eventually be filled by a regularly licensed teacher. Upon receiving the DOE's response, the NYSDHR gave petitioner an opportunity to respond. Petitioner responded by letter dated December 5, 2009. The NYSDHR issued a decision on January 29, 2010 dismissing petitioner's complaint because its investigation "failed to uncover sufficient evidence to establish a causal nexus between respondent's treatment of complainant and her race/color and national origin." First, NYSDHR found that the DOE terminated petitioner's employment because it had found a certified teacher to fill the program and therefore no longer needed petitioner's per diem services. NYSDHR further noted that pursuant to the CBA between the DOE and the UFT, respondent may only hire substitute teachers when certified teachers are unavailable. Here, the court notes that the actual language of the CBA states that the DOE could only hire substitute teachers when "regularly licensed" teachers are unavailable. However, this error is harmless, as all "regularly licensed" teachers must be certified. Second, NYSDHR found that petitioner's hours were limited to fourteen hours or fewer for financial reasons in order to ensure that petitioner did not become eligible for benefits available to full-time personnel. Third, NYSDHR found that petitioner's allegation that the DOE paid her for fourteen hours of work, when she actually worked fifteen hours, was not supported by the record as the course schedule was modified so that petitioner was only assigned fourteen hours of work per week. Fourth, NYSDHR found that petitioner was denied the Chief GED Examiner position because she was not a certified teacher and did not have sufficient work experience.

NYSDHR has "broad discretion in determining the method to be employed in investigating a claim." *McFarland v. N.Y. State Div. Of Human Rights*, 241 A.D.2d 108, 111 (1st Dep't 1998). "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 or capricious or lacking a rational basis." *Id.* Additionally, the court's role is "limited to a review of the information before the agency" *Tanalski v. N.Y. State Div. of Human Rights*, 262 A.D.2d 117, 118 (1st Dep't 1999) and NYSDHR's determination may not be overturned unless the record reflects an "abbreviated" or "one-sided" investigation. *Chirgotis v. Mobil Oil Corp.* 128 A.D.2d 400, 403 (1st Dep't 1987).

In the instant action, NYSDHR's determination that there is no probable cause to believe that the DOE has engaged or is engaging in the unlawful discriminatory practice alleged by petitioner is not arbitrary or capricious and is made upon a rational basis. Petitioner was given a full and fair opportunity to present her case. NYSDHR, taking into consideration the record submitted by the parties, provided a rational basis for coming to its conclusion. Accordingly, the court denies petitioner's request for relief under Article 78 of the C.P.L.R. and dismisses the proceeding in its entirety. This constitutes the decision and order of the court.

Dated: 6/11/10

Enter: PK  
J.S.C.

CYNTHIA S. KERN  
J.S.C.

**FILED**

JUN 17 2010

NEW YORK  
COUNTY CLERK'S OFFICE