

Matter of Peralta v New York State Div. of Human Rights

2014 NY Slip Op 30898(U)

April 4, 2014

Supreme Court, New York County

Docket Number: 400204/14

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

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

PRESENT.

PART _____

Index Number : 400204/2014

PERALTA, VICTOR

vs

NYS DIVISION OF HUMAN RIGHTS

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

FILED

Cross-Motion: Yes No

APR 09 2014

Upon the foregoing papers, it is ordered that this motion

COUNTY CLERK'S OFFICE
NEW YORK

is decided in accordance with the annexed decision.

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Dated: _____

4/4/14

CGK

J.S.C.

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SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

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 55

-----x
In the Matter of the Application of

VICTOR PERALTA,

Petitioner,

Index No. 400204/14

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 ST. LUKE'S ROOSEVELT HOSPITAL,

Respondents.

FILED

APR 09 2014

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

COUNTY CLERK'S OFFICE
NEW YORK

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>
Verified Answer.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>3</u>

In this Article 78 proceeding, petitioner Victor Peralta ("petitioner") seeks to reverse the determination made by respondent the New York State Division of Human Rights ("DHR") that there is no probable cause to support the allegation that St. Luke's Roosevelt Hospital ("St. Luke's") unlawfully discriminated against petitioner with regard to his employment based on the fact that he is Dominican. For the reasons set forth below, the petition is denied.

The relevant facts are as follows. In or around November 2003, petitioner was hired by St. Luke's as a Porter at 501 West 113th Street, New York, New York. In or around September

2010, petitioner was promoted to the position of Handyperson at 1090 Amsterdam Avenue, New York, New York ("1090"), a St. Luke's-owned building containing numerous medical offices. On or about October 1, 2012, petitioner was suspended from his position pending an investigation of alleged sexual harassment complaints made against him by other employees working at 1090. On or about February 5, 2013, petitioner was terminated from his position.

On or about June 26, 2013, petitioner filed a verified complaint with DHR alleging that St. Luke's engaged in unlawful discriminatory practice relating to his employment on the basis of petitioner's Dominican nationality in violation of Article 15 of the New York Executive Law. Specifically, petitioner's complaint alleged that he was terminated from his position so that Loida Ramos, St. Luke's Vice President of Real Estate Services and Construction, could help her Puerto Rican friend obtain petitioner's job. Petitioner further asserted that any allegations of sexual harassment made against him are unfounded because St. Luke's did not disclose the names of the women who accused him of such conduct. In response, St. Luke's denied petitioner's allegation that he was terminated because he was Dominican and claimed that he was treated fairly and given opportunities to advance. Rather, St. Luke's alleged that petitioner was terminated from his position on the basis of inappropriate sexual behavior as evidenced by numerous complaints by women employees at 1090. Specifically, St. Luke's claimed that on September 28, 2012, Noel Chin, petitioner's supervisor, approached Jim Taipovic, 1090's Property Manager, and informed him that he had received a complaint from Victim 1, a manager in a medical office renting space at 1090, that petitioner had been making sexual advances toward her over a span of three months. Mr. Taipovic immediately relayed the information to Stephen Monez, St. Luke's Assistant Vice President of Corporate Engineering and Facilities,

who had assumed the responsibility of managing 1090 in August 2012. Mr. Monez then referred the matter to Janet Connery, St. Luke's then Director of Labor and Employee Relations. As part of her investigation, in addition to obtaining written statements, Ms. Connery interviewed Victim 1 along with other victims complaining of sexual harassment by petitioner and two witnesses and concluded that all those who were interviewed were credible and that the witnesses corroborated the victims' statements.

The DHR commenced an investigation into petitioner's allegations of discrimination and determined that petitioner failed to proffer evidence refuting the reason articulated by St. Luke's for his termination and that petitioner failed to provide evidence connecting his national origin to any action taken against him by St. Luke's. DHR found that St. Luke's provided documentary evidence that petitioner engaged in inappropriate behavior directed towards one or more female employees, which had been formally reported to St. Luke's. Thus, DHR determined that there is no probable cause to believe that St. Luke's has engaged in or is engaging in the unlawful discriminatory act complained of and dismissed petitioner's complaint. Petitioner then commenced the instant proceeding pursuant to Article 78 challenging the DHR's dismissal of his complaint.

On review of an Article 78 petition, "[t]he law is well settled that the courts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary and capricious." *Goldstein v. Lewis*, 90 A.D.2d 748, 749 (1st Dep't 1982). "In applying the 'arbitrary and capricious' standard, a court inquires whether the determination under review had a rational basis." *Halperin v. City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep't 2005); see *Pell v. Board. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck*,

Westchester County, 34 N.Y.2d, 222, 231 (1974)(“[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.”) “The arbitrary or capricious test chiefly ‘relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.’ Arbitrary action is without sound basis in reason and is generally taken without regard to facts.” *Pell*, 34 N.Y.2d at 231 (internal citations omitted). Further, a court should defer to DHR when “[t]he record demonstrates that petitioner had a full and fair opportunity to present her case and that DHR’s investigation was neither abbreviated nor one-sided.” *Kim v. New York State Div. of Human Rights*, 107 A.D.3d 434 (1st Dept 2013).

In the instant action, this court finds that DHR’s dismissal of petitioner’s complaint on the ground that there is no probable cause to support petitioner’s allegation that St. Luke’s unlawfully discriminated against petitioner based on the fact that he is Dominican was made on a rational basis. As an initial matter, both petitioner and St. Luke’s were given a full and fair opportunity to present their case. Additionally, the DHR, taking into consideration the record submitted by the parties, had a rational basis for coming to its conclusion that petitioner was terminated from his employment with St. Luke’s due to numerous allegations of sexual harassment made against petitioner, which it found had been substantiated. Specifically, DHR rationally relied on evidence provided by St. Luke’s, such as written complaints from numerous victims along with a written report from Ms. Connery, which detailed her interviews with the victims and witnesses and concluded “that the conduct alleged probably did occur” based “on the fact that all individuals interviewed appeared creditable and many of the incidents were witnessed by others.” Further, petitioner has not provided any evidence of a one-sided

[* 6]
investigation and has not put forth any evidence that he was terminated from his position on the basis of his national origin other than his own self-serving statements.

Accordingly, the petition is denied and dismissed in its entirety. This constitutes the decision and order of the court.

Date: 4/4/14

Enter: _____



J.S.C.

FILED

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