

Matter of Bussa v New York State Div. of Human Rights
2014 NY Slip Op 31290(U)
May 15, 2014
Sup Ct, New York County
Docket Number: 400079/2014
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: KERN
Justice

PART 55

ANTONINO BUSSA

INDEX NO. 400079/14

MOTION DATE _____

MOTION SEQ. NO. 001

-v-
NEW YORK STATE DIVISION OF
HUMAN RIGHTS, et al.

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

FILED

MAY 20 2014

COUNTY CLERK'S OFFICE
NEW YORK

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

Dated: 5/15/14

PK, J.S.C.

1. CHECK ONE: ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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

ANTONINO BUSSA,

Petitioner,

Index No. 400079/2014

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 EDUCATIONAL ALLIANCE, INC.,

Respondents.
-----X

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

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

Papers

Numbered

FILED

Notice of Motion and Affidavits Annexed.....

1

Verified Answer.....

2

MAY 20 2014

Replying Affidavits.....

Exhibits.....

3

COUNTY CLERK'S OFFICE
NEW YORK

In this Article 78 proceeding, petitioner Antonino Bussa ("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 Educational Alliance, Inc. ("Educational Alliance") unlawfully discriminated against petitioner by refusing to hire him because of his disability. For the reasons set forth below, the petition is denied.

The relevant facts are as follows. On or about April 26, 2013, petitioner submitted his resume to Educational Alliance during the CUNY Big Apple Job and Internship Fair. Thereafter,

Educational Alliance asked petitioner to come in to interview for a position as a Group Leader for P.S. 140's Summer After School Program. Educational Alliance alleges that it initially asked petitioner in for an interview as his resume showed he had prior experience working at various camps. However, his resume did not specify the age groups he worked with at these camps. Petitioner appeared for an interview on May 13, 2013. Thereafter, on or about June 25, 2013, petitioner was told that Educational Alliance had selected another candidate for the position.

On or about June 26, 2013, petitioner filed a verified complaint with DHR alleging that Educational Alliance engaged in unlawful discriminatory practice relating to employment on the basis of petitioner's disability in violation of Article 15 of the New York Executive Law. Specifically, petitioner's complaint alleged that Educational Alliance refused to hire him because he suffers from Cerebral Palsy. In response, Educational Alliance denied petitioner's allegation that he was not hired because he was disabled and asserted that it did not hire petitioner for the position as he did not have experience working with the age range of children attending the Summer After School Program at P.S. 140. In support of its position, Educational Alliance submitted, among other things, a copy of the Group Leader's job posting and petitioner's resume.

The DHR commenced an investigation into petitioner's allegations of discrimination and determined that petitioner failed to proffer evidence refuting the reason articulated by Educational Alliance for not hiring petitioner. Thus, DHR concluded that there was no probable cause to believe that Educational Alliance had engaged in or was 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 Educational Alliance unlawfully discriminated against petitioner based on the fact that he is disabled was made on a rational basis. As an initial matter, both petitioner and Educational Alliance 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 not hired by Educational Alliance as he did not have the required

experience working with kindergarten to fifth grade students. Specifically, DHR rationally relied on the job description for the Group Leader position, which stated that it involves supervision of "elementary school-aged children" and Educational Alliance's undisputed assertion that petitioner did not have experience working with this age group. Finally, petitioner has not provided any evidence of a one-sided investigation and has put forth no evidence that he was not hired for the position on the basis of his disability 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: 5/15/14

Enter: _____

CK
J.S.C.

FILED

MAY 20 2014

COUNTY CLERK'S OFFICE
NEW YORK