

Carlino v New York State Div. of Human Rights

2016 NY Slip Op 30737(U)

March 28, 2016

Supreme Court, Queens County

Docket Number: 3121/15

Judge: Darrell L. Gavrin

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NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE DARRELL L. GAVRIN**
Justice

IA PART 27

The application of JOHN M. CARLINO,
CHRISTINE DEVEAU, KIMBERLY MANZ-SMITH,
JOHN R. MCMAHON, JOHN SHATINSKY and
BRUCE SMITH,

Index No. 3121/15

Motion

Date June 5, 2015

Petitioners,

Motion

For a judgment under Article 78 of the Civil Practice
Law and Rules in the nature of mandamus to review
and

Cal. No. 22 & 23

- against -

Motion

Seq. No. 1 & 2

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Respondent,

QUEENS BALLPARK COMPANY, LLC,

Necessary Party.

The following papers read on these proceedings pursuant to Executive Law §298, petitioners for judicial review of respondent New York State Division of Human Right's (SDHR) determinations dismissing petitioners' complaints after investigation for lack of probable cause.

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Upon the foregoing papers, these petitions are consolidated for the purpose of a single decision and judgment and are determined as follows:

This court in its decision dated December 1, 2015, held in abeyance the within petitions pending respondent SDHR's service and submission of the written transcripts. The transcripts were timely served on the petitioners and submitted to chambers.

In motion sequence number 1, petitioners, John M. Carlino, Christine Deveau, Kimberly Manz-Smith, John R. McMahon, John Shatinsky and Bruce Smith, in their verified petition seek mandamus to review the SDHR's determinations of no probable cause and to remand the matter to the agency or fix an appropriate award.

In motion sequence No. 2, petitioners, John M. Carlino, Christine Deveau, Kimberly Manz-Smith, John R. McMahon, John Shatinsky and Bruce Smith, in their amended verified petition seek mandamus to review the SDHR's determinations of no probable cause and to remand the matter to the agency or fix an appropriate award.

The verified petition is dated March 11, 2015, and the amended verified petition is dated March 26, 2015. Respondent, SDHR and Queens Ballpark Company, LLC (QBC), named herein as a necessary party, each served an answer to the amended verified petition. As the verified petition has been superceded by the amended verified petition, the proceeding designated as motion sequence number 1 is now moot.

Although denominated as Article 78 proceeding, the within proceeding designated as motion sequence 2 shall be treated as a proceeding for judicial review pursuant to Executive Law § 298, as Executive Law § 298 provides the "exclusive means" for reviewing a determination of the SDHR, including an order dismissing a complaint (*see Matter of State Commn. for Human Rights v Lieber*, 23 NY2d 253, 255-256 [1968]; *Ken-Vil Assoc. Ltd. Partnership v New York State Div. of Human Rights*, 100 AD3d 1390, 1391 [4th Dept 2012]; *Matter of Baust v New York State Div. of Human Rights*, 70 AD3d 1107, 1108 [3d Dept 2010], *lv denied* 15 NY3d 710 [2010]; *Matter of Maloff v City Commn. on Human Rights*, 45 AD2d 834, 834[1st Dept 1974]; *see also* CPLR 2001).

QBC is the lessee of Citi Field Stadium located in Flushing, New York and employs the security guards and security supervisors who work at the ballpark. QBC employs Security Game Day Supervisors (Game Day Supervisors) who oversee the safe and efficient operation of the ballpark gates, concourse and seating areas; provide direction to all event staff to ensure the ballpark is properly staffed, equipped and operated; and serve as a source of information and problem solving during all ballpark events. Game Day Supervisors are seasonal employees who are hired at the beginning of each baseball season and then rehired for the next season.

Bruce Smith alleges that QBC appointed him to the position of Director of Game Day Security on April 1, 2000; John R. McMahon alleges that QBC appointed him to the position of Game Day Supervisor on June 12, 1992; Kimberly Manz-Smith alleges that QBC appointed her to the position of Game Day Supervisor on June 16, 2004; Christine Deveau alleges that QBC appointed her to the position of Game Day Supervisor on June 9, 2007; John Shatinsky alleges that QBE appointed him to the position of Day Game Supervisor on January 16, 2008; and John M.

Carlino alleges that QBC appointed him to the position of Game Day Supervisor on July 11, 2011.

Bruce Smith and Kimberly Manz-Smith are husband and wife, John Shatinsky is Mr. Smith's brother-in-law, and Christine Deveau is Ms. Smith's lifelong friend. All of the petitioners allege that they were given notice of termination of their employment with QBC in November and December 2013, prior to the commencement of the 2014 baseball season. In July 2014, John Carlino, Christine Deveau, Kimberly Manz-Smith, John McMahon, John Shatinsky and Bruce Smith filed separate complaints with the SDHR charging QBC with a lawful discriminatory practices relating to employment in violation of Executive Law Article 15 (Human Rights Law). QBC submitted a 12 page response to the administrative complaints dated September 22, 2014, in which denying all allegations of discrimination and retaliation, and set forth its reasons for all actions taken with respect to the claimants' employment. During the course of its investigation, the SDHR held verbal conferences with the complainants and the complaints submitted a 25 page rebuttal with exhibits attached to QBC's responses. The SDHR requested from QBC demographic information regarding the date of birth, gender and dates of employment for Security Game Day Supervisors for the 2013 and 2014 seasons. In addition to information regarding the allegations in the complaint and QBC submitted the information to SDHR. In January 2015, the SDHR issued determinations and orders with respect to each complainant, as stated below.

Bruce Smith

Bruce Smith filed a complaint with respondent SDHR on July 18, 2014 charging QBC with unlawful discriminatory practice relating to employment because of age in violation of the Human Rights Law. Mr. Smith, then age 61, alleged that his termination was a pretext; that he performed his job duties in the manner he always performed them and that he was replaced by younger person. QBC denied discriminating against Mr. Smith, and asserted that he was terminated for falsifying his own, his families' and friends' time-cards.

The SDHR conducted an investigation and issued a determination and order dated January 14, 2015, stating in pertinent part,:

“The investigation revealed that Complainant [Bruce Smith] “the Director of Event Staff, had a relatively close relationship with his direct supervisor, Vice President of Security Robert Kasdon, who attended Complainant's wedding to Kimberly Manz-Smith (*SDHR 10170062*). The record reveals that Respondent [QBC] has policies including “Hiring Relatives” and “Non-Fraternization, Dating and Romantic Relationships” that prohibit a manager supervising relatives and as a Director, Complainant would be responsible for enforcing these policies. Complainant acknowledged that Kasdon repeatedly discussed and cautioned Complainant regarding supervising his wife and brother-in-law John Shatinsky...but contends that Kasdon did not confront him with enforcing the policy.”

“The investigation cannot resolve all of the issues regarding the manipulation of the time-cards. Complainant acknowledged submitting time-cards for himself that did not reflect the time he was on the site, let alone swiped in, because he routinely did work for Respondent while outside. Respondent acknowledged that Complainant would have to adjust all the time cards as part of his duties and that Kasdon would routinely approve Complainant's, as well as the others', time-cards. It is undisputed that in a November 2013 meeting, Kasdon and his

supervisor Venue Services and Operations Senior Vice President, Mike Landeen, confronted Complainant over issues with time cards and Complainant was terminated shortly thereafter. However, in any event the investigation does not support that Complainant's age (61 at the time) or any other protected characteristic was a criteria for his termination. Kasdon (age 64) terminated Complainant, and Complainant's duties were distributed to three existing full-time employees including Security System Manager John Bonner (age 63) as well as Executive Director Guest Services Chris Brown (36) and Director of Facility Security Sean Dean (age 46). Additionally, the record reveals that Respondent hired nine security supervisors to replace the sixteen security supervisors who departed, and the ages of the nine new supervisors were (from oldest):65;62;56;56;52;51;48;41;and 29. Further, the investigation supports that Complainant, Kasdon, Bonner, Brown and Dean are all Caucasian males”.

The SDHR determined that “ the investigation did not reveal any evidence aside from his [Bruce Smith's] conclusory allegations to support that the real reason was a discriminatory animus based on age.”

Based on these facts, the SDHR found that there was no probable cause to believe that QBC has engaged in or is engaging in the unlawful discriminatory practice complained of; that there was no violation of the Human Rights Law. Accordingly, SDHR dismissed the complaint and closed the file.

John Shatinsky

John Shatinsky filed a complaint with respondent SDHR on July 18, 2014, charging QBC with an unlawful discriminatory practice relating to employment because of age in violation of the Human Rights Law. Mr. Shatinsky alleged that because he was 70 years old, and because of his association with Director of Event Staff Bruce Smith, who himself was terminated because of age discrimination, he was terminated from his position. QBC denied discriminating against Bruce Smith, Shatinsky's brother-in-law. QBC asserted that after it determined to terminate Smith for falsification of time records, it terminated others including Shatinsky whose loyalty to Smith might compromise their ability to work with new leadership.

The SDHR conducted an investigation and issued a determination and order dated January 15, 2015, stating in pertinent part:

“The investigation reveals that once Respondent targeted Director of Security Bruce Smith for termination due to their belief that he falsified employees' time records respondent also determined they needed to terminate everyone who is perceived loyalty to Smith might compromise their working with the new management, from Smith's wife (*Kimberly Manz-Smith SDHR 10170062*) to his brother-in-law(the instant complaint, *SDHR 10170021 John Shatinsky*) to the cousins who made Smith's sandwiches (*SDHR 10170092 Steven F. Carlino* and *SDHR 10170311 John M. Carlino*).”

“The record reveals that Complainant was hired at age 65 and terminated at age 70. The record shows fifty-eight (58) Security Game Day Supervisors on the roster of 2013, of whom sixteen (16) were either terminated or left before the 2014 season. The record shows fifty-one (51) Security Supervisors for the 2014 season. The nine (9) new security supervisors' ages were (from oldest): 65;62;56;52;51;48; and 29. Complainant acknowledged that Respondent

continues to employ a Security Supervisor who is 77 years of age. While Respondent only presented its otherwise unsupported statement that Complainant's performance was an issue, the record does not support Complainant's allegation that his termination was based on his age."

"The Division makes no determination regarding whether Bruce Smith falsified time records and/or the respondent's determination to terminate all employees perceived to have benefitted from Smith's alleged falsification and/or were related to or friends of Smith; what the investigation does support is that the termination of Complainant was related to Bruce Smith's alleged falsification and termination and had no relationship to age or any other protected category."

"The investigation reveals that Complainant never engaged in protected activity as considered by the Human Rights law, and the complaint cannot sustain an allegation of retaliation."

Based on these facts, the SDHR found that there was no probable cause to believe that QBC has engaged in or is engaging in the unlawful discriminatory practice complained of; that there was no violation of the Human Rights Law; the complaint was dismissed and the file was closed.

John R. McMahon

John R. McMahon filed a complaint with respondent SDHR on July 22, 2014 charging QBC with an unlawful discriminatory practice relating to employment because of age in violation of the Human Rights Law. He alleged that because of his age, 64, he was terminated from his Security Supervisor position. QBC denied discriminating against Mr. McMahon, who it was asserted had ongoing attitude and performance issues. He was assigned to the "Stengel VIP" gate and it was decided to combine the supervisory post with the "Left Field" gate post.

The SDHR conducted an investigation and issued a determination and order dated January 15, 2015, stating, in pertinent part, that:

"The record reveals that Respondent was routinely reducing its security expenditures and staff. The record shows fifty-eight (58) Security Game Day Supervisors on the roster of 2013, of who sixteen (16) were either terminated or left before the 2014 season. The record shows fifty-one (51) Security Supervisors for the 2014 season, two (2) are thirty (30) years or younger, four (4) are between 30 and forty years of age, twenty four (24) are between the age of 40 and 50 and ten (10) are over sixty (60) years of age. The nine(9) new security supervisors' ages were (from oldest): 65,62,56,56, 52,51,48; 41; and 29. In 2013 Respondent had thirty-three (33) supervisors over fifty (50) years of age and in 2014 there were thirty-four (34) supervisors over fifty (50) years of age."

"Complainant confirmed during an interview that the 'Stengel Gate' post he was assigned to during 2013 was combined with the 'Left Field Gate' supervisor post during 2014."

"While Respondent only presented it's[sic] otherwise unsupported statement that Complainant's performance was an issue, the record does not support Complainant's allegation that his termination was based on his age, sixty four (64)".

Based on these facts, the SDHR found that there was no probable cause to believe that QBC has engaged in or is engaging in the unlawful discriminatory practice complained of; that

there was no violation of the Human Rights Law; the complaint was dismissed and the file was closed.

Kimberly Manz-Smith

Kimberly Manz-Smith filed a complaint with respondent, SDHR, on July 23, 2014 charging QBC with an unlawful discriminatory practice relating to employment because of sex and marital status in violation of the Human Rights Law. She alleged that because she is married to Bruce Smith, she was terminated from her position as Security Game Day Supervisor and her post was staffed with only male supervisors.

QBC denied her allegations and asserted that Director of Staff Events, Bruce Smith, was terminated in November 2013 for falsifying records, including those of Kimberly Manz-Smith, and that it determined to terminate those whose loyalty to Bruce Smith might compromise loyalty to a new leadership and undermine the effectiveness of the security department.

The SDHR conducted an investigation and issued a determination and order dated January 15, 2015, stating, in pertinent part, that:

“While Complainant alleged retaliation/opposed discrimination in her rebuttal and verbal conference, the investigation did not reveal evidence to support that Complainant engaged in protected activity prior to her termination.”

“The allegations articulated by Complainant do not articulate a *prima facie* violation of the statute prohibiting marital status discrimination. Complainant has not identified facts to show that it was her marital status, and not her specific spouse, that was the basis of any employment decision.”

“The investigation reveals that once Respondent targeted Director of Security Bruce Smith for termination, Respondent determined to terminate everyone who is perceived loyalty to Smith might compromise their working with the new management, from Smith’s wife (the instant complainant, *SDHR 10170062 Kimberly Manz-Smith*) to his brother-in-law (*SDHR 10170021 John Shatinsky*) to the cousins who made Smith’s sandwiches (*SDHR 10170092 Steven F. Carlino* and *SDHR 10170311 John M. Carlino*). It is undisputed that the eight (8) female security supervisors unconnected to Bruce Smith remain employed”.

“The Division makes no determination regarding whether Bruce Smith falsified time records and/or the respondent’s determination to terminate all employees perceived to have benefitted from Smith’s alleged falsification and/or were related to or friends of Smith; the Division investigation supports the termination of Complainant was related to Bruce Smith’s alleged falsification and termination and had no relationship to gender.”

“While it is undisputed that Complainant had no disciplinary history, the investigation does not support that Complainant was terminated based on discriminatory animus because of her sex.”

Based on these facts, the SDHR found that there was no probable cause to believe that QBC has engaged in or is engaging in the unlawful discriminatory practice complained of; that there was no violation of the Human Rights Law; the complaint was dismissed and the file was closed.

Christine Deveau

Christine Deveau filed a complaint with respondent SDHR on July 23, 2014 charging QBC with an unlawful discriminatory practice relating to employment because of gender in violation of the Human Rights Law. She alleged that she was terminated from her Security Supervisor position because of her sex.

QBC denied her allegations and asserted that when Director of Staff Events Bruce Smith was terminated in November 2013 for falsifying records, it determined to terminate those whose loyalty to Bruce Smith might compromise loyalty to a new leadership and undermine the effectiveness of the security department. QBC therefore decided to terminate Ms. Deveau.

The SDHR conducted an investigation and issued a determination and order dated January 20, 2015, stating, in pertinent part, that:

“While Complainant alleged retaliation/opposed discrimination in her rebuttal and verbal conference, the investigation did not reveal evidence to support that Complainant engaged in protected activity prior to her termination.”

“The investigation reveals that once Respondent targeted Director of Security Bruce Smith for termination, Respondent determined to terminate everyone who is perceived loyalty to Smith might compromise their working with the new management, from Smith’s wife (*SDHR 10170062 Kimberly Manz-Smith*) to his brother-in-law (*SDHR 10170021 John Shatinsky*) to the cousins who made Smtih’s sandwiches (*SDHR 10170092 Steven F. Carlino* and *SDHR 10170311 John M. Carlino*). Complainant is the childhood friend of Kimberley Manz-Smioth and Complaint was purportedly the beneficiary of Bruce Smith’s falsifying records.”

“While it is undisputed that Complainant had no disciplinary history, the investigation does not support that Complainant was terminated based on discriminatory animus because of her sex.”

“The Division makes no determination regarding whether Bruce Smith falsified time records and/or the respondent’s determination to terminate all employees perceived to have benefitted from Smith’s alleged falsification and/or were related to or friends of Smith; the investigation clearly supports the termination of Complainant was related to Bruce Smith’s alleged falsification and termination and had no relationship to age or any other protected category.”

“It is undisputed that the eight (8) female security supervisors unconnected to Bruce Smith remain employed, and that Complainant and co-Complainant Manz-Smith were the only female security supervisors terminated.”

Based on these facts, the SDHR found that there was no probable cause to believe that QBC has engaged in or is engaging in the unlawful discriminatory practice complained of; that there was no violation of the Human Rights Law; the complaint was dismissed and the file was closed.

John M. Carlino

John M. Carlino filed a complaint with respondent, SDHR, on August 5, 2014, charging QBC with an unlawful discriminatory practice relating to employment because of age,

race/color in violation of the Human Rights Law. Mr. Carlino, a former Security Game Day Supervisor, alleged that he was he was pretextually terminated by QBC because he was then age 43 and is Italian. QBC denied discriminating against Mr. Carlino and asserted that he was not rehired because of a perceived inappropriate relationship and loyalty to Bruce Smith, who was terminated for falsifying records.

The SDHR conducted an investigation and issued a determination and order dated January 29, 2015, stating, in pertinent part, that:

“While Complainant’s identification of ‘Italian’ is appropriately considered under the basis of national origin, Complainant has not identified any act or statement that could conceivably relate to Complainant’s race or national origin as the basis of an adverse employment action.”

“While Complainant alleged retaliation/opposed discrimination in her rebuttal and verbal conference, the investigation did not reveal evidence to support that Complainant engaged in protected activity prior to her termination.”

“The investigation reveals that once Respondent targeted Director of Security, Bruce Smith, for termination, Respondent determined to terminate everyone whose perceived loyalty to Smith might compromise their working with the new management, from Smith’s wife (*SDHR 10170062 Kimberly Manz-Smith*) to his brother-in-law (*SDHR 10170021 John Shatinsky*) to the cousins who made Smith’s sandwiches (*SDHR 10170092 Steven F. Carlino* and the instant complaint *SDHR 10170311 John M. Carlino*).”

“The record shows fifty-eight (58) Security Game Day Supervisors on the roster of 2013, of whom sixteen (16) were either terminated or left before the 2014 season. The record shows fifty-one (51) Security Supervisors for the 2014 season. The nine (9) new security supervisors’ ages were (from oldest): 65;62;56;52;51;48; and 29.”

“While there has been no issue with Complainant’s performance, the record does not support Complainant’s contention that his termination was based on his age, the investigation supports that the termination was related to the Bruce Smith situation.”

Based on these facts, the SDHR found that there was no probable cause to believe that QBC has engaged in or is engaging in the unlawful discriminatory practice complained of; that there was no violation of the Human Rights Law; the complaint was dismissed and the file was closed.

Pleadings

Petitioners now seek judicial review of each of the SDHR’s determination of no probable cause. Petitioners allege in their amended verified petition that in the proceedings before the agency, QBC, in its response dated September 22, 2014, falsely accused Mr. Smith of falsifying time records, and admitted to terminating Carlino, Deveau, Manz-Smith and Shatinsky because they had strong connections and relations to Bruce Smith. Petitioners assert that QBC in the response submitted to the SDHR failed to provide any documentation that the adverse employment actions against them did not occur under circumstances giving rise to an inference of retaliation, age discrimination and/or gender discrimination. Further, they asserted that QBC failed to produce verbal or written reprimands or disciplines refuting petitioners’ qualifications

and excellent work performance.

Petitioners allege that they filed a rebuttal with the agency dated October 24, 2014, demonstrating that QBC had terminate all of the petitioners once the 2013 baseball season concluded in order to unlawfully limit the number of female Security Game Day Supervisors, and Security Game Day Supervisors over the age of 40, for the 2014 baseball season. It is alleged that it was not until petitioners' conference with the SDHR on December 29, 2014, that they became aware of two rosters from QBC that purported to list the security supervisors in 2013 and 2014.

Petitioners allege that during the conference they contended that the rosters inappropriately inflated both the number of female Security Game Day Supervisors, and Security Game Day Supervisors over the age of 40. They alleged that both the 2013 and 2014 rosters were unreliable because the rosters failed to make distinctions between the mutually exclusive positions of Security Game Day Supervisors, the position petitioners held, and Security Shift Supervisor, and listed all personnel as "Security Supervisor". Moreover, petitioners alleged that said rosters included individuals who were no longer employed by QBC, who were no longer able to work due to physical injury, or were unable to work as Security Game Day Supervisors in a manner that was comparable to petitioners. Petitioners allege that four specific female employees on the rosters were no longer able to work, no longer employed by QBC, or worked in a different capacity than the female petitioners.

Petitioners allege that the SDHR nonetheless relied upon the flawed and unreliable rosters in its determinations of no probable cause. It is further alleged that the SDHR failed to take into account any "comparison or factual inquiry, it did not review any of QBC's payroll account information to ascertain what employees, if any, were similarly situated with Petitioners, or whether QBC's false accusations of Petitioner Smith falsifying time records serves as a pretext" for the wrongful termination of Smith as a result of age discrimination. Petitioners allege that the SDHR's determinations of no probable cause are arbitrary and capricious and lack a factual basis.

Respondent, SDHR, asserts in its answer that its orders dismissing each of the petitioners' complaints were not arbitrary nor capricious, nor an abuse of discretion. SDHR, has submitted the administrative record of its proceedings with respect to each petitioner, and asserts that as QBC and petitioners are the real parties in interest, it will not actively participate in this proceeding.

QBC, in opposition to the within petition, asserts that the SDHR's determinations are supported by substantial evidence in the record, were reached after a thorough investigation and the proper exercise of administrative discretion, and are not arbitrary and capricious. It is asserted that the amended verified petition fails to allege facts demonstrating that the SDHR's determinations are arbitrary and capricious; that the SDHR conducted a complete and thorough investigation of the petitioner's administrative complaints; and that the dismissal orders are rationally based on the substantial evidence in the administrative record which showed no evidence of discrimination or retaliation. With respect to the petitioners' claim that the agency relied upon flawed rosters, said rosters are not related to Ms. Manz-Smith's claim of marital

status discrimination or Carlino's claim of race, color or ethnicity discrimination; and that petitioners' conclusory assertions regarding the rosters are insufficient to warrant the overturning of the SDHR's determinations and orders. It is asserted that the information relied upon by the petitioners to demonstrate that the rosters were flawed and unreliable was not contained in the administrative record, and therefore may not be considered by this court.

Finally, QBC states that on February 23, 2015, the U.S. Equal Employment Opportunity Commission issued separate "Dismissal and Notice of Rights" determinations, in which it adopted the findings of the SDHR which had investigated the charges.

Discussion

When, as here, a SDHR "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]; see *Matter of Ramirez v New York State Div. of Human Rights*, 4 NY3d 789 [2005]; *Matter of Baird v New York State Div. of Human Rights*, 100 AD3d 880, 881 [2nd Dept 2012]; *Matter of Pajoo v State Div. of Human Rights*, 82 AD3d 609, 609 [1st Dept 2011]). Generally, "[a]n action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*Matter of Peckham v Calogero*, 12 NY3d 424, 431 [(2009)]; see *Matter of Pell v Board of Educ.*, 34 NY2d 222, 231 [1974]). Once a court finds "some--indeed, any--rational basis or credible evidence to support an administrative determination, the agency's decision must be upheld" (*Matter of Rivera v New York State Div. of Human Rights*, 18 Misc 3d 1133[A] [Sup Ct, NY County 2008]; see *Matter of Pell*, 34 NY2d at 231), and "[t]he judicial function is exhausted" (*Matter of CUNY-Hostos Community Coll. v State Human Rights Appeal Bd.*, 59 NY2d 69, 75 [1983]; see *Matter of Hughes v Doherty*, 5 NY3d 100, 107 [2005]; *Sullivan County Harness Racing Assn., Inc. v Glasser*, 30 NY2d 269, 277-278 [1972]; *Kim v Woodysun Hous. Dev. Fund Corp.*, 2014 NY Misc LEXIS 5267, [Sup Ct, Queens County 2014]; *Warner v General Counsel, State Div. of Human Rights*, 2014 NY Misc LEXIS 1149 [Sup Ct, NY County 2014]; *Kuzminski v New York State Div. of Human Rights*, 2013 NY Slip Op 31416(U), 2013 NY Misc LEXIS 2779 [Sup Ct, NY County 2013]; *Matter of Friedman v New York State Div. of Human Rights*, 2012 WL 2951184, 2012 NY Misc LEXIS 3343 [Sup Ct, NY County 2012]).

As long as the agency's decision has a rational basis, a court may not weigh the evidence, or substitute its judgment for that of the agency (see *Matter of Nehorayoff v Mills*, 95 NY2d 671, 675 [2001]; *Matter of State Div. of Human Rights [Granelle]*, 70 NY2d 100, 106 [1987]; *Matter of Pell*, 34 NY2d at 232). Nor may a court "overturn an agency's decision merely because it would have reached a contrary conclusion" (*Sullivan County Harness Racing Assn., Inc. v Glasser*, 30 NY2d 269, 278 [1972]; see *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; *Matter of Imperial Diner v State Human Rights Appeal Bd.*, 52 NY2d 72, 79 [1980]; *Matter of Mize v State Div. of Human Rights*, 33 NY2d 53, 56 [1973]).

Moreover, when an administrative agency's determination "involves factual evaluations in an area of the agency's expertise and is supported by the record, such [determination] must be

accorded great weight and judicial deference” (*Flacke v Onondaga Landfill Sys., Inc.*, 69 NY2d 355, 363 [1987]; see *Matter of Peckham*, 12 NY3d at 431; *Matter of Roberts v Gavin* 96 AD3d 669, 671[1st Dept 2012]; *Matter of Rosario v New York State Div. of Human Rights*, 21 Misc 3d 1108[A],[Sup Ct, NY County 2008]). “Indeed, a court’s opinion that a particular outcome is not fair or is not in the interests of justice is not sufficient to overcome the deference to be afforded an agency acting rationally within its area of expertise” (*Matter of Terrace Ct., LLC v New York State Div. of Hous. & Community Renewal*, 79 AD3d 630, 635-636 [1st Dept 2010], *affd* 18 NY3d 446 [2012]; see *Matter of Roberts*, 96 AD3d at 672).

In the instant case, the determination of the SDHR is “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]; see *Matter of Eastport Assoc., Inc. v New York State Div. of Human Rights*, 71 AD3d 890, 891 [2d Dept 2010]; *Bruno v Pembroke Mgt., Inc.*, 212 AD2d 314, 318 [2d Dept 1995]). Moreover, the SDHR “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 Pajoo*, 82 AD3d 609, 609 [1st Dept 2011]; *Matter of Pascual v New York State Div. of Human Rights*, 37 AD3d 215, 216 [1st Dept 2007]).

This court finds that the SDHR’s determinations were not arbitrary and capricious or lacking a rational basis in the record (see *Matter of Ferguson v New York State Div. of Human Rights*, 120 AD3d 497 [2d Dept 2014]; *Matter of Romain v State Div. of Human Rights*, 103 AD3d 730, 730 [2d Dept 2013]; *Matter of Maltsev v New York State Div. of Human Rights*, 31 AD3d 641, 641 [2d Dept 2006]). Each each petitioner had a full opportunity to present his or her case to the SDHR, made numerous submissions, and participated in the conference. Nearly all of the petitioners participated in the conferences with an attorney (see *Matter of Vora v New York State Div. of Human Rights*, 103 AD3d 739 [2d Dept 2013]; *Matter of Orosz v New York State Div. of Human Rights*, 88 AD3d 798, 930 NYS2d 288 [2011]; *Matter of Rauch v New York State Div. of Human Rights*, 73 AD3d at 930).

With respect to the alleged falsification of time records and other reasons proffered by the employer, it does not matter whether the reasons for the employer’s decisions regarding the petitioners are good reasons or bad reasons. Rather, “[w]hat matters is that the [employer’s] stated reason for terminating plaintiff was nondiscriminatory” (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 308, n5 [2004] [superceded by statute on other grounds, see *Bennett v Health Mgt. Sys., Inc.*, 92 AD3d 29 (1st Dept 2011)]). Petitioners’ assertions that the SDHR’s determination of no probable cause was not supported by the evidence, and that the SDHR relied upon flawed and unreliable rosters, is without merit. The evidence in the record demonstrates that petitioners were given the opportunity to submit evidence in support of their claims, that the SDHR reviewed the evidence submitted by the petitioners and QBC, and that its conduct of the investigation was not one-sided. There is substantial evidence in the administrative record to support the SDHR’s determination that QBC did not discriminate against any of the petitioners on the basis of their age, sex, marital status or race, color or ethnicity. Further, there is substantial evidence to support SDHR’s determination that

petitioners were not subjected to retaliation for complaining about the alleged unlawful discrimination.

Accordingly, it is hereby

ORDERED AND ADJUDGED that the petition designated as sequence number 1 is denied as moot and the proceeding is dismissed; and it is further

ORDERED AND ADJUDGED that the petition designated as sequence number 2 is denied and the proceeding is dismissed.

Dated: March 28, 2016

DARRELL L. GAVRIN, J.S.C.