Matter of Watkins v New York State Div. of Human Rights
2019 NY Slip Op 30557(U)
March 1, 2019
Supreme Court, Suffolk County
Docket Number: 2120/2018
Judge: William G. Ford

SHORT FORM ORDER **INDEX NO.: 2120/2018**

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 38 - SUFFOLK COUNTY

PRESENT:

HON. WILLIAM G. FORD
JUSTICE OF THE SUPREME COURT

_____x

In the Matter of the Application of

ALFRED WATKINS,

Petitioner,
For a Judgment Pursuant to the Provisions of Article 78 of the New York Civil Practice Law & Rules

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Respondent.

_____x

Motions Submit Date: 06/14/2018
Mot Seq 001 MD; CASE DISP
Mot Seq 002 MG; CASE DISP

PETITIONER'S COUNSEL:
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RESPONDENT'S COUNSEL:
New York State Division of Human Rights
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Read on the petitioner's special proceeding commences under CPLR Article 78, the Court considered the following: Notice of Petition, Petition, and supporting papers; Notice of Motion, Motion to Dismiss, Affirmation in Support of Motion, and Affirmation in Opposition to Cross Motion; and upon due deliberation and full consideration of the same; it is

ORDERED that this special proceeding commenced by petitioner's Notice of Petition and Verified Petition pursuant to CPLR Article 78 seeking to vacate, annul, or otherwise set aside a determination made by respondent New York State Division of Human Rights of no probable cause for discrimination on the basis of race and retaliation is **denied** for the following reasons; and it is further

ORDERED that respondent's motion to dismiss the Petition pursuant to CPLR 404 & 406, 1001 & 22 NYCRR § 202.57(a) for failure to join a necessary and indispensable party is **granted** as stated below; and it is further

ORDERED that respondent's counsel is hereby directed to serve a copy of this decision and order with notice of entry on petitioner's counsel by overnight mail forthwith; and it is lastly

ORDERED that if applicable, within 30 days of the entry of this decision and order, that respondent's counsel is also hereby directed to give notice to the Suffolk County Clerk as

required by CPLR 8019(c) with a copy of this decision and order, and pay any fees should any be required.

BACKGROUND

Petitioner Alfred Watkins commenced this special proceeding filing his notice of petition and petition on April 20, 2018. Petitioner seeks to annul a final determination of no probable cause of unlawful discriminatory acts by petitioner's employer, made by respondent New York State Division of Human Rights (hereinafter SDHR).

Plaintiff filed a verified complaint with the SDHR on August 21, 2017, alleging that he was subject to unlawful discrimination due to his race, and retaliation due to engagement in protected activities, by his employer, New York State Office for People with Developmental Disabilities (hereinafter OPWDD).

On October 2, 2017, SDHR sent OPWDD's response. OPWDD's response alleges that plaintiff's discrimination claims result from his lack of understanding of overtime policy. OPWDD further alleges that plaintiff did not participate in any protected activity so his retaliation complaint cannot be sustained. Petitioner submitted a timely rebuttal on October 13, 2017, asserting that it was not a lack of understanding of overtime policy but racial discrimination that lead to his grievances. Plaintiff also states that he was retaliated against for filing a union grievance and a complaint with the SDHR. Respondent issued its final determination of no probable cause on February 21, 2018.

Petitioner filed his notice of petition and petition on April 20, 2018. He named the SDHR as respondent, but failed to name his employer, OPWDD. On May 2, 2018, respondent motioned to dismiss pursuant to Executive Law § 298, CPLR § 406, and 22 NYCRR § 202.57.

STANDARDS OF REVIEW

"Any complainant, respondent or other person aggrieved by any order of the State Commissioner of Human Rights or the State Division of Human Rights may obtain judicial review of such order by commencing a special proceeding, within 60 days after service of the order, in the Supreme Court in the county where the alleged discriminatory practice which is the subject of the order occurred or where any person required by the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business. Such proceeding shall be commenced by the filing of a notice of petition and petition *naming as respondents the State Division of Human Rights and all other parties appearing in the proceeding before the State Division of Human Rights* (N.Y. Comp. Codes R. & Regs. tit. 22, § 202.57[emphasis supplied]).

The parties should be well versed in the fundamental legal principle that pursuant to CPLR § 7803 as relevant here "the only questions that may be raised in a proceeding under this article are … (3) whether a determination was … was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed." If the action taken is without foundation in fact or not justified it is arbitrary and capricious (*see* ***Pell v Bd. of Educ.***, 34 NY2d 222, 231 [1974]; ***Matter of***

Peckham v Calogero, 12 NY3d 424, 431 [2009]; ***Matter of Wooley v N.Y. State Dep't of Corr. Servs.***, 15 NY3d 275, 280 [2010]; ***Ward v City of Long Beach***, 20 NY3d 1042, 1043 [2013]).

Indeed, where, as here, the SDHR renders a determination of no probable cause without holding a hearing, the appropriate standard of review is whether the probable cause determination was arbitrary and capricious or lacked a rational basis (***Gordon v New York State Div. of Human Rights***, 126 AD3d 697, 698, 2 NYS3d 368 [2d Dept 2015]).

Undertaking such a review, the motion court is cautioned that SDHR's determination is "entitled to considerable deference due to [SDHR's] expertise in evaluating discrimination claims." Thus, our courts have previously held that their probable cause determination made after sufficient investigation, founded on a rational basis in the evidentiary record, warrants denial of the Article 78 petition and dismissal of the proceeding (***Knight v New York State Div. of Human Rights***, 118 AD3d 791, 792, 987 NYS2d 217, 218 [2d Dept 2014]). This is often in reflection of the knowledge that SDHR has broad discretion in conducting its investigations (***Sahni v Foster***, 145 AD3d 733, 734, 42 NYS3d 343, 345 [2d Dept 2016]).

DISCUSSION

A. Statutory Burden Shifting Framework for Employment Discrimination & Retaliation

Under ordinary circumstances, claimants such as petitioner here making claims of invidious race discrimination and retaliation under the New York State Human Rights Law, Art. 15, Exec. L. § 296 *et seq*. must at threshold demonstrate *prima facie*, as relevant here, that (1) he is a member of a protected class; (2) he was qualified or eligible for overtime opportunities; (3) he was suffered adverse employment action (denial of overtime opportunities); and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination (*see* ***Johnson v N. Shore Long Is. Jewish Health Sys., Inc.***, 137 AD3d 977, 978, 27 NYS3d 598, 599 [2d Dept 2016]; *citing* ***Forrest v Jewish Guild for the Blind***, 3 NY3d 295, 305 [2005]; ***Ferrante v American Lung Ass'n***, 90 NY2d 623, 629 [1997]).

Correspondingly, to properly plead a *prima facie* showing of retaliation under Executive Law § 296, a petitioner must show that (1) he has engaged in protected activity, (2) the employer was aware that the petitioner participated in such activity, (3) the petitioner suffered an adverse employment action based upon that activity, and (4) there is a causal connection between the protected activity and the adverse action (***Brunache v MV Transp., Inc.***, 151 AD3d 1011, 1013, 59 NYS3d 37, 40 [2d Dept 2017]).

Under New York anti-discrimination law, our courts have determined that "[a]n employee engages in a 'protected activity' by 'opposing or complaining about unlawful discrimination' " (***Borawski v Abulafia***, 140 AD3d 817, 818, 33 NYS3d 412, 413 [2d Dept 2016]).

As relevant to both discrimination and retaliation claims, once petitioner has satisfactorily met with his *prima* facie burden, it then shifts to the respondent to present legitimate, independent, and nondiscriminatory reasons to support its actions. Assuming the defendant

meets this burden, the claimant would then have the obligation to show that the reasons put forth were merely a pretext (***Adeniran v State***, 106 AD3d 844, 845, 965 NYS2d 163, 165 [2d Dept 2013]).

B. Necessary Joinder of Parties

When a plaintiff fails to name a necessary party, dismissal of the preceding is warranted (***Matter of Jeanty v N.Y. State Dep't of Corr. Servs.***, 36 A.D.3d 811, 812, 828 N.Y.S.2d 499, 500 [2d Dept. 2007]; ***Seemer v N.Y. State Div. of Human Rights***, 2011 NY Slip Op 32317(U), ¶ 5 [Sup Ct, New York Co. 2011][Gische, J.]).

As a subject matter expert, the SDHR has promulgated rules and administrative guidance pertaining to the resolution and adjudication of matters challenging its determinations. One such regulation which our courts have found entitled to due deference appears at 22 NYCRR § 202.57(a), entitled "**Judicial review of orders of the State Division of Human Rights; procedure**" which provides in pertinent part:

> (a) Any complainant, . . . aggrieved by any order of the . . . the State Division of Human Rights may obtain judicial review of such order by commencing a special proceeding, within 60 days after service of the order, in the Supreme Court in the county where the alleged discriminatory practice which is the subject of the order occurred or where any person required by the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business. Such proceeding shall be commenced by the filing of a notice of petition and petition **naming as respondents the State Division of Human Rights and all other parties appearing in the proceeding before the State Division of Human Rights.**

22 NYCRR 202.57 [2019][emphasis supplied]

Applying the above here, it is clear that petitioner has failed to name his employer, OPWDD, as a party to this proceeding. Under CPLR § 1001, OPWDD is a necessary party as the records makes evident that they participated in the proceedings below and accordingly, should this court to enter judgment in favor of petitioner, it would necessarily affect OPWDD (***Id.***) Accordingly, respondent's motion to dismiss for failure to name a necessary party is **granted** and the petition is **dismissed**.

C. Merits of the Petition

Even were the petition not determined procedurally deficient for failure to join a necessary and indispensable party, petitioner would fare no better on its merits. The evidence adduced and read on the parties' respective applications does not suffice to sustain a finding that the SDHR's determination of no probable cause was infected with irrationality, or was otherwise arbitrary or capricious, contrary to petitioner's claims. Thus, even if petitioner had named his employer OPWDD, based on this record, this Court would have **denied** the petitioner for petitioner's failure to sustain his burden under CPLR § 7803.

The foregoing constitutes the decision and order of this Court.

Settle judgment on notice.

Dated: March 1, 2019
Riverhead, New York

WILLIAM G. FORD, J.S.C.

___X___ **FINAL DISPOSITION** _____ **NON-FINAL DISPOSITION**