Carroll v Public Health Solutions
2022 NY Slip Op 33912(U)
November 21, 2022
Supreme Court, New York County
Docket Number: Index No. 155954/2022
Judge: David B. Cohen
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAVID B. COHEN** **PART** **58**

Justice

----------X

BETTINA CARROLL,

Petitioner,

- v -

PUBLIC HEALTH SOLUTIONS, NEW YORK STATE DIVISION OF HUMAN RIGHTS, GALEN KIRKLAND

Respondents.

----------X

INDEX NO. 155954/2022

MOTION DATE 08/29/2022

MOTION SEQ. NO. 001

DECISION + JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 17 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

By notice of petition and petition, petitioner bring this CPLR Article 78 proceeding to challenge the determination by respondent New York State Division of Human Rights (NYSDHR) to dismiss her complaint against her former employer, respondent Public Health Solutions (PHS), alleging acts involving age and race discrimination by PHS. Both respondents filed answers opposing the petition.

In its Determination and Order After Investigation, dated May 17, 2022, SDHR found that there is no probable cause to believe that PHS engaged in the alleged discriminatory conduct toward petitioner, based on "a lack of evidence" to support petitioner's allegations. (NYSCEF 9).

Petitioner contends that NYSDHR overlooked evidence that supported her claims, and that, therefore, its determination of no probable cause was arbitrary and capricious. Respondents deny the allegations.

Pursuant to CPLR Article 78, a special proceeding may be commenced to challenge a determination issued by a governmental or administrative entity or agency, with the petitioner

bearing the burden of establishing that the determination was neither irrational, nor arbitrary and capricious. (CPLR 7803). The court may not substitute its judgment for the agency that made the determination, but must decide only whether there is a rational basis for the determination or if it is arbitrary and capricious (*Cuccia v Martinez & Ritorto, PC,* 61 AD3d 609 [1st Dept 2009], *lv denied* 13 NY3d 708 [2009]).

When the determination involves factual evaluations made within an area of the agency's expertise, and is supported by the record, the determination must be given great weight and judicial deference (*Flacke v Onondaga Landfill Sys*., 69 NY2d 355 [1987]). The agency has broad discretion in deciding how to investigate a complaint, and its determination may not be overturned unless the investigation is abbreviated or one-sided. (*Matter of Bal v New York State Div. of Human Rights*, 202 AD2d 236 [1st Dept 1994], *lv denied* 84 NY2d 805 [1994]).

In this proceeding, petitioner, an African-American woman over the age of 60 years, alleged that respondent PHS, her employer for whom she had worked for almost 20 years, terminated her employment for discriminatory reasons. In August 2021, petitioner filed a complaint with NYSDHR. (NYSCEF 9).

NYSDHR investigated the complaint and allowed the parties to submit information and evidence, which is also reviewed. Thereafter, it determined that there was no probable cause to believe that PHS had discriminated against petitioner, for the following reasons:

In December 2020, a new supervisor was appointed to head petitioner's work division, and in January 2021, new organizational changes were announced. Petitioner was required to apply for a new position following the changes, and ultimately was not hired for either of the two positions for which she applied. (*Id.*).

The record reflected that PHS did not hire petitioner due to non-discriminatory reasons, ie, that petitioner had previously created an organizational model that had caused internal problems and was partly the reason why the division required reorganization. Moreover, the panel of interviewers for the new positions was diverse; two of the four new positions were given to African-American employees; all of the employees chosen for the new positions were over 40 years old; of the 19 employees promoted during the reorganization, 16 were people of color; PHS has African-Americans in upper management positions; and a new policy team was created, consisting of two employees promoted into managerial roles, both of whom are African-American women. To the extent that a Caucasian woman was hired for petitioner's old role, she was also approximately 60 years old. (*Id.*).

Petitioner now contends that the investigation was one-sided, and therefore arbitrary and capricious, as NYSDHR did not consider the fact that petitioner had worked for PHS for 19 years and had been evaluated as an exceptional employee in the two years before her termination, nor did it consider that her replacement was a white woman. She also denies the legitimacy of the reasons for the reorganization and PHS's subsequent decision to not hire her for an open position. Finally, petitioner asserts that she should have had a chance to present her evidence at a hearing. (NYSCEF 1, 10).

NYSDHR maintains that it thoroughly investigated petitioner's complaint by reviewing her and PHS's documentary submissions, permitted her to review PHS's response to her complaint and provide a written rebuttal to it, and held a conference with her, at which she was given the opportunity to submit further information and evidence. NYSDHR also reviewed and analyzed comparative data and compiled a seven-page investigative report. As petitioner was given a chance to be heard, no formal hearing was also needed (NYSCEF 12, 17).

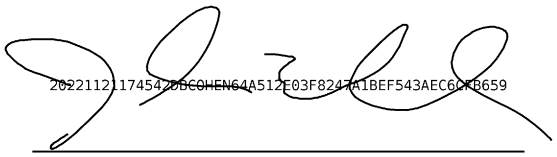
To the extent that petitioner contends that the evidence does not support NYSDHR's conclusion, PHS offered a non-discriminatory reason for its actions toward petitioner, and she provided no evidence from which it may be inferred that the reasons were a pretext for discrimination, especially absent a showing of discriminatory comments or differential treatment of others (*See e.g., Cuccia,* 61 AD3d at 610 [court may not substitute judgment for that of agency making determination; NYSDHR's determination that petitioner did not meet burden of proving discrimination was supported by evidence in record, and she was unable to show that reasons for termination were pretextual]).

Moreover, petitioner does not demonstrate that NYSDHR's investigation was abbreviated or one-sided – petitioner was given the opportunity to present evidence in writing and at an in-person conference. That petitioner disagrees with the conclusions drawn by NYSDHR does not show that the investigation was insufficient or improper. (*See Matter of Conte v City of New York Dept. of Sanitation*, 159 AD3d 640 [1st Dept 2018] [petitioner did not show that investigation was abbreviated or one-sided as she was given opportunity to present claim in writing]).

Finally, as petitioner was given several opportunities to present her evidence, no further hearing was required (*Matter of McDonald v New York State Div. of Human Rights*, 147 AD3d 1482 [4th Dept 2017] [SDHR given deference to decision to hold hearing, and hearing not required in all cases; if petitioner given chance to present case, decision to not conduct hearing is not arbitrary and capricious]).

Accordingly, it is hereby

ORDERED and ADJUDGED, that the petition is denied, and the proceeding is dismissed.



11/21/2022
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	X	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE