

Elie v New York State Div. of Human Rights

2023 NY Slip Op 32304(U)

July 10, 2023

Supreme Court, New York County

Docket Number: Index No. 150276/2023

Judge: Arlene P. Bluth

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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: HON. ARLENE P. BLUTH PART 14

Justice

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JACQUEE ELIE,

Petitioner,

- v -

NEW YORK STATE DIVISION OF HUMAN RIGHTS, CITY
OF NEW YORK DEPARTMENT OF HOMELESS
SERVICES

Respondents.

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INDEX NO. 150276/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29

were read on this motion to/for Article 78.

The petition to annul a decision by respondents is denied and the cross-motion by respondent the City of New York Department of Homeless Services (“DHS”) to dismiss is granted.

Background

Petitioner contends that she filed a discrimination complaint against her employer, respondent DHS, related to the denial of her request for a reasonable accommodation. She contends that she suffers from PTSD, agoraphobia, Bipolar 2, anxiety and depression and requested that she be allowed to work from home. Petitioner claims that she had already successfully worked from home from about April 2020 through January 2022 and insists that the denial of this request was irrational. Specifically, she challenges the decision of respondent New York State Division of Human Rights (“DHR”), which found no probable cause that DHS discriminated against her in connection with the denial of petitioner’s accommodation request.

DHS cross-moves to dismiss. It claims that petitioner worked as a Community Coordinator for DHS at an intake center for vulnerable homeless families in the Bronx and that telework was allowed only during the height of the COVID-19 pandemic. In May 2021, staff at DHS was informed that there would be a phased return to the office plan starting in July 2021. DHS asserts that petitioner initially asked for a reasonable accommodation in July 2021 and that request was denied. DHS noted that petitioner might be eligible for leave as an accommodation.

Petitioner then applied for another accommodation in March 2022 and that request was also denied on the ground that her supervisory role made it impossible for her to fulfill her duties on a remote basis. DHS stresses that all other Community Coordinators have to work in-person.

Petitioner appealed the denial of her request for an accommodation and respondent New York State Division of Human Rights (“DHR”) found no probable cause that DHS discriminated against her. DHR filed an answer in this proceeding and insists that petitioner had a full and fair opportunity to present her claims and that DHR rationally concluded that her complaint was without merit.

Discussion

“The courts cannot interfere unless there is no rational basis for the exercise of discretion or the action complained of is arbitrary and capricious. 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 the facts” (*Pell v Bd. of Ed. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974] [internal quotations and citations omitted]).

The Court's analysis begins with DHR's no probable cause determination. In this determination, DHR observed that:

"It is an unlawful discriminatory practice for an employer to refuse to provide reasonable accommodations to an employee's disabilities. An employer must move forward to consider an accommodation once the need for accommodation is known or requested, and may require the employee to provide sufficient supporting medical documentation prior to granting the accommodation request when the disability and need for accommodation are not obvious. The employer does not have to grant a specific accommodation requested by the employee, as long as the employer works with the employee to come up with an effective accommodation. The employer may choose, from among the available effective accommodations, which accommodation the employer will provide" (NYSCEF Doc. No. 2 at 1).

It concluded that:

"Here, a review of the evidence in the record does not support a probable cause finding that Respondent's decision to deny her accommodation request to work remotely from home was an act of unlawful discrimination under the Human Rights Law. The record shows and the parties do not dispute that Complainant submitted requests to work remotely from home as an accommodation of her disabilities. She provided medical notes that recommended that Complainant telework because her symptoms are alleviated when she works remotely. The parties do not dispute that Respondent reviewed Complainant's multiple requests, and when Complainant appealed Respondent's rejection of her accommodation requests, Respondent then reviewed the information Complainant included in her appeals.

The record shows that the only option Complainant offered for Respondent's review was the accommodation request to work remotely full-time. These documents show that Complainant provided no other alternatives to Respondent as an accommodation of her disabilities. Complainant does not dispute Respondent's assertion that her position includes supervisory functions that required her presence at work once Respondent reopened its business operations to the public. Nor has she challenged Respondent's claim that her supervisory and other responsibilities required her physical presence at work or that she is able to perform these functions remotely through the accommodation she requested. Complainant does not dispute Respondent's assertion that no other workers in her unit was permitted to telework. Given this record, Complainant has not demonstrated that she was entitled to an accommodation to work fully from home" (*id.* at 1-2).

The Court finds that this decision was entirely rational and denies the petition. DHS was entitled to deny a request for an accommodation in which a supervisory employee demands full-time remote work. DHS was rational in insisting that supervisory functions required in-person

appearances. Moreover, the record shows that DHS did not permit other workers in petitioner’s unit to perform their work remotely. This is an in-person job.

It is important to point out that petitioner worked at a Prevention Assistance and Temporary Housing Family Intake Center (NYSCEF Doc. No. 17 at 135). This center assists vulnerable homeless families with finding temporary housing (*id.*). Under those circumstances, DHS was entitled to deny the accommodation request for full-time remote work.

The Court recognizes that petitioner argues that she did her job effectively during the pandemic while in a remote capacity. But that contention does not compel the Court to grant the petition. DHS was entitled to require workers to return to the office to provide services for its clients. It is not this Court’s role to second guess that assessment.

And to the extent that petitioner asserts in reply that she be permitted a partial work-from-home accommodation, that request is denied because it was not previously raised before respondents nor can petitioner raise such an argument for the first time in reply. That there may be a compromise position petitioner is now willing to explore is not properly before this Court and it is not a basis to grant the petition.

Accordingly, it is hereby

ADJUDGED that the petition is denied, this case is dismissed and the Clerk is directed to enter judgment in favor of respondents and against petitioner along with costs and disbursements upon presentation of proper papers therefor.

<p>7/10/2023</p> <hr style="width: 100%;"/> <p>DATE</p>	 <hr style="width: 100%;"/> <p>ARLENE P. BLUTH, J.S.C.</p>
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CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE