

**Webster v New York State Div. of Human Rights**

2023 NY Slip Op 32323(U)

July 10, 2023

Supreme Court, New York County

Docket Number: Index No. 452232/2019

Judge: Debra A. James

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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. DEBRA A. JAMES PART 59**

*Justice*

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JOHN A. WEBSTER, II,

Petitioner,

- v -

NEW YORK STATE DIVISION OF HUMAN RIGHTS,  
TEACHERS' RETIREMENT SYSTEM OF THE CITY OF  
NEW YORK, THE CITY OF NEW YORK

Respondents.

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INDEX NO. 452232/2019

MOTION DATE 03/30/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

ORDER

Upon the foregoing documents, it is

ADJUDGED that the cross motion of respondent City of New York Teachers' Retirement System to dismiss the proceeding pursuant to CPLR 3211(a)(5) and CPLR § 7804(f) is granted and the petition against such respondent is dismissed, without costs and disbursements to such respondent; and it is further

ADJUDGED that the petition against respondent New York State Division of Human Rights is denied and the proceeding dismissed, without costs to such respondent; and it is further

ORDERED that petitioner may move by show cause order to restore this proceeding to the calendar and to seal personal information contained in the herein record pursuant to 22 NYCRR 216.1(a).

DECISION

Petitioner commenced this proceeding challenging the final determination of September 27, 2018 of the New York City Teachers' Retirement System (City Retirement), which denied his application for Accident Disability Retirement pension benefits, in Kings County, Supreme Court, on November 8, 2019. As respondent City Retirement, as cross movant, argues, the statute of limitations for Article 78 challenges to any determination of a municipal entity is four months from the date of any such determination. See CPLR § 217. Having been filed more than one year after the subject determination, the petition against respondent City Retirement must be denied and the proceeding dismissed, as time barred. See In the Application of 252 West 30<sup>th</sup> Street Realty Corp v Biderman, 165 AD2d 759 (1<sup>st</sup> Dept 1990).

Petitioner cites no authority for the proposition that either the determination of Hon. Alexander Hunter, Jr. in Webster v Teachers' Retirement System, New York County Supreme Court Index No. 100874/2014, or that of Hon. Carmen Victoria St. George, in Webster v Teachers' Retirement System, New York County Index No 101100/2015, which each remanded the matter to the respondent City Retirement for further proceedings, either tolled the statute of limitations with respect to the instant

petition, or collaterally estopped this court from denying the instant petition, as untimely brought. Nor, contrary to petitioner's arguments, notwithstanding such remands, does any judge have the power to issue an order of mandamus to compel respondent City to award Accidental Disability Retirement pension benefits to petitioner. City of New York v Schoeck, 294 NY 559 (1945).

Respondent New York State Department of Human Rights (DHR) issued a Determination and Order After Investigation on April 8, 2019, which found that there was "no probable cause" with respect to petitioner's claims that respondent City Retirement unlawfully discriminated against him based on age, race/color, disability, and/or gender during his employment as a physical education teacher, including respondent City Retirement's denial of his application for Accidental Disability Retirement pension benefits.

Petitioner challenges such State DHR determination as arbitrary and capricious and unlawful as it was based, inter alia, upon respondent State DHR's reasoning that it "may lack jurisdiction" over petitioner's claims, where petitioner had no employment relationship with respondent City Teacher's Retirement System. This court finds that respondent State DHR supposition that it lacked jurisdiction over the matter in the absence of such employment relationship constitutes mere dicta, as State DHR rendered a determination of "no probable cause",

assuming arguendo that it had subject matter jurisdiction over petitioner's claim for such pension benefits.

In assuming that it had jurisdiction, respondent State DHR determined that respondent City offered legitimate, non-discriminatory reasons for denying petitioner Accidental Disability Retirement pension benefits and that petitioner's complaint and written submissions demonstrated "no probable cause". This court must dismiss the herein petition against State DHR, as

It is within the discretion of the DHR to decide the method or methods to be employed in investigating the claim. A DHR determination of "no probable cause" should be overturned only where the record demonstrates that its investigation was "abbreviated or one sided". Notwithstanding that no hearing or conference [was] held, where a claimant [had] a full and fair opportunity to present [his] contentions and evidence[,] there is no basis to annul the determination as arbitrary and capricious.

Chirgotis v Mobil Oil Corp., 128 AD2d 400, 403 (1<sup>st</sup> Dept 1987) (citations omitted). The record before this court demonstrates that respondent DHR's investigation of petitioner's claims was neither abbreviated nor one-sided.

*Debra A. James*

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<u>7/10/2023</u> DATE					<u>DEBRA A. JAMES, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE