

Le Prevost v New York State Div. of Human Rights

2023 NY Slip Op 32870(U)

August 11, 2023

Supreme Court, Kings County

Docket Number: Index No. 536657/2022

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73
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Index No.: 536657/2022
Motion Date: 5-22-23
Mot. Seq. No.: 1

FREDA LE PREVOST,
Petitioner,

DECISION/ORDER

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,
CHARTER COMMUNICATIONS, LLC, A SUBSIDIARY
OF CHARTER COMMUNICATIONS, INC.,

Respondents.
-----X

The following papers were read on this petition:

Papers:	Numbered:
Notice of Petition & Petition/Affs/Exhibits/Memo of Law	1
Answering Affs/Exhibits/Memo of Law	2
Other [Original Administrative Record]	3

Upon review of the above papers, the petition is decided as follows:

The petitioner, FREDA LE PREVOST, brought this proceeding pursuant to New York Civil Practice Law and Rules (“CPLR”) Article 78 for a judgment 1) Vacating, annulling and setting aside the Determination and Order After Investigation dated October 18, 2022 of the NYS Division of Human Rights (hereinafter “DHR”), which dismissed petitioner’s complaint of unlawful discriminatory practice relating to employment on the basis of age, race and/or color and retaliation in violation of NY Exec Law Art 15, on the grounds that the dismissal was arbitrary and capricious; 2) Finding that probable cause exists on petitioner’s complaint and scheduling a public hearing on the complaint; 3) Awarding petitioner such other and further relief as this court may deem just proper and equitable. Respondent CHARTER COMMUNICATIONS, LLC (hereinafter “Charter”) put in an amended answer to the petition.

The petitioner filed a complaint with DHR alleging that she was employed as a full-time Sales Specialist for respondent. She alleged that she was wrongfully terminated by respondent for attending a court appearance with the NYS Workers' Compensation Board, that respondent

took away all of her PTO including sick time, personal time and vacation time to cover her religious observance on Sundays and ignored the information she had provided, that she was not provided with the proper breaks during her shift, that she was consistently undermined/scrutinized at work, and that respondent failed to compensate her with the correct hourly rate and commission earnings.

DHR investigated the petitioner's claims and made the following findings:

The investigation failed to find any discriminatory animus as the premise for the petitioner's termination of employment. DHR concluded that the petitioner was terminated for her violation of Respondent's Punctuality Policy, a legitimate, non-discriminatory reason of business necessity, after she had incurred unapproved absences and was tardy on a number of occasions.

With respect to the petitioner's claim that she was discriminated against because of her prior discrimination complaints, specifically, that after 15 months of employment where she was off on Sundays, she was now scheduled shifts on Sundays and was threatened with disciplinary action if she failed to report to work on such days; and was given unwarranted poor performance assessments resulting in a written warning, DHR found that Respondent placed all Store Specialists on a rotating schedule of Sunday shifts. When the petitioner communicated that she needed Sundays off for religious observance, Respondent provided her with the appropriate form and instructions to submit her request, which she refused to submit.

Regarding the petitioner's age and race/color claims, the investigation revealed that on the day her employment was severed, three of the four members of her team of Store Specialists, including the petitioner, were over 40 years of age. Additionally, four of the other Store Specialists at Respondent's New York stores were terminated for attendance violations in the past two years, were all under 40 years of age. Three of them were Hispanic/Latino and one was Asian. When petitioner's replacement was hired, on July 12, 2021, she was less than a month shy of her 40th birthday.

No information was obtained during the investigation showing that the petitioner was not provided with the proper breaks during her shift other than her conclusory statement.

Regarding the petitioner's contention that Respondent failed to compensate her accordingly with the correct hourly rate and commission earnings, the investigation demonstrated that in her

prior complaint it was revealed that those issues were subject to being remedied by the NYS Department of Labor. Complainant filed a claim with said agency, which went into arbitration where she was awarded \$20,000.00 for unpaid wages and retaliation.

Inasmuch as the investigation did not support charging respondent with workplace harassment or with unlawful discriminatory practices in relation to petitioner's employment because of age, race/color, and opposed discrimination/retaliation, DHR dismissed petitioner's complaint and closed the file without a hearing.

In seeking review, Petitioner makes the following specific claims:

Petitioner had always had Sundays off from the inception of her employment due to religious observance. The other employees at the store, who had not requested religious observance, routinely had worked on rotating Sundays. Petitioner did not first ask for religious observance after 15 months of employment. It had been granted to her from the inception of her employment. Attempting to have her fill out an application 15 months later was a ploy by the respondent to remove her religious observance.

. . . [The Order] does not address the reality that the other employees at the store worked on rotating Sundays for the 15 months prior to the company's request of petitioner. The Reginal [sic] Director's Order does not address the fact that petitioner had never worked Sundays and was granted a religious observance at the very outset of her employment. The Reginal [sic] Director's Order does not address the allegation that Charter advised that their policy was to only give Jews religious observance. In failing to address or even investigate these issues the Regional Director completely missed the entire basis of petitioner's complaint.

(See Petition ¶¶ 33-34).

“Where, as here, the DHR 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 lacking a rational basis” (*Matter of Sahni v. Foster*, 145 A.D.3d 733, 734, 42 N.Y.S.3d 343). “The [DHR's] determination is ‘entitled to considerable deference due to its expertise in evaluating discrimination claims’ ” (*Matter of Steinberg–Fisher v. North Shore Towers Apts., Inc.*, 149 A.D.3d 848, 850, 51 N.Y.S.3d 585, quoting *Matter of Camp v. New York State Div. of Human Rights*, 300 A.D.2d 481, 482, 751 N.Y.S.2d 564; see also *Pastor v. P'ship for Children's Rts.*, 159 A.D.3d 910, 911, 70 N.Y.S.3d 65, 66). “An 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 N.Y.3d 424, 431, 883 N.Y.S.2d 751, 911 N.E.2d 813; see *Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d 222, 231, 356 N.Y.S.2d 833, 313 N.E.2d 321). “The judicial function is exhausted when there is to be found a rational basis for the conclusions approved by the administrative body.” *Sullivan County Harness Racing Assn. v. Glasser*, 30 N.Y.2d 269, 277–278, 332 N.Y.S.2d 622, 283 N.E.2d 603 (internal quotation marks and citations omitted); see *Matter of Friedman v. New York State Div. of Human Rights*, 2012 WL 2951184, 2012 N.Y. Misc. LEXIS 3343 (Sup. Ct., N.Y. County 2012). “Provided there is 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), 2008 WL 441902 (Sup. Ct., N.Y. County 2008); see *Matter of Pell*, 34 N.Y.2d at 231, 356 N.Y.S.2d 833, 313 N.E.2d 321).

Here, the DHR's determination that there was no probable cause was not arbitrary and capricious or lacking a rational basis in the record (see *Matter of Sahni v. Foster*, 145 A.D.3d at 734, 42 N.Y.S.3d 343; *Matter of Walker v. N.Y.S. Div. of Human Rights*, 129 A.D.3d 980, 10 N.Y.S.3d 453).

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is DISMISSED.

This constitutes the decision and order of the Court.

Dated: August 11, 2023



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020