

**Matter of Robinson v New York State Div. of Human Rights**

2023 NY Slip Op 33243(U)

September 19, 2023

Supreme Court, New York County

Docket Number: Index No. 154991/2023

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS**

**PART 10M**

*Justice*

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**INDEX NO. 154991/2023**

In the Matter of the Application of

**MOTION DATE 06/12/2023**

ALICIA ROBINSON,

**MOTION SEQ. NO. 001**

Petitioner,

- v -

NEW YORK STATE DIVISION OF HUMAN RIGHTS and  
NEW YORK CITY HEALTH & HOSPITALS,

**DECISION + ORDER ON  
MOTION**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

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

Upon the foregoing documents, the court denies the relief requested in Petitioner Alicia Robinson’s (“Petitioner”) Verified Petition and the court dismisses the Verified Petition as against Respondents New York State Division of Human Rights (“NYSDHR”) and New York City Health & Hospitals (“NYCHHC”) (collectively “Respondents”), without costs to any party.

Petitioner brought this Article 78 proceeding against Respondents seeking an order annulling, vacating, and setting aside the Determination and Order After Investigation (“Determination”) made by Respondent NYSDHR, dated April 18, 2023, an order remanding the matter to NYSDHR for further proceedings consistent with the reversal and an order awarding Petitioner costs of this proceeding and reasonable attorney’s fees.

Petitioner filed an amended complaint of unlawful discrimination based on her disability after an automobile accident under the New York State Human Rights Law with NYSDHR on October 31, 2022. Petitioner alleges in substance that she was unable to return to work due to her

disability, but when she was deemed medically fit to return to work, Respondent NYCHHC unlawfully refused to reinstate her to her position as an Addiction Counselor Level II at Queens Hospital Center.

On April 18, 2023, Respondent NYSDHR issued a Determination and Order After Investigation finding that the evidence did not support a finding of probable cause that Respondent NYCHHC's treatment of Petitioner violated the Human Rights Law. It dismissed the complaint and closed the file. Petitioner alleges in substance that such determination was arbitrary, capricious and unsupported by the evidence in the case. Petitioner argues in substance that the Determination failed to address Petitioner's argument that NYCHHC violated the Human Rights Law by failing to reinstate her to her position, but instead, discussed whether her termination was lawful. Petitioner further argues that she is not challenging the validity of her termination which was effective March 2, 2022, because she failed to return to work within one year of her absence, however, Petitioner is challenging the failure to reinstate her employment once her health care professionals deemed her to be medically fit to return to work on June 28, 2022.

Respondent NYSDHR opposes the Petition and argues in substance that the Determination was not arbitrary or capricious and that Petitioner's appeal remains open. Respondent NYCHHC failed to appear in this action.

It is well settled that petitioners who object to the act of an administrative agency must exhaust available administrative remedies prior to litigating the matter in a court of law (*see Irizarry v New York City Police Dep't*, 260 AD2d 269, 270 [1<sup>st</sup> Dept 1999]).

A determination subject to review under Article 78 exists when, first, the agency "reached a definitive position on the issue that inflicts actual, concrete injury and second, the

injury inflicted may not be significantly ameliorated by further administrative action or by steps available to the complaining party” (*Walton v. New York State Dept. of Correctional Servs.*, [8 NY3d 186, 194 \[2007\]](#)). There can be no judicial review of an agency’s determination pursuant to Article 78 unless the petitioner has exhausted administrative remedies (*Pascale v New York State Div. of Hous. & Community Renewal*, 157 AD3d 625, 625-26 [1<sup>st</sup> Dept 2018]).

Review of an agency’s non-final order should be limited to situations when it is necessary to avoid irreparable harm without prompt judicial intervention (*Martin v Ambach*, 85 AD2d 869, 871 [3d Dept 1981]). The doctrine of exhaustion of administrative remedies requires that “if further administrative avenues or remedies are available to obtain the result, they must be pursued and completed unless such further pursuit reasonably appears to be futile” (*id.* at 870).

In an Article 78 proceeding, the scope of judicial review is limited to whether a governmental agency’s determination was made in violation of lawful procedures, whether it was arbitrary or capricious, or whether it was affected by an error of law (*see* CPLR § 7803[3]; *Matter of Pell v Board of Educ.*, 34 NY2d 222, 230 [1974]; and *Scherbyn v BOCES*, 77 N.Y.2d 753, 757-758 [1991]). In reviewing an administrative agency’s determination, courts must ascertain whether there is a rational basis for the agency’s action or whether it is arbitrary and capricious in that it was without sound basis in reason or regard to the facts (*Matter of Stahl York Ave. Co., LLC v City of New York*, 162 AD3d 103, 109 [1<sup>st</sup> Dept 2018]; *Matter of Pell*, 34 NY2d at 231). Where the agency’s determination involves factual evaluation within an area of the agency’s expertise and is amply supported by the record, the determination must be accorded great weight and judicial deference (*Testwell, Inc. v New York City Dept. of Bldgs.*, 80 AD3d 266, 276 [1<sup>st</sup> Dept 2010]). When a court reviews an agency’s determination it may not substitute its judgment for that of the agency and the court must confine itself to deciding whether the

agency's determination was rationally based (*Matter of Medical Malpractice Ins. Assn. v Superintendent of Ins. of State of N.Y.*, 72 NY2d 753, 763 [1<sup>st</sup> Dept 1988]).

Furthermore, an agency is to be afforded wide deference in the interpretation of its regulations and, to a lesser extent, in its construction of the governing statutory law, however an agency cannot engraft additional requirements or assume additional powers not contained in the enabling legislation (*see Vink v New York State Div. of Hous. and Community Renewal*, 285 AD2d 203, 210 [1<sup>st</sup> Dept 2001]).

Here, the court denies Petitioner's Petition and finds that Petitioner failed to exhaust her administrative remedies as Respondent NYSDHR indicated that Petitioner's appeal for reinstatement to the Personnel Review Board on August 29, 2022, and that such appeal is still pending. As such, the initial Determination is not a final determination by the agency and Petitioner failed to exhaust her administrative remedies.

Additionally, even if Petitioner had exhausted her administrative remedies, then the court finds that Petitioner failed to demonstrate that NYSDHR's Determination was arbitrary or capricious, made in violation of lawful procedures, or that it was affected by an error of law. The court finds that the Determination was rationally based.

Petitioner failed to return to work within one year of her absence, her request for additional leave as reasonable accommodation was denied, she was terminated from her employment and her request for reinstatement was not granted as there was no response. The court finds that, contrary to Petitioner's claims, the Determination did address NYCHHC's decision not to reinstate Petitioner to her employment as it indicated in substance that Petitioner was not eligible to seek reinstatement since she was a provisional employee. Therefore, there was no need for further discussion in the Determination as to whether the denial of her

reinstatement discriminated against Petitioner because of her disability, as she was not eligible to seek reinstatement based on her status as a provisional employee. Thus, it is clear that Petitioner’s main argument was considered, but rejected.

The court also finds that Petitioner is not entitled to attorney’s fees and costs.

Therefore, the court finds that Petitioner failed to demonstrate her entitlement to the relief requested in the Petition and the court dismisses the Petition as against both Respondents, without costs to any party.

The court has considered any additional arguments raised by the parties, but not specifically discussed herein, and the court denies any additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED that the court denies the relief requested in Petitioner Alicia Robinson’s Verified Petition and the court dismisses the Verified Petition as against Respondents New York State Division of Human Rights and New York City Health & Hospitals, without costs to any party.

This constitutes the decision and order of the court.

  
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<u>9/19/2023</u> DATE					<u>ERIKA M. EDWARDS, 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 <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE