

Dandridge v Imperial
2026 NY Slip Op 31519(U)
April 7, 2026
Supreme Court, New York County
Docket Number: Index No. 159636/2023
Judge: Leslie A. Stroth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

INDEX NO. 159636/2023

LEONARD DANDRIDGE,

Plaintiff,

MOTION DATE 09/29/2023, 11/27/2023

- v -

MOTION SEQ. NO. 001 002

MARIA IMPERIAL, IRHYTHM TECHNOLOGIES, INC.,

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 15, 16, 17, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 36

were read on this motion to/for DISMISS

In this Article 78 Proceeding, Petitioner Leonard Dandridge ("Petitioner") seeks to set aside the determination by Respondent New York State Division of Human Rights ("DHR"), finding that there was no probable cause as to Petitioner's claims for discrimination, hostile work environment, and retaliation, based upon his race and familial status, against his former employer, respondent iRhythm Technologies, Inc. ("iRhythm"), and to remand the matter to the DHR for further proceedings.

Petitioner first filed claims with the DHR against iRhythm on January 19, 2021, after which the DHR issued its first Determination and Order (the "First Determination"), finding that there was no probable cause and dismissing Petitioner's claims (NYSCEF Doc. No. 9). Petitioner subsequently filed an Article 78 proceeding to vacate the First Determination. During that proceeding, Respondent DHR requested that the matter be remanded back to the DHR so

that it could further explore particular issues, including (1) data regarding sales managers, (2) why Petitioner, who is Black, did not receive a bonus, but his white colleague did, and (3) conflicting accounts of what was told to iRhythm's human resources department. By Decision and Order dated December 22, 2022, the Court declined to set aside the First Determination and granted Respondent DHR's request to remand the dispute back to the DHR to further explore the issues identified above. (NYSCEF Doc. No. 10).

On July 21, 2023, Respondent DHR issued a second Determination and Order (the "Second Determination"), again dismissing Petitioner's complaint and finding that there was no probable cause to believe that Respondent iRhythm engaged in unlawful discriminatory behavior (NYSCEF Doc. No. 11).

Following the Second Determination, Petitioner commenced the instant Article 78 proceeding on September 29, 2023, seeking to set aside Respondent DHR's Second Determination and to remand the matter again for further proceedings. On November 21, 2023, Respondent DHR filed a motion to dismiss the petition as untimely (motion sequence 002). On November 22, 2023, Respondent iRhythm filed a verified answer to petition (NYSCEF Doc. No. 23) and an opposition to the verified petition (NYSCEF Doc. No. 24). On February 6, 2025, Respondent DHR filed a verified answer to the petition (NYSCEF Doc. No. 41).

FACTUAL BACKGROUND

Petitioner was hired to work for iRhythm, a digital healthcare company, as a territory sales manager on or around March 19, 2019. Petitioner alleges that he received little to no training for the position and that six months after he was hired, his supervisor abruptly left and was replaced by Victoria LoRusso ("LoRusso"), who immediately began her hostile treatment of

Petitioner. Petitioner further alleges that LoRusso worked closely with Area Vice President Andrew Sale (“Sale”), who “followed LoRusso’s lead with respect to LoRusso’s discriminatory treatment of Petitioner” (NYSCEF Doc. No. 1, ¶25). Petitioner alleges that he was the only Black sales manager that reported to LoRusso and that she regularly undermined him, including by falsely accusing him of not being available during work hours because he had to “give kids rides to practices all the time” (NYSCEF Doc. No. 1, ¶37). Additionally, Petitioner alleges that he did not receive a bonus for the fourth quarter of 2019, even though another white colleague, Adam Fox (“Fox”), whom Petitioner outperformed, received a bonus. Petitioner further alleges that he raised these claims with human resources, but that they were disregarded. Petitioner alleges that this discriminatory treatment culminated in his termination on April 21, 2020.

Conversely, Respondent iRhythm asserts that Petitioner was fired as part of a reduction in force, due to COVID, and Petitioner’s poor performance. Respondent iRhythm identified sixty other employees who were also terminated on April 21, 2020, including fourteen Black employees, nineteen white employees, seven Asian employees, thirteen Hispanic employees, and one Native American employee.

LEGAL STANDARD

Judicial review of an administrative determination is limited to whether the determination was made “in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion . . .” (CPLR 7803[3]). “In reviewing an administrative agency determination, [courts] must ascertain whether there is a rational basis for the action in question or whether it is arbitrary and capricious” (*McCollum v City of New York*, 184 AD3d 838 [2nd Dept 2020]). “It is well settled that a court may not substitute its judgment for that of the

board or body it reviews *unless* the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion” (*Matter of Pell v Board of Educ.*, 34 NY2d 222, 232 [1974]). An action is “arbitrary and capricious” when it is “. . . without sound basis in reason and is generally taken without regard to the facts” (*Id.*).

As to proceedings stemming from DHR determinations, the First Department has stated that “the DHR has broad discretion in determining the method to be employed in investigating a claim, and its determination will not be overturned unless the record demonstrates that its investigation was abbreviated or one sided” (*Matter of Conte v City of NY Dept of Sanitation (DSNY)*, 159 AD3d 640, 641 [1st Dept 2018], quoting *Matter of Pascual v New York State Div. of Human Rights*, 37 AD3d 215, 216 [1st Dept 2007]). The “DHR’s factual determinations are accorded substantial deference . . . , and the court may not substitute its judgment for that of the agency or pass on the credibility of witnesses where conflicting evidence exists” (*Matter of G.P. v N.Y. State Div. of Human Rights*, 172 AD3d 639, 640 [1st Dept 2019] [internal quotations and citations omitted]).

DISCUSSION

I. DHR’s Motion to Dismiss and Verified Answer

As an initial matter, Respondent DHR’s motion to dismiss is denied. Respondent DHR moves to dismiss the petition as untimely pursuant to Executive Law § 298, which requires that “[a] proceeding under this section when instituted by any complainant, respondent or other person aggrieved must be instituted within sixty days after the service of such order.” Respondent DHR argues that the Second Determination was served by regular mail on July 25, 2023, and that the instant proceeding was not initiated until September 29, 2023.

However, Petitioner's opposition states that Petitioner did not receive the final order until July 31, 2023, and that the Petition was filed within 60 days of his receipt (NYSCEF Doc. No. 38 at 4). Petitioner's counsel affirms that she never received a copy of the Second Determination from Respondent DHR because it was mailed to her old firm, and that she only received a copy from her client (NYSCEF Doc. No. 37). This is supported by Respondent DHR's affidavit of service, which shows that the Second Determination was mailed to counsel's old firm address. In view of the foregoing, the Court finds that the petition is timely and Respondent DHR's motion to dismiss is denied.

At this juncture the Court would typically grant Respondent DHR leave to file an Answer. However, the Court notes that Respondent DHR filed a verified answer, with accompanying exhibits, on February 6, 2025 (NYSCEF Doc. No. 41-44). By letter dated February 12, 2025, Petitioner objected to Respondent DHR's Answer on the grounds that it was untimely and that the Court granted Respondent DHR an extension through improper ex parte communication (NYSCEF Doc. No. 45). The Court advises that there were no ex parte communications with Respondent DHR and it never granted an extension to file an answer. However, the Court finds that Respondent DHR's Answer is timely given that it was filed while its motion to dismiss was pending.

II. The Petition

a. Discrimination

For a plaintiff to succeed on a claim for discrimination, a plaintiff must prove that: (1) they are members of a protected class, (2) they are qualified to hold the position, (3) they suffered an adverse employment action, and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination ((see *Stephenson v Hotel Empls. & Rest. Empls.*

Union Local 100 of AFL-CIO, 6 NY3d 265, 270 [2006]; see also *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004]).

Petitioner argues that this matter must be remanded to Respondent DHR again for further proceedings because the Second Determination, dismissing his complaint, was arbitrary and capricious as Petitioner clearly established a *prima facie* case for employment discrimination. Specifically addressing the fourth element for a discrimination claim, Petitioner asserts that the verified complaint alleges that Petitioner is the only member of his team who is Black, that he was subject to more “rigorous and punitive terms and conditions of employment” than other non-Black employees, and that he was unjustifiably accused of not being available during work hours because his supervisor believed he was driving his children to practice, even though he was not. Petitioner further asserts that it provided iRhythm’s March 2020 “Leaderboards”, which were weekly rankings of the Territory Sales managers and shows that Petitioner performed better than other team members in March 2020, whereas iRhythm did not present any evidence that Petitioner was poor performer, except for self-serving emails and statements from his supervisors, LoRusso and Sale. Therefore, Petitioner argues that the Second Determination is arbitrary and capricious because it does not give any weight to Petitioner’s evidence.

In opposition, Respondent iRhythm argues that the Second Determination was rationally based because Petitioner was terminated as a part of iRhythm’s reduction in force due to COVID and that he was selected because of his performance issues, which were ongoing and well documented. In support of this, iRhythm provides one email from LoRusso to Petitioner, dated December 9, 2019, one email from Sale to Petitioner, dated February 24, 2020, and two emails from Sale to iRhythm leadership regarding Petitioner, dated February 21 and 22, 2020 (NYSCEF Doc. Nos. 25-26, 32). iRhythm further argues that Petitioner was Sale’s lowest performer, and

that other team members were ranked on iRhythm's President's Club for sales, whereas Petitioner was not. Additionally, in iRhythm's responses to the DHR's requests for information, it stated that the "Leaderboards" were not a true reflection of Petitioner's performance because there was limited data available regarding the territory manager's selling of products and they were "merely a tool to try to incentivize employees to sell" (NYSCEF Doc. No. 32). iRhythm's responses also include the paystubs and the sales performance data used to calculate bonuses for Petitioner and Fox, the white employee that allegedly received a bonus (*id.*). iRhythm asserts that the pay stubs reveal that neither Petitioner nor Fox received a bonus.

Respondent DHR's answer provides that its investigation involved a review of Petitioner's complaint, material provided by both Petitioner and Respondent, which included copies of Petitioner's and Fox's paystubs, Petitioner's and Fox's sales performance data, documentation regarding the selection of employees for downsizing, iRhythm's "Leaderboards", Petitioner's EZ-Pass records, emails between Sale, LoRusso and Petitioner regarding his performance, and an email between Sale and iRhythm's leadership regarding Petitioner's performance, as well as multiple communications with the parties.

Both the First and Second Determinations outline in detail the submissions by both parties, as well as the interviews that were conducted. The First Determination describes Petitioner's allegations, emails from Sale and LoRusso to Petitioner regarding his performance, as well as Petitioner's responses, text messages provided by Petitioner regarding his bonus, and iRhythm's "Leaderboards". Respondent DHR concludes:

Despite [Petitioner]'s submission of leaderboards to show his success, it is undisputed that there were multiple customer complaints, and the Area Vice President told him his actions were insubordination. Further Respondent provided undisputed comparative data showing a diverse group of employees were laid off on the same day as [Petitioner]. The investigation does not support the real reason [Petitioner] was laid off was discriminatory animus.

(NYSCEF Doc. No. 9).

The Second Determination further analyzes the same emails between Petitioner, Sale, and LoRusso, noting that one of Petitioner's emails was "at the very least argumentative, conceivably insubordinate and clearly vexatious" (NYSCEF Doc. No. 11). Additionally, Respondent DHR points to Sale's February 21, 2020 email to iRhythm leadership, in which he discusses issues with Petitioner, stating that three customers asked that Petitioner be removed from their accounts and that he has not executed on his top account (*id.*).

As to the alleged bonus that Petitioner did not receive but Fox, a white employee, did receive, the Second determination discusses the paystubs for both employees. It notes that the alleged "bonuses" were listed on the paystubs as "commissions", that both Petitioner and Fox received the commissions, and that their year-to-day pay as of March 27, 2020 only differed by 0.03%. In conclusion, the Second Determination states:

The record overwhelmingly establishes that Respondent had a poor impression of Complainant's performance, he was identified as a poor performer to the CEO and COO, he was placed on an informal final warning and PIP, and Sale wrote he was working on Complainant's 'exit' a month before COVID and two months before the ensuing layoffs. Complainant counters he was never trained, casts blame and aspersions on his past and present managers, co-workers and supervisors and contend the real reason he was laid off, along with fourteen Blacks, nineteen whites, seven Asians, thirteen Hispanics or Latinos, one Native American, and six of two or more races is because of his black race. The complaint is therefore ordered dismissed and the file is closed.

(NYSCEF Doc. No. 11).

The Court finds that both the First and Second Determinations are arbitrary and capricious with respect to the discrimination claim. iRhythm argues that Petitioner was selected to be laid off because of his poor performance and he was one of Sale's lowest performers, yet they present no data supporting this claim. iRhythm only provided the sales data used to

calculate bonuses for Petitioner and Fox, Petitioner's white colleague. iRhythm provided no further information regarding how Petitioner's sales data compared to other sales managers on Sale's and LoRusso's team. The only data provided regarding sales managers were the "Leaderboards" from March 2020, just one month before Petitioner's termination, which were shared by Petitioner and show that he was outperforming several of his colleagues. The First and Second Determination hardly address the "Leaderboards" and make no mention of the lack of sales manager data from iRhythm, even though this matter was remanded back to Respondent DHR to address, *inter alia*, sales manager data.

In the absence of any data, the First and Second Determinations focus on six emails which the Second Determination claims "overwhelmingly establishes that [iRhythm] had a poor impression of [Petitioner]'s performance" (NYSCEF Doc. No. 11) These include one email from LoRusso to Petitioner, one email from Sale to Petitioner, Petitioner's responses to LoRusso and Sale, and two emails from Sale to iRhythm's leadership regarding Petitioner. These six emails, sent over a three-month period, are insufficient to establish Petitioner's poor performance. Nor are there any formal records or write-ups regarding Petitioner's alleged performance issues.

Additionally, the First Determination concludes that there was no evidence of discriminatory animus because of the "undisputed comparative data showing group of employees were laid off on the same day as [Petitioner]" (NYSCEF Doc. No. 9). However, the First Determination does not account for the fact that Petitioner was the only Black member of LoRusso's and Sale's team.

Accordingly, the First and Second Determinations regarding the discrimination claim are set aside as they are arbitrary and capricious.

b. Hostile Work Environment

To establish a hostile work environment claim, Petitioner must show that “the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment” (*Forest*, 3 NY3d at 310 [internal quotation omitted]).

Petitioner argues that his complaint clearly establishes a discriminatory and hostile campaign by LoRusso and Sale, which culminated in Petitioner’s termination. Specifically, Petitioner alleges that he was berated in front of his peers during a meeting, falsely accused of driving his kids to practice during work hours, discouraged from using his paid time off, and chastised for adding nothing of value to the team. In support of these assertions, Petitioner includes the February 24, 2020 email from Sale, in which he was chastised and falsely accused of missing meetings. Petitioner also includes various emails in which LoRusso praises other members of his team, but does not include him, despite his high position on iRhythm’s “Leaderboard”. Petitioner argues that these actions are more than “petty slights and trivial inconveniences” and that they were orchestrated to either coerce Petitioner to quit, or to set him up for termination. Petitioner argues that the Second Determination does not consider his hostile work environment claim at all and it therefore must be set aside and returned to Respondent DHR for a hearing.

In opposition, Respondent iRhythm argues that the communications referenced in the complaint involve legitimate concerns that LoRusso and Sales had regarding Petitioner’s performance and include suggestions about how Petitioner could improve. Additionally, Respondent iRhythm asserts that the First Determination specifically found that there was

nothing in the record to support a finding the actions taken by iRhythm regarding Petitioner were due to discriminatory animus.

Though the First Determination found that there was no evidence of discriminatory animus, it does not consider Petitioner's hostile work environment claim at all. Nor does the Second Determination. Moreover, as discussed above, the Court finds that the First and Second Determinations regarding discrimination are arbitrary and capricious.

Accordingly, the First and Second Determinations regarding the hostile work environment claim are set aside as they are arbitrary and capricious.

c. Retaliation

To establish a claim for retaliation, Petitioner must show that "(1) he has engaged in protected activity, (2) [his] employer was aware that [he] participated in such activity, (3) [he] suffered an adverse employment action based upon [his] activity, and (4) there is a causal connection between the protected activity and the adverse action" (*Forrest*, 3 NY3d at 313).

Petitioner argues that he established a *prima facie* case of retaliation because he engaged in a protected activity by complaining about the unfair treatment, that LoRusso and human resources were aware of Petitioner's complaint, and that iRhythm terminated Petitioner's employment.

Here, the First and Second Determinations discussed Petitioner's emails to human resources. Specifically, both Determinations stated that "[f]or the purposes of the investigation [Petitioner's] February 4, 2020 email to LoRusso and his complaint to Human Resources are considered protected activity" (NYSCEF Doc. Nos. 9, 11). The Second Determination further analyzes the emails and states that

[t]he record provides that Sale told the CEO that he reached out to Human Resources regarding [Petitioner's] 'exit' before [Petitioner] reached out to HR.

The record does not support that Respondent took adverse actions because of [Petitioner] speaking to HR.

(NYSCEF Doc. No. 11).

Therefore, the Court finds that Respondent DHR had a rational basis for dismissing the retaliation claim.

Accordingly, for the foregoing reasons, it is hereby

ORDERED Respondent DHR's motion to dismiss is denied; and it is further

ORDERED and ADJUDGED that the petition is granted with respect to the

discrimination and hostile work environment claims and these claims are remanded to the DHR for further proceedings; and it is further


ORDERED and ADJUDGED that the petition is denied with respect to the retaliation claim and this claim is dismissed; and it is further

ORDERED that Petitioner shall, within twenty days of receipt of this decision and order, serve a copy of same, with notice of entry, upon Respondents as well as the Clerk of the Court, who is directed to enter judgment accordingly, and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "Efiling" page on this court's website).

This constitutes the decision and order of the Court.

4/7/2026
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" 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
	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT