

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50E

In the Matter of the Application of
FERN ABBOTT,

Petitioner,

-against-

NYS DIVISION OF HUMAN RIGHTS,

Respondent.

DECISION AND ORDER
Index No. 119027/06

WILLIAM A. WETZEL, J.:

Petitioner brings this proceeding pursuant to Article 78 of the CPLR seeking to reverse a determination of the respondent, NYS Division of Human Rights, which dismissed her complaint of unlawful employment discrimination by the intervener, CBS Broadcasting Inc.

On September 20, 2005, petitioner filed a verified complaint with the NYS Division of Human Rights charging her former employer, CBS Broadcasting Inc., with an unlawful discriminatory practice based upon gender and disability. After investigation and following an opportunity for review of related information and evidence by the petitioner, the Division of Human Rights, in a decision dated October 24, 2006, dismissed the complaint, having determined that there was no probable cause to believe that the respondent had engaged in an unlawful discriminatory practice.

For petitioner to prevail, she must demonstrate that the determination of the Division of Human Rights was arbitrary and capricious, or lacking a rational basis. See Matter of McFarland v. NYS Division of Human Rights, 241 AD2d 108 (1st Dept. 1998). As the Court of Appeals stated in the seminal case of Pell v. Bd. of Education, 34 NY2d 222 (1974), this requires a finding that the determination was made without any sound basis in reason, or without regard to

the facts. It is the role of the court to determine whether "some credible evidence supports the findings and that there is a reasonable basis in law." Matter of Procaccino v. Stewart, 32 AD2d 486 (1st Dept. 1969).

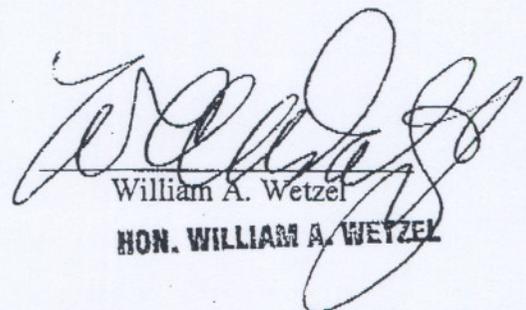
This court has reviewed the petition and supporting documents, as well as the papers submitted in opposition by the intervener. More importantly, this court has examined the file of the respondent, NYS Division of Human Rights. A review of these documents leads to the inescapable conclusion that the decision of the Division of Human Rights was made after a careful and complete investigation, and that the petitioner who bore the burden of showing probable cause as to the discriminatory acts charged was given every opportunity to address all of the factual issues, and in fact, she did so. As noted in McFarland, the Division has broad discretion in how it conducts the investigation, and as long as the investigation is sufficient and has afforded the complainant a full opportunity to present her claim, it is within the discretion of the Division to decide the manner of investigation. This court is satisfied that in this particular case, the Division of Human Rights has met their obligation as stated in McFarland, and that there is a rational basis for their determination and therefore it must remain undisturbed.

A review of the petitioner's papers indicates that she wishes this court to make a *de novo* determination based upon the conflicting statements and then substitute its judgment for that of the Division of Human Rights. This simply is not the role of the court in an Article 78 review.

For the reasons stated herein, the petition is dismissed.

This constitutes the Decision and Judgment of this Court.

Dated: February 26, 2007
New York, New York



William A. Wetzel
HON. WILLIAM A. WETZEL