

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. MICHAEL D. STALLMAN

PART 7

Justice

Matter of the Application of
MEGAN AINA,

Petitioner,

INDEX NO. 115478/08

MOTION DATE 1/30/08

MOTION SEQ. NO. 001

MOTION CAL. NO. 3

THE CITY OF NEW YORK, HUMAN
RESOURCES ADMINISTRATION OF THE CITY
OF NEW YORK,

Respondents.

The following papers, numbered 1 to 5 and the certified original administrative record were read on this Article 78 petition and cross motion to dismiss

Notice of Petition— Verified Petition — Exhibits

PAPERS NUMBERED

1-2

Answer — Exhibit A

3

Notice of Cross Motion—Affirmation—Exhibit 1

4-5

Replying Affidavits — Exhibits

NONE

Certified Administrative Record in Complaint No. 10122059

Cross-Motion: Yes No

Upon the foregoing papers, it is ORDERED that this respondents' cross motion to dismiss an Article 78 petition challenging a determination by the New York State Division of Human Rights of no probable cause as to petitioner's complaint of discrimination is granted; and it is further

ADJUDGED that the petition is denied and the proceeding is dismissed.

Petitioner pro se, an employee of the City's Human Resources Administration and a sixty year old Black woman with disabled knees, filed a complaint with the New York State Division of Human Rights (SDHR) on December 3, 2007, alleging that respondents discriminated against her because of age, disability, race/color, and retaliated against her in violation of the state's Human Rights Law, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act.

By determination and order dated October 16, 2008, SDHR found no probable cause to believe that respondents have engaged in, or was engaging in the unlawful discrimination complained of (see Gomez-Sanchez Affirm., Exhibit 1). SDHR reasoned that the complaint's allegations were fatally vague, conclusory, unrelated to discrimination, and are overwhelmingly time-barred. SDHR held a conference to afford petitioner an opportunity to be heard. As set forth in the SDHR determination, "Complainant failed to identify any adverse employment actions attached to discriminatory motives. Similarly, though she used the term 'hostile environment' frequently, she failed to link it to a recognized class or give it substance. Likewise, Complainant identified her chief alleged harasser, Constant Ford, as also being a Black woman in her 60's thus undercutting an inference of racial or age discrimination (See Gomez-Sanchez Affirm., Ex 1).

This petition followed. Petitioner did not name SDHR in the caption of the proceeding, which appears to follow the caption in petitioner's complaint before SDHR. However, SDHR answered the petition.

(Continued...)

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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"Where, as here, a determination of no probable cause is rendered without holding a public hearing pursuant to Executive Law § 297(4)(a), the appropriate standard of review is whether the determination was arbitrary and capricious or lacking a rational basis" (Matter of McFarland v New York State Div. of Human Rights, 241 AD2d 108, 111 [1st Dept 1998]). Petitioner bears the burden of showing probable cause as to the discriminatory acts charged (Id. at 113). "Probable cause exists only when, after giving full credence to the complainant's version of the events, there is some evidence of unlawful discrimination" (Matter of Doin v Continental Ins. Co., 114 AD2d 724, 725 [3d Dept 1985]). "[T]here must be a factual basis in the evidence sufficient to warrant a cautious person to believe that discrimination has been practiced" (Matter of Ramasar v State Div. of Human Rights, 294 AD2d 249, 249 [1st Dept 2002][citing Matter of Hone v New York State Div. of Human Rights, 223 AD2d 761, 762 (3d Dept 1996)][internal quotation marks and citation omitted]).

Having reviewed the papers submitted on this petition, including the original administrative record from SDHR, the Court finds that SDHR's no probable cause determination was not arbitrary and capricious, and is rationally based. Therefore, respondents' cross motion to dismiss the petition is granted, the petition is denied, and the proceeding is dismissed.

Dated: 4/3/09
New York, New York

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

Norman Goodman
clerk

FILED
APR 14 2009
COUNTY CLERK'S OFFICE