

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DAVID ELLIOT IA PART 14
Justice

	x	Index Number <u>24980</u> 2006
JOYCE CROCKER,		
Petitioner,		Motion Date <u>February 27,</u> 2007
- against -		
INCARNATION ROMAN CATHOLIC CHURCH, et al.,		Motion Cal. Nos. <u>17 and 18</u>
Respondents.		Motion Seq. Nos. <u>1 and 2</u>
	x	

The following papers numbered 1 to 16 read on this proceeding pursuant to Executive Law § 298, petitioner Joyce Crocker seeks a judgment reinstating her to her position as a teacher at the Incarnation School; awarding petitioner compensatory damages and liquidated damages; and awarding petitioner attorney's fees and costs; and in the alternative seeks a judgment granting a jury trial and de novo review of her claims. Respondents separately move pursuant to CPLR 404 for an order striking petitioner's appeal of an order of the New York State Division of Human Rights which found that there was no probable cause with respect to petitioner's claim of employment discrimination.

	<u>Papers Numbered</u>
Notice of Petition-Petition-Exhibits(1-2)	1-6
Answer.....	7
Re-Notice of Motion - Affirmation-Affidavit	
- Exhibits(A-J).....	8-11
Opposing Affirmation-Exhibit(A-C).....	12-14
Reply Affirmation.....	15-16

Upon the foregoing papers it is ordered that the petition and respondent's motion are determined as follows:

Petitioner Joyce Crocker, in her first cause of action pursuant to Executive Law § 298 seeks judicial review of an order of the New York State Division of Human Rights, dated September 12, 2006, which found that there was no probable cause with respect to

petitioner's claim of employment discrimination. The second and third causes of action allege violations of Title VII of the Civil Rights Act and the Age Discrimination in Employment Act, and are based upon the October 19, 2006 dismissal of her complaint by the Equal Employment Opportunity Commission, which specifically adopted the findings of the Division of Human Rights. The second and third causes of action thus are directly related to the Division of Human Rights' determination of no probable cause.

The Division of Human Rights is required to make a prompt investigation "by field visit, written or oral inquiry, conference, or any method or a combination thereof deemed suitable" (9 NYCRR 465.6[b]; see also Executive Law § 297[2]). "Upon filing of a complaint with the New York State Division of Human Rights, the regional director of the office in which it is filed must make a prompt and fair investigation to determine whether there is probable cause to believe the charged parties have committed illegal discrimination" (Soellner v State Div. of Human Rights, 100 AD2d 876, 877 [1984], citing Executive Law § 297[2]; 9 NYCRR 465.6[a]). The petitioner's burden is simply to establish there is probable cause to believe that she has been the victim of unlawful discrimination and determinations of no probable cause may be overturned for failure to conduct an in-depth investigation (see Moore v State Div. of Human Rights, 110 AD2d 507 [1985]; Matter of Hendel v New York State Division of Human Rights, 114 AD2d 897 [1985]; Bachman v State Div. of Human Rights, 104 AD2d 111 [1984]; Matter of Tirino v Long. Is. Jewish-Hillside Med. Center, 99 AD2d 513 [1984]; Matter of Vadney v State Human Rights Appeal Bd., 93 AD2d 935 [1983]; Matter of Piekieniak v New York State Dept. of Health, 90 AD2d 585 [1982]; Steins v State Div. of Human Rights, 86 AD2d 795 [1982], appeal dismissed 56 NY2d 805 [1982]; Wolchok v New York State Human Rights Appeal Bd., 83 AD2d 850 [1981]). While the investigation need not be extensive, it must not be so abbreviated and one-sided that it results in a record which does not afford a reasonable basis for the administrative determination.

Here, the Division of Human Rights agency has concluded that its investigation is incomplete and that further investigation is warranted on the issue of whether respondents discriminated against petitioner because of her age, national origin and gender, and engaged in disparate treatment. Counsel for the Division of Human Rights, therefore, has requested that the matter be remanded to the agency (see 9 NYCRR § 465.20[a][2]). Respondents object to the request for a remand. The court, however, may remand the matter to the agency despite the objections of one of the parties.

In view of the foregoing, the petition is dismissed and the matter is remitted to the Division for Human Rights for a full and

thorough investigation and, if appropriate, a confrontation
conference and a hearing. Respondent's motion to strike
petitioner's request for judicial review is denied as moot.

Dated: June 29, 2007

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J.S.C.