

At an IAS Term, Part 41 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 30th day of March, 2009

P R E S E N T:

HON. LARRY D. MARTIN
Justice.

-----X
LEND A D. DAUGHTRY,

Plaintiff,

- against -

Index No. 21559/08

WESTERN BEEF INC. , AND THE N.Y.S. DIVISION
OF HUMAN RIGHTS,

Defendants.
-----X

The following papers numbered 1 to 10 read on this motion:

	<u>Papers Numbered</u>
Affidavits (Affirmations) Annexed <u>Petition and Affidavit</u>	1,2
Answering Affidavits (Affirmations)	3
Reply Affidavits (Affirmations)	
_____ (Affirmations)	
Pleadings -Exhibits <u>N.Y. State Div. Of Human Rights File</u>	4
Stipulations - Minutes <u>Affidavits of Service</u>	5,6

Upon the foregoing papers, petitioner seeks to annul respondent, N.Y. State Division of Human Rights (hereafter NYSDHR), decision of May 30, 2008 determining no probable cause that complainant, petitioner Lenda Daughtry was the victim of sexual

harassment discrimination by her employer, respondent Western Beef, Inc. Petitioner also moves for reinstatement to her employment as a meat packer. In the alternative, petition seeks \$15,000 in damages from respondent Western Beef Inc. For emotional distress, pain and suffering.

Respondent NYSDHR opposes the petition, submitting the case file and investigative report with the complaint and denial of discrimination by employer, Western Beef. Respondent Western Beef submits no opposition.

After oral argument, a review of the pleadings herein, and consideration of the applicable statutory and case law, the court denies petitioner's request to annul the NYSDHR decision of no probable cause, finding it was not arbitrary or capricious or an abuse of discretion. (See CPLR Art. 7803; Executive Law §296); *Pell v. Board of Ed. Of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222 [1974].

Petitioner is free to pursue her claim for employment discrimination or wrongful termination in an action against her employer, Western Beef Inc., in the Supreme Court if she chooses to do so.

This constitutes the decision and order of the court.

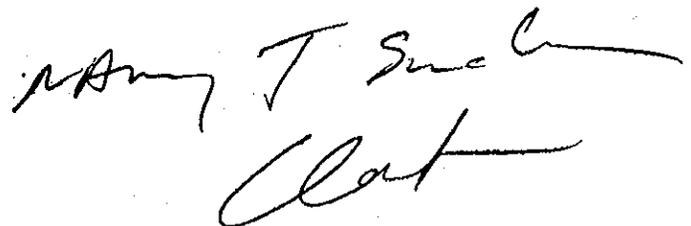
ENTER:



HON. LARRY D MARTIN
Justice of the Supreme Court

LARRY D. MARTIN
J.S.C.

HON. LARRY D. MARTIN
Justice of the Supreme Court




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KINGS COUNTY CLERK

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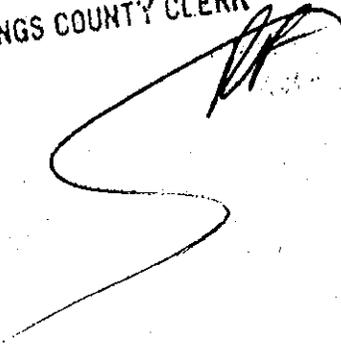
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FEE _____

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2009 APR 20 AM 7:55
KINGS COUNTY CLERK

A large, stylized handwritten signature in black ink, appearing to be a cursive 'S' with a flourish at the top right.

Office of the Clerk of the Court
Kings County, New York