

Supreme Court - State of New York  
J.A.S. Term, Part 23, Suffolk County

Present:

**Hon. Emily Pines**

Justice Supreme Court

Original Motion Date: 11-06-2006

Motion Submit Date: 01-11-2007

Motion Sequence No.: 001 MD

Original Motion Date: 11-30-2006

Motion Submit Date: 01-11-2007

Motion Sequence No.: 002 MD  
CASEDISP

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TERRANCE FREEMAN,  
Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN  
RIGHTS and NORTEL NETWORKS, INC.,  
Defendant.

X Attorney of Plaintiff  
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Attorney of Defendant NY State Div. Of  
Human Rights  
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GENERAL-COUNSEL'S OFFICE

**ORDERED**, that this Petition seeking a judgment pursuant to Executive Law §298 setting aside the New York State Division of Human Rights ("NYSDHR") Determination and Order After Investigation, dismissing Petitioner's complaint and closing the case is dismissed and the matter is respectfully remanded to NYSDHR for further proceedings; and it is further

**ORDERED**, that the motion (motion sequence number 002) by Respondent NORTEL NETWORKS, INC. ("NORTEL") is denied in light of the determination herein.

Petitioner commenced this special proceeding challenging the determination of "no probable cause" issued by Respondent NYSDHR on his discrimination complaint based upon his disability of alcoholism. NYSDHR issued

determination, dated August 7, 2006, which found "insufficient evidence to substantiate the Complainant's allegations of discrimination." Specifically, NYSDHR found that Petitioner was not protected since he was not a rehabilitated or rehabilitating alcohol user, that Petitioner had executed a Severance Agreement and Release with respondent NORTEL which precluded his rights to file a claim and finally, that it (NYSDHR) did not have jurisdiction to decide on the validity of that agreement.<sup>1</sup>

In response to the Petition, Respondent NORTEL has moved to dismiss pursuant to CPLR §§404(a), 3211(a)(1) and 3211(a)(5). Respondent NYSDHR has submitted an Affirmation by its counsel in which it alleges that the determination which dismissed Petitioner's complaint was based upon both factual and legal errors and requests that the Court annul the "no probable cause" determination and remand the proceeding to the Division for a public hearing.

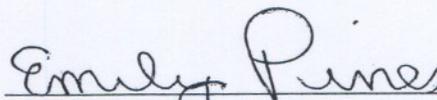
Specifically, counsel for NYSDHR asserts that the determination was based upon three errors: first, that the statement that the Human Rights Law only protects rehabilitated or rehabilitating alcohol users was contrary to law<sup>2</sup>; second that, contrary to the assertion in the determination, the Division does have the authority to determine whether the release executed by petitioner was valid, based upon ordinary contract principles; and finally, that the ultimate determination of no probable cause was in error.

Based upon the foregoing, the Court finds that the request by NYSDHR demonstrates good cause to remand the case pursuant to 9 N.Y.C.R.R. §465.20(a)(2). The Petition is therefore denied, and the matter is remanded to the New York State Division of Human Rights for a hearing on Petitioner's claims. The motion to dismiss by NORTEL is denied in light of the determination herein.

The foregoing constitutes the **DECISION** and **ORDER** of the Court.

Submit Judgment.

**Dated: February 28, 2007**  
**Riverhead, New York**

  
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**Emily Pines**  
**J. S. C.**

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<sup>1</sup>Petitioner alleges that the Severance Agreement and Release should be vitiated on the ground that it was entered into under duress or induced by fraud or mistake.

<sup>2</sup>Counsel for NYSDHR refers to the decision in *Matter of McEniry v. Landin*, 84 N.Y.2d 554, 620 N.Y.S.2d 328, 644 N.E.2d 1019 (1994) in which the Court of Appeals held that alcohol dependency qualifies as a disability within the meaning of the Human Rights Law.