

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

PRESENT: SHAFER
Justice

PART 8

HADZAS, ENVER

INDEX NO. 107788/08

MOTION DATE _____

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

12th AMERICAS COMPANY, ETAL

FILED
SEP 30 2008
COUNTY CLERK'S OFFICE
NEW YORK

The following papers, numbered 1 to 3 were read on this motion to or

Notice of Motion/ Order to Show Cause - Affidavits	_____	EXHIBITS NUMBERED	_____
Answering Affidavits - Exhibits	_____		<u>2</u>
Replying Affidavits	_____		<u>3</u>

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this ~~motion~~ petition is dismissed
in accord with the annexed memoranda.

HAROLD SHAFER

Dated: 9/25/08

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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

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

PRESENT: HON. MARILYN SHAFER PART 8
Justice

In the Matter of the Application of,
ENVER HADZAJ,

Petitioner,

INDEX NO. 107788/08
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

For a Judgment Under Article 78 of the Civil
Practice Law and Rules

-against-

12TH AMERICAS COMPANY and NYS DIVISION
OF HUMAN RIGHTS,

Respondents.

The following papers, numbered 1 to 3, were read on this petition under Article 78 of the
Civil Practice Law and Rules:

- Order to Show Cause – Petition – Exhibits
- Verified Answer – Exhibits

Cross-Motion: Yes No

FILED
PAPERS NUMBERED 1, 2, 3
SEP 30 2008
COUNTY CLERK'S OFFICE
NEW YORK

Upon the foregoing papers, it is ordered that the petition is
dismissed.

Petitioner seeks review of the determination of respondent New York State Division of
Human Rights that the termination of his employment by respondent 12th Americas Company
was not unlawful discrimination.

Background

Petitioner, Enver Hadzaj, moves, pursuant to Article 78 of the CPLR, to review
respondent's denial of his complaint charging respondent 12th Americas Company with an

unlawful discriminatory practice relating to employment because of disability in violation of NY Exec Law, art 15 (Human Rights Law).

The record shows that Hadzaj was terminated from his employment as a building superintendent when it came to respondent's attention that Hadzaj was totally disabled. It is undisputed that he is totally disabled, but he argues that he has been so disabled since 2001; that his wife has fulfilled the functions of the superintendent; and that respondent was aware that he was disabled. Respondent denies knowing that Hadzaj was totally disabled prior to March, 2008, when Hadzaj wife circulated an acknowledgment letter attempting to establish her rights.

Discussion

It is well settled that judicial review in an Article 78 proceeding is limited to a determination of whether the administrative action complained of is arbitrary and capricious or lacks a rational basis (*In re Application of Chelrae Estates, Inc v State Division of Housing and Community Renewal, Office of Rent Administration*, 255 AD2d 387, 389 [1st Dept. 1996] citing *Matter of Pell v Board of Education*, 34 NY2d 222, 230-231 [1974]). An Article 78 proceeding is limited to consideration of the evidence and arguments raised before the agency when the administrative determination was rendered and "[t]he function of the court . . . is to determine . . . whether the determination had a rational basis in the record (*In re Application of IILV Associates v Aponte*, 223 AD2d 362, 363 [1st Dept. 1996] citing *Matter of Fanelli v New York City Conciliation & Appeals Bd.*, 90 AD2d 756, 757 [1st Dept. 1982]). Courts are not permitted to substitute their judgment for that of the administrative agency where the decision is rationally based on the record. (*In re Application of Royal Realty Co v New York State Division of Housing and Community Renewal*, 161 AD2d 404, 405 [1st Dept. 1990]; *Matter of Levine v New York*

State Liq Auth, 23 NY2d 863, 864 [1969][“Judicial review of an administrative action is limited to the record made before the agency”]).

Under the Human Rights Law, the term “disability” is limited to conditions which do not prevent performance of the activities of the position. Where, as here, it is undisputed that Hadzaj was totally disabled and unable to perform the essential functions of the superintendent, termination of his employment is not forbidden by the Human Rights Law.

We have considered the other arguments of the parties and find them to be without merit.

Conclusion

Accordingly, it is

ORDERED that the petition is dismissed.

This reflects the decision and order of the court.

Dated: 9/25/08

MARILYN SHAFER

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

FILED
SLP 3-D 2008
COUNTY CLERK'S OFFICE
NEW YORK