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

PRESENT: SHAFER, Justice

PART 8

HADZAJ, MIHRISE

- v -

12TH AMERICAS COMPANY, ET AL.

INDEX NO. 107789/08

MOTION DATE

MOTION SEQ. NO. 01

MOTION CAL. NO.

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

	PAPERS NUMBERED
~~Notice of Motion~~/ Order to Show Cause — Affidavits — Exhibits ...	1, 2
Answering Affidavits — Exhibits	3
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

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

FILED

SEP 30 2008

COUNTY CLERK'S OFFICE
NEW YORK

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SUPPORT OFFICE

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

Dated: 9/25/08

MARILYN SHAFER
J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

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

PRESENT: HON. MARILYN SHAFER, *Justice* — PART 8

In the Matter of the Application of,
MIHRIJE HADZAJ,

Petitioner,

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

-against-

12TH AMERICAS COMPANY and NYS DIVISION OF HUMAN RIGHTS,

Respondents.

INDEX NO. 107789/08

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

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

	PAPERS NUMBERED
Order to Show Cause – Petition – Exhibits	1,2
Verified Answer – Exhibits	3

FILED
SEP 30 2008
COUNTY CLERK'S OFFICE
NEW YORK

Cross-Motion: ☐ Yes ☒ No

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 respondent 12th Americas Company's refusal to hire her was not unlawful discrimination.

Background

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

001

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

The record shows that Mrs. Hadzaj's husband was terminated from his employment as a building superintendent when it came to respondent's attention that he was totally disabled. She argues that her husband has been totally disabled since 2001 and that she has been the *de facto* superintendent since then with the knowledge and consent of the respondent. Respondent denies knowing that Hadzaj was totally disabled prior to March, 2008, when Mrs. Hadjaz circulated an acknowledgment letter attempting to establish her rights as superintendent.

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 HLV 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"]).

Mrs. Hadjaz's husband charged respondent with disability discrimination based on its termination of his employment. His case was dismissed based upon his inability to perform the essential functions of his position. This Court dismissed Mr. Hadjaz's Article 78 petition seeking review of that decision.

The record supports the Division's finding that respondent did not discriminate in failing to hire Mrs. Hadjaz because, as far as it knew, the superintendent position was never open. Moreover, it provided a non-discriminatory reason for not choosing Mrs. Hadjaz after it discovered Mr. Hadjaz's disability by submitting the resume of a more experienced candidate.

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.

FILED
SEP 30 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 9/25/08

J.S.C.

Check one: [X] FINAL DISPOSITION [ ] NON-FINAL DISPOSITION