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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
In the Matter of the Application of
CHRISTOPHER HORTON,

Petitioner,

-against-

NYS DIVISION OF HUMAN RIGHTS and
TACONIC D.D.S.O.,

Respondents.
-----X

**DECISION, ORDER,
AND JUDGMENT**

Index No. 6505/2008

Petitioner moves for a judgment vacating the June 30, 2008 Determination and Order of respondent New York State Division of Human Rights.

The following submissions were read:

Order to Show Cause - Verified Petition - Annexed Exhibits	1-3
Answer of Respondent Taconic D.D.S.O. - Annexed Exhibits	4-5
Answer of Respondent NYS Division of Human Rights - Annexed Exhibits	6-7
Certified Record	8

Upon the foregoing papers it is hereby ORDERED that the petitioner's application is denied and the petition is dismissed.

In the instant special proceeding petitioner Christopher Horton seeks the annulment of a June 30, 2008 Determination and Order of the New York State Division of Human Rights. The State Division of Human Rights, after investigating petitioner's complaint, determined that "there is no probable cause to believe that the respondent [Taconic D.D.S.O.] has engaged in or is engaging in the unlawful discriminatory practice complained of." Respondent D.D.S.O. is petitioner's former employer and had terminated petitioner for poor job performance. Thereafter, petitioner filed a complaint

with the State Division of Human Rights against respondent Taconic D.D.S.O.

Petitioner contends that the decision of the State Division of Human Rights was biased and premature and should be annulled.

Initially, the Court notes that the State Division of Human Rights “has broad discretion to determine its method of investigating complaints.” (*Matter of Maltsev v. New York State Division of Human Rights*, 31 AD3d 641 (2nd Dept., 2006) citing 9 NYCRR 465.6(b); *Matter of Camp v. New York State Division of Human Rights*, 300 AD2d 481 (2002); *Lee v. New York State Human Rights Appeal Board*, 111 AD2d 748, 749 (1985); *Matter of Verderber v. Roechling Steel*, 110 AD2d 705, 706 (1985).)

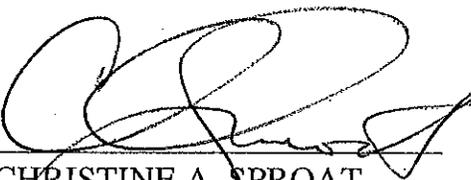
Further, “a court may not substitute its judgment for that of the board or body it reviews unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion” (*Matter of Pell v. Board of Education of Union Free School District No. 1 of Towns of Scarsdale & Mamaronack, Westchester County*, 34 NY2d 222, 232 (1974).)

“Arbitrary and capricious” conduct has been interpreted as action “without sound basis in reason and is generally taken without regard to the facts.” (*Matter of Pell v. Board of Education*, 34 NY2d 222, 231.) A review of the record submitted to the Court reveals that the June 30, 2008 determination of the State Division of Human Rights does not fall within the aforesaid definition of “arbitrary and capricious.” Rather, this Court finds that said decision possesses a rational basis. Accordingly, the decision must be

confirmed and the petition dismissed. (See, e.g., *Matter of Wagschal v. Board of Examiners of the Board of Education of the City of New York*, 69 NY2d 672 (1986).)

So Ordered.

Dated: March 12, 2009
Poughkeepsie, New York



HON. CHRISTINE A. SPROAT
Supreme Court Justice

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