

STATE OF NEW YORK
SUPREME COURT

TOMPKINS COUNTY

JEFFREY KING,

Petitioner,

vs.

Index No. 2008-1033

JANITRONIC, INC. AND
NYS DIVISION OF HUMAN
RIGHTS,

Respondents.

BEFORE: HON. ROBERT C. MULVEY
Supreme Court Justice

APPEARANCES:

JEFFREY KING
Petitioner Pro Se
1507 Slaterville Road
Ithaca, New York 14850

JANITRONIC, INC.
1988 Central Avenue
Albany, New York 12205

STATE DIVISION OF HUMAN RIGHTS
By: Marilyn Balcacer, Esq. of Counsel
One Fordham Plaza
Bronx, New York 10458

2008 OCT 22 PM 2:45
REGISTERED CLERK
TOMPKINS COUNTY NY OFFICE

DECISION & ORDER

Mulvey, Robert C., J.

Petitioner has brought this special proceeding pursuant to Article 78 of the CPLR and the Human Rights Law (Executive Law Art. 15, Section 298) seeking to review a determination of the Division of Human Rights which found no probable cause to believe that the respondent, Janitronics, Inc., engaged in a discriminatory practice and dismissed the petitioner's complaint. The respondent, Janitronics, Inc., appeared by its representative on the return date of the petition and voiced its opposition to the relief requested by the petitioner. The respondent, State Division of Human Rights, has submitted the certified record of the proceedings conducted by the Division as well as its verified answer seeking dismissal of the petition.

The record reflects that the petitioner filed a complaint with the State Division of Human Rights on or about January 9, 2008. The petitioner, a janitorial supervisor, charged the respondent employer, Janitronics, with unlawful discriminatory practices regarding petitioner's employment because of his disability and religion. Petitioner, through his complaint, essentially alleges that, at the time he was hired, he informed his manager that he suffered from asthma and that he could not work on Sundays because he was a devout Baptist, but that petitioner was subsequently terminated on or about September 10, 2007, without having been given accommodations for his disability or his religious beliefs. After conducting an investigation with respect thereto, the Division issued a determination of no probable cause and dismissed the complaint on July 10, 2008, without conducting a hearing. Petitioner asserts that the Division

failed to conduct an adequate investigation of his complaint or follow up on supporting documents he supplied to the Division and petitioner otherwise, in substance, contends that said determination which dismissed his complaint was arbitrary, capricious or an abuse of discretion.

The respondent, Division, in its verified answer, contends that the evidence gathered by the Division during the course of its investigation was sufficient to support the Division's no probable cause determination and, further, denies that its dismissal of the complaint was arbitrary, capricious or an abuse of discretion.

Where a determination of no probable cause is issued by the Division without holding a formal hearing, the proper standard of review is whether the determination was arbitrary and capricious or without a rational basis. Matter of McFarland v. New York State Division of Human Rights, 241 A.D.2d 108, 111; Matter of Hone v. New York State Division of Human Rights, 223 A.D.2d 761, 762; Matter of Giles v. State Division of Human Rights, 166 A.D.2d 779, 780.

Upon review and consideration of the papers submitted, the Court has determined that the petition herein should be dismissed in its entirety.

First, the record reflects that the petitioner was given a full and fair opportunity to present evidence and to rebut the evidence presented by the respondent, Jantronics. Further, the record contains copies of statements from certain employees of Jantronics and others, as well as copies

of medical records and a copy of a Department of Labor - Unemployment Hearing Decision that were supplied by the petitioner. The record also indicates that a one-party conference was conducted with the petitioner/complainant. Under such circumstances, the Court finds that the Division did not abuse its discretion by the manner in which it investigated the petitioner's complaint. (See, Matter of Murphy v. Russel Sage College, 134 A.D.2d 716; Matter of Friel v. McCall, 109 A.D.2d 741; Matter of Shay v. City of Elmira, 108 A.D.2d 968).

Second, although there is conflicting evidence in the record as to whether the petitioner told his manager or another representative of Jantronics that he suffered from asthma, there is no evidence that the petitioner ever provided Jantronics with any medical documentation regarding his asthma or that he requested any accommodations because of that condition. The record also indicates that the petitioner's normal duties consisted primarily of supervision of the night cleaning staff and it was not necessary for him to perform cleaning tasks unless he was short of staff. Further, the petitioner's employment application with Jantronics indicated that, in connection with previous employment in 2004, his duties included dusting and vacuuming along with other general cleaning.

With respect to the petitioner's claim that Jantronics denied his request to have Sundays off, the record indicates that during his two years of employment with Jantronics he was not asked to work on Sundays, except for one occasion on August 26, 2007, and, in connection with that one request, the petitioner agreed to appear to inspect the work done by other workers. Further, the record indicates that there is no dispute that the petitioner was suspended from his

employment with Jantronics on or about August 29, 2007, because he could not be found by his manager at his work site during his normal working hours on August 28, 2007, and petitioner acknowledged that he left work early on the 28th without permission. It is also undisputed that the petitioner was subsequently terminated in September of 2007, after his manager was apparently informed that the petitioner distributed paychecks without authority.

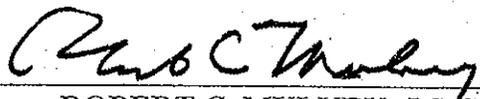
Upon the record presented, the Court finds that there was a rational nondiscriminatory basis for the Division's determination of no probable cause. (See, Matter of Jo v. May Department Stores Company, 21 A.D.3d 614; Matter of Sonne v. New York State Division of Human Rights, 12 A.D.3d 820). Moreover, the Court may not substitute its judgment for that of the Division where, as here, there has been no demonstration that the determination was arbitrary or capricious. (See, Matter of Murphy v. Russell Sage College, 134 A.D.2d 716; Matter of Gray v. Albany Medical Center Hospital, 108 A.D.2d 1031).

Accordingly, for the reasons set forth above, it is

ORDERED AND ADJUDGED that the petition is hereby dismissed in its entirety.

This shall constitute the Decision and Judgment of the Court. No costs are awarded.

Dated: October 20, 2008


ROBERT C. MULVEY, J.S.C.