

At a Special Term of the Supreme Court held in and for the County of Onondaga at the Courthouse, Syracuse, New York on the 21st day of January, 2009.

PRESENT: HON. ANTHONY J. PARIS
Justice of the Supreme Court

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

MARCIA K. LaFAVE,

Index No. 2008-2770
RJI No. 33-08-1273

Petitioner,

ORDER

-vs-

WILL & BAUMER, INC. and SCOTT HERRING,

Respondents.

The Petitioner Marcia K. LaFave ("Petitioner") having filed a Petition with this Court to review and challenge the determination of the New York State Division of Human Rights finding that Respondents had not discriminated against Petitioner on the basis of gender, and the Petition having regularly come to be heard,

NOW, upon reading and filing the Notice of Petition dated November 18, 2008, and a Verified Petition dated November 18, 2008, all in support of Petitioner's Petition, and Respondents, Will & Baumer, Inc. and Scott Herring, having filed an Answer to the Petition, dated December 9, 2008, and an Affirmation in Opposition to Petition of Dennis P. Hennigan, dated December 9, 2008, together with exhibits attached thereto, all in opposition to Petitioner's Petition, and the Answer filed by Respondent New York State Division of Human Rights on December 12, 2008, together with exhibit, all in opposition to Petitioner's Petition, and the Court having heard Petitioner and Costello, Cooney & Fearon, PLLC (Brenton P. Dadey, of counsel), attorneys for Respondents, Will & Baumer, Inc. and Scott Herring, and no

COSTELLO, COONEY & FEARON, PLLC

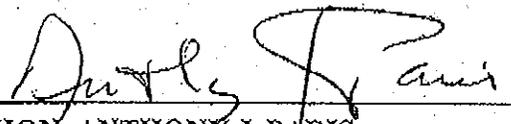
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person having appeared on behalf of the New York State Division of Human Rights, and due deliberation having been had, and this Court having issued its Decision dated January 21, 2009, a copy of which is attached hereto and incorporated herein, it is hereby

ORDERED, that the Petition is dismissed, without prejudice.

DATED: 215, 2009
Syracuse, New York

ENTER:


HON. ANTHONY J. PARIS
Justice of the Supreme Court

COSTELLO, COONEY & FEARON, PLLC

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ONONDAGA

-----X

MARCIA K. LA FAVE, : Index No.

Plaintiff, : 08-2770

-vs-

WILL & BAUMER, INC. & SCOTT HERRING, : Decision

Defendants. :

-----X

January 21, 2009
Onondaga County Courthouse
401 Montgomery Street
Syracuse, New York 13202

B E F O R E :

HON. ANTHONY J. PARIS,

Supreme Court Justice

A P P E A R A N C E S :

Marcia LaFave, Plaintiff - Pro Se

COSTELLO COONEY & FEARON

Attorney for the Defendant

205 S. Salina Street

Syracuse, New York

BY: BRENTON DADEY, ESQ., of counsel

Reported by: Elizabeth A. Black, CSR, RMR, CRR

Decision

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(Off-the-record motion arguments.)

THE COURT: Okay. This is a petition to review and challenge the determination of the New York state Division of Human Rights finding that respondents had not discriminated against petitioner on the basis of gender.

After a public hearing the Division determined that there was no probable cause that respondents engaged in any type of discriminatory practice as concerns the petitioner. It made no award for any back pay or compensatory damages. Its written determination was issued on February 4, 2008.

Thereafter, the petitioner attempted to initiate a proceeding to review and appeal the Division's determination. However, the materials were and continue to be legally insufficient. Her petition is not signed or verified.

The petition is also inaccurate in that at paragraph twelve it alleges a determination of discrimination by respondents, when in fact the determination by the Division found no such discrimination and made no such determination.

Furthermore, the petition at paragraphs 17 and 18 seeks only to have predetermination interest added to the back pay award, which is impossible as no award for back pay was made by the Division.

Decision

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Finally, the petition possibly may have been untimely commenced.

Therefore, by reason of the foregoing, the petition is denied without prejudice to refile it with legally sufficient pleadings if possible.

Counsel, you'll prepare the order, attach a copy of the transcript, send it to Miss LaFave. All right? Excuse me, ma'am.

MR. DADEY: Yes, Your Honor.

THE COURT: If you'll see my clerk, who will give you the name of the law school. They have a number of clinic programs up that there may be able to assist you. Okay?

THE PETITIONER: Thank you.

THE COURT: All right.

THE PETITIONER: Thank you.

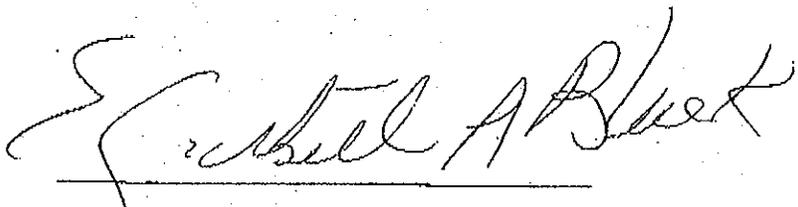
THE COURT: Good luck.

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C E R T I F I C A T I O N

I, Elizabeth A. Black, an Official Reporter in the Fifth Judicial District, State of New York, do hereby certify that the foregoing is a true and complete transcript of my stenographic notes taken in the above-entitled matter, held at the time and place first above-mentioned.

DATED: January 22, 2009



Elizabeth A. Black
Senior Court Reporter

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

MARCIA K. LaFAVE,

Index No. 2008-2770
RJI No. 33-08-1273

Petitioner,

-vs-

AFFIDAVIT OF SERVICE

WILL & BAUMER, INC. and
SCOTT HERRING,

Respondents.

STATE OF NEW YORK
COUNTY OF ONONDAGA ss.:

The undersigned, being duly sworn, says: I am not a party to the action, am over 18 years of age and reside at Williamstown, New York.

On February 9, 2009, I served the annexed Notice of Entry with Order.

Service By Mail

by depositing a true copy thereof enclosed in a post-paid envelope, in an official depository under the exclusive care and custody of the U.S. Postal Service in Syracuse, New York, addressed to each of the following at the last known address set forth: Marcia K. LaFave, *pro se*, 220 Sutton Road, Pennellville, New York 13132.

Personal Service on Individual

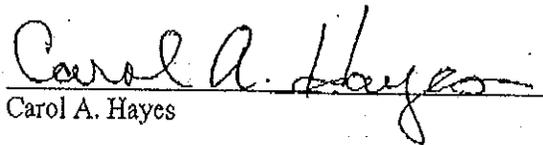
by delivering a true copy thereof personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as a party therein:

Service by Electronic Means

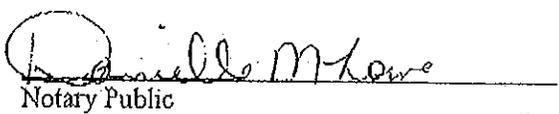
by transmitting the papers by electronic means to the telephone number listed below, which number was designated by the attorney for that purpose. I received a confirmation from the equipment indicating that the transmission was received. I also deposited a true copy of the papers, enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service in Syracuse, New York, addressed to the attorney at the address set forth:

Overnight Delivery Service

by depositing a true copy thereof, enclosed in a container addressed as shown below, into the custody of for overnight delivery, prior to the latest time designated by that service for overnight delivery:


Carol A. Hayes

Sworn to before me on February 9, 2009.


Notary Public

DANIELLE M. LOWE
Notary Public, State of New York
No. 01LO8045244
Qualified in Onondaga County
Commission Expires July 24, 2010

14:58 02/09/09 ONONDAGA COUNTY CLERK MM