Supreme Court
of the
State of New York

ROBERT A. SACKETT
JUSTICE

CHAMBERS
LAWRENCE H. COOKE SULLIVAN COUNTY COURTHOUSE
414 BROADWAY
MONTICELLO, NEW YORK 12701

May 8, 2007

RECEIVED
MAY 1 0 2007
GENERAL-COUNSEL'S OFFICE

Michael Colodner, Esq.
Unified Court System of the State of New York
25 Beaver Street
New York, New York 10004
Att: John Eiseman, Esq.
Att: Lisa M. Evans, Esq.

Re: Lawrence v. NYS Unified Court System, et al.
Index No. 7340/06

Counsel:

Enclosed please find original Decision/Judgment signed on April 24, 2007 with regard to the above captioned matter to be filed with the Clerk's Office.

I am returning all supporting papers which must be filed with the original Decision/Judgment.

Thank you.

Very truly yours,

Robert A. Sackett

ROBERT A. SACKETT
J.S.C.

RAS/agk
Encls.

cc: Sherrie Seeley, Special Term Clerk
Albany County Courthouse
16 Eagle Street, Room 102
Albany, N. Y. 12207
Mr. William J. Lawrence
3109 Carman Road
Schenectady, New York 12303
Caroline J. Downey, Esq., Acting Counsel General - State Division of Human Rights
One Fordham Plaza, 4th Floor
Bronx, New York 10458
Att: Marilyn Balcacer, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of
WILLIAM J. LAWRENCE,

Petitioner,

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

- against -

NEW YORK STATE UNIFIED COURT SYSTEM, NYS
OFFICE OF COURT ADMINISTRATION, NYS
DIVISION OF HUMAN RIGHTS,

Respondents.

DECISION AND JUDGMENT

Motion Return Date: Albany County Special Term, November 17, 2006
(Return Date: March 20, 2007)
RJI Number: 01-06-ST7140
Index Number: 7340/06

Justice Robert A. Sackett, Presiding

APPEARANCES: **William J. Lawrence**
Self-Represented Petitioner
3109 Carman Road
Schenectady, New York 12303

Michael Colodner, Esq.
Unified Court System of the State of New York
25 Beaver Street - 11th Floor
New York, New York 10004
John Eiseman, Esq., of Counsel
Lisa M. Evans, Esq., of Counsel

Caroline J. Downey, Esq.
Acting General Counsel
State Division of Human Rights
One Fordham Plaza
Bronx, New York 10458
Marilyn Balcacer, Esq., of Counsel

SACKETT, J.:

Petitioner brings this CPLR article 78 proceeding pursuant to Section 298 of the

Human Rights Law against respondents the New York State Division of Human Rights, the State of New York Unified Court System ["UCS"], and the Office of Court Administration ["OCA"], challenging respondent the New York State Division of Human Rights's administrative determination finding that the Unified Court System did not discriminate against petitioner based on his sex. Petitioner seeks relief in the form of a promotion and back pay "equivalent to [the] difference between Grade 8 pay and Grade 16 pay from 1984 through 1997 and Grade 12 pay and Grade 16 pay from 1997 to present".

Respondent New York State Office of Court Administration, Unified Court System has filed a verified answer alleging that the amended petition fails to state a cause of action; that the decision of the State Division of Human Rights was not arbitrary, capricious or an abuse of discretion and its determination must not be disturbed; and that the petition is barred, in part, by the applicable statute of limitations.

Respondent State Division of Human Rights ["SDHR"] has filed a verified answer alleging that the evidence gathered by the Division in the course of the investigation was sufficient to support its probable cause determination and seeks dismissal of the amended petition.

The salient facts are as follows. Petitioner, a male in his early 50's, has been employed as an office worker/secretary with the New York State Unified Court System, Office of Court Administration since 1981. On or about January 9, 2006, he filed a complaint with respondent SDHR alleging that respondent UCS discriminated against him based on his sex. The gravamen of petitioner's amended petition is that between the Fall of 2004 and the Summer of 2005, he applied for numerous promotions to the posted vacancies of court analyst and secretary. More specifically, the records indicate that in January 2005, petitioner applied for two secretarial positions in the New York State Court of Claims, one position was in the Purchasing Unit, and the other position was in the Court Decision Unit. In March 2006, he applied for a secretarial position in the Claims Assessment Unit in the Court of Claims. Petitioner was interviewed for all three positions but the positions were subsequently filled by women. According to petitioner, he was denied these positions because of, *inter alia*, his gender and not that he lacked the requisite qualifications. After conducting an investigation, SDHR found no probable cause to support petitioner's allegations. In dismissing the complaint, the Division determined that:

> "The complainant sought advancement in his employment, and to that end, he applied for three separate job postings. Of the qualified candidates, complainant had considerably less direct experience. The

> reasons for respondent denying complainant the promotions he sought are the product of sound business judgment, and do not appear to be pretexts for discrimination. Respondent found persons more fully qualified for the job postings, and it hired them."

Prefatorily, because certain of petitioner's claims, to wit, that he was subject to discriminatory treatment based on his marital status (he is single) and ancestry, were not raised before SDHR, they are precluded from review (*see* Human Rights Law §298). In addition, any events of which petitioner complains which occurred prior to January 9, 2005 are barred by the one-year statute of limitations (*see* Human Rights Law §297).

Turning to the merits, it is well settled that "'[a]dministrative determinations...are of course subject to only limited judicial review, and will not be disturbed in the absence of a showing that they are wholly arbitrary or without any rational basis'" (Matter of Civil Serv. Empl. Assn., Inc., Local 1000, AFSCME. AFL-CIO v State University of New York, 286 AD2d 850 [2001], quoting Cove v Sise, 71 NY2d 910, 912 [1988]). The appropriate standard of review to be applied by the Court to the SDHR's no probable cause determination rendered without a public hearing is whether the determination is arbitrary and capricious or lacking a rational basis (*see, e.g.* Matter of Giles v State Division of Human Rights, 166 AD2d 779, 780 [1990]).

Applying this standard to the matter at hand, it is the Court's view that after conducting an investigation and receiving information from petitioner and respondent UCS, SDHR rationally concluded that there was no probable cause for believing that respondent New York State, Unified Court System, Office of Court Administration had engaged in unlawful discriminatory practices relating to petitioner based upon his gender. More specifically, petitioner alleges that in each instance wherein he applied for a secretarial vacancy, a woman was offered the position and that he was not because of his sex. With respect to the secretarial position in the Purchasing Unit, the investigation by SDHR revealed that petitioner was one of nine candidates interviewed by a panel consisting of two employees of the Court of Claims --one of whom was a male: a senior administrative services clerk and an associate court clerk.. The candidate selected to fill the position was already assigned to the Purchasing Unit and was, in fact, performing duties that essentially mirrored the duties that were required for the secretarial position. By comparison, petitioner had no recent experience in purchasing, dealing with vendors or dealing with accounts receivables and that his experience for the 15 years that he has worked in the Court of Claims has been primarily mail room duties.

Next, with respect to the secretarial position in the New York State Court of Claims, petitioner was one of 11 candidates interviewed by a panel consisting of a principal court attorney and a senior court clerk. Petitioner had no secretarial experience nor had he successfully completed an certified

business or commercial course. The candidate selected was the Senior Court Office Assistant who had 10 years of experience as an executive secretary, including more than three years as an office assistant in the Unified Court System, the position she held at the time of the interviews. As is indicated by her resume, her primary responsibilities in that position included the filing and serving of orders, stipulations, decisions and other legal paperwork that is handled by the Court Decisions Unit, the unit seeking to fill the position. Unequivocally, the candidate selected for the position not only met the qualifications for the job but had already been performing many of the required duties.

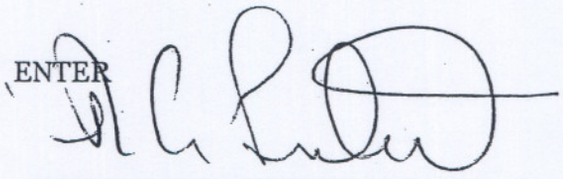
Finally, with respect to the secretarial position in the Claims Assessment Unit in the Court of Claims, petitioner was one of 12 candidates interviewed by a panel consisting of a principal court attorney and an associate court attorney, one of whom was a male. The position required, *inter alia*, sorting and distributing the unit's incoming mail; processing filing fee payments; entering information regarding new claims and retrieving information regarding previously filed claims in the court database; preparing filing fee and dismissal orders for the presiding Judge's signature, duties all of which were being performed by the selected candidate in her position as Senior Court Office Assistant.

Based on the foregoing, the Court finds that SDHR rationally concluded that there was an insufficient factual basis in the evidence to warrant an inference of unlawful discrimination (*see* Matter of Doin v Continental Ins., Co., 114 AD2d 724, 725 [1985]). Indeed, the record sufficiently supports the SDHR's conclusion that respondent Unified Court System, Office of Court Administration did not promote petitioner to the positions for which he applied was not discriminatory in naturebut rather its need to fill those positions with those best qualified and experienced to meet the requirements of the each particular job description.

In light of the foregoing, the amended petition is dismissed. This constitutes the Decision and Judgment of this Court. All papers, including the original copy of this Decision and Judgment, are being sent to respondent's attorney, who is not relieved from the provisions of CPLR 2220 with respect to filing, entry and notice of entry.

Dated: Monticello, New York
April 24, 2007

ENTER



Hon. Robert A. Sackett, JSC

Papers considered:

Amended petition of William J. Lawrence, dated October 26,2006, with exhibits; verified answer of respondent State of New York Unified Court System, dated March 22, 2007, opposing affidavit of Lisa M. Evans, Esq., dated March 22, 2007, with exhibits and memorandum of law; answer to amended petition of respondent State Division of Human Rights, dated January 31, 2007, with certified transcript of the record; correspondence from William J. Lawrence, dated February 6, 2007.