

Supreme Court, Appellate Division, Third Department, New York.
In the Matter of John MOMOT, Appellant,
v.
RENSELAER COUNTY, Hudson Valley Community College, Respondent.

May 14, 2009.

John Momot, Watervliet, appellant pro se.

Featherstonhaugh, Wiley & Clyne, L.L.P., Albany (Stephen B. Hanse of counsel), for respondent.

Appeal from an order of the Supreme Court (Hummel, J.), entered January 8, 2008 in Rensselaer County, which dismissed petitioner's application, in a proceeding pursuant to Executive Law § 298, to review a determination of the State Division of Human Rights finding no probable cause to believe that respondent had engaged in an unlawful discriminatory practice relating to education.

Petitioner, a former student in respondent's nursing program, filed a complaint with the State Division of Human Rights in January 2007, alleging that respondent discriminated against him. The allegations primarily involve discrimination based upon his national origin and in retaliation for previously filed complaints. [FN1] Following an investigation, the Division found that there was no probable cause to believe that respondent had engaged in the alleged discriminatory practice, and that respondent had articulated legitimate, nondiscriminatory reasons for dismissing petitioner from its nursing program. Petitioner then commenced this proceeding to challenge the Division's determination, and Supreme Court dismissed the petition, prompting this appeal.

FN1. In a prior decision, this Court affirmed the dismissal of petitioner's application to review a separate determination of the State Division of Human Rights finding no probable cause to believe that respondent had engaged in discrimination based upon petitioner's gender or subjected him to sexual harassment (*Matter of Momot v. Rensselaer County, Hudson Val. Community Coll.*, 57 A.D.3d 1069, 868 N.Y.S.2d 396 [2008], *lv. denied* --- N.Y.3d ----, --- N.Y.S.2d ----, --- N.E.2d ---- [May 5, 2009]).

We affirm. Inasmuch as the record reveals that respondent dismissed petitioner from its nursing program for legitimate educational reasons and that petitioner's claims of discrimination are unfounded, the Division's determination was not arbitrary and capricious and must be affirmed (*see Matter of Sughe Jo v. May Dept. Stores Co.*, 21 A.D.3d 614, 615, 799 N.Y.S.2d 839 [2005], *appeal dismissed* 5 N.Y.3d 880, 808 N.Y.S.2d 142, 842 N.E.2d 28 [2005]; *Matter of Sonne v. New York State Div. of Human Rights*, 12 A.D.3d 820, 821, 784 N.Y.S.2d 667 [2004]; *Matter of Hone v. New York State Div. of Human Rights*, 223 A.D.2d 761, 762, 635 N.Y.S.2d 802 [1996]). Peti-

tioner's arguments regarding matters not contained within the record are not properly before us (see e.g. *Matter of Smith [Commissioner of Labor]*, 296 A.D.2d 803, 804 n., 745 N.Y.S.2d 618 [2002]).

***922** ORDERED that the order is affirmed, without costs.

CARDONA, P.J., MERCURE, SPAIN, LAHTINEN and MALONE JR., JJ., concur.

877 N.Y.S.2d 921, 2009 N.Y. Slip Op. 03820

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