

COPY

STATE OF NEW YORK
SUPREME COURT COUNTY OF RENSSELAER

DECISION AND ORDER

JOHN MOMOT,

INDEX NO.: 222548

Petitioner,

- against -

RENSSELAER COUNTY,
HUDSON VALLEY COMMUNITY COLLEGE,

Respondent.

APPEARANCES:

JOHN MOMOT
2613 3rd Avenue
Watervliet, New York 12189
Petitioner, Pro Se

FEATHERSTONHAUGH, WILEY,
CLYNE & CORDO, LLP
(Randall J. Ezick, Esq., of Counsel)
99 Pine Street
Albany, New York 12207
Attorneys for Respondent

HUMMEL, J.:

Petitioner seeks judicial review of a determination and order of the New York State Division of Human Rights dated June 27, 2007, which determined that he had not been unlawfully discriminated against by Respondent and issued a finding of no probable cause. Respondent opposes the relief sought.

Petitioner's claim asserts, in sum and substance, that the Respondent engaged in a pattern of encouraging females to engage in sexually provocative behavior in order

to demonstrate that he was a sexual offender and to eject him from college. Petitioner named several females he believed had acted inappropriately with him. Petitioner also described how the college was part of the "Mafia", the "system", or the "big fish", a conspiracy that involved not only Respondent, but the Federal Government as well, and which was aimed at exposing him as a sexual offender. Not only was he being provoked, but his movements were being taped and watched by the "system".

Respondent conducted a thorough investigation into the allegations of Petitioner's complaint, which included interviews with the individuals identified in the complaint. Respondent determined the complaints to be unfounded. The Division of Human Rights also conducted an independent review of the allegations, Petitioner's submissions, and the submissions of some of Petitioner's previous associates and past employers. The review included the college's determination that Petitioner should be discharged from the nursing program for his failure to follow the procedures set forth by that department, his poor performance in the clinical setting, and his inability and unwillingness to accept criticism and take advice.

In reviewing a determination of the Division of Human Rights, the Court must consider whether the agency's determination was rationally supported by substantial evidence (see, Salvatore v. New York State Division of Human Rights on Complaint of Frey, 118 AD2d 715 [2nd Dept., 1986]). The burden is on the complainant to prove by substantial evidence his claim (see, Milonas v. Rosa, 217 Ad2d 825 [3rd Dept., 1995]).

A reviewing court may not substitute its own judgment for that of the Commissioner of Human Resources unless the determination is so arbitrary and capricious as to constitute an abuse of discretion (see, e.g., Consolidated Edison Co.

Of New York v. New York State Division of Human Resources, 77 NY2d 411).

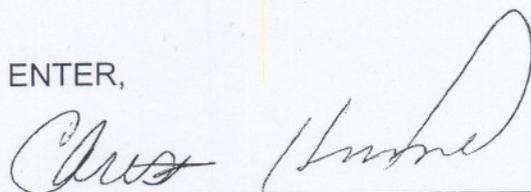
Petitioner has failed to establish, or even allege, that the determination was arbitrary and capricious and without a rational basis. The Court's review of the record shows no evidence of a policy of sexual discrimination established and carried out by the college against this Petitioner or others similarly situated. Petitioner offered no substantiation for his belief that the college was using sexually provocative women to place him in the position where he could be arrested as a sexual offender. Further, the evidence was overwhelming that Petitioner's dismissal from the college's nursing program was based on a rational analysis by the nursing department staff and faculty that Petitioner was unable to complete the course's requirements in any manner that was satisfactory.

Petitioner's challenge to the determination of the New York State Department of Human Rights made on June 27, 2007 is denied, and the petition is dismissed.

The preliminary conference scheduled for October 19, 2007 is cancelled.

DATED: OCTOBER 16, 2007

ENTER,



CHRISTIAN F. HUMMEL
ACTING SUPREME COURT JUSTICE

Papers considered:

Notice of Petition dated August 23, 2007 with supporting documents;

Answer to Petition by New York State Department of Human Rights, certified Administrative Record;

Verified Answer, Affidavit in Opposition to the Petition of Randall J. Ezick, Esq., sworn to on September 11, 2007, Memorandum of Law.