

STATE OF NEW YORK  
SUPREME COURT : TOMPKINS COUNTY

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In the Matter of the Application of

**STEPHEN R. MONDICS, SR.,**

Petitioner,

-against-

Index No. 2007-0074

**REY F. TORRES**, as Regional Director  
New York State Division of Human Rights

and

**KENDAL AT ITHACA. INC.,**  
2230 North Triphammer Road  
Ithaca, New York 14850

Respondents.

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DECISION AND ORDER

Petitioner has moved pursuant to Article 78 of the CPLR and Article 15 of the Human Rights Law (Executive Law, Section 298) seeking to vacate a determination of no probable cause issued on November 17, 2006, and remitting the case to the Division in the interest of justice for the purpose of adducing additional material evidence. The State Division of Human Rights has appeared in the proceeding and has requested, through its answering papers, that the Court remand the case to the Division for good cause shown. The respondent, Kendal at Ithaca, Inc., has appeared and moved for dismissal of the petition herein on the ground that this proceeding was not timely commenced.

The record reflects that the petitioner filed a complaint with the Division on or about February 21, 2006. The Division issued a determination of no probable cause with respect thereto on November 17, 2006. No hearing was conducted in connection with said determination. Petitioner contends that the determination was arbitrary, capricious,

unreasonable and unlawful because documentary evidence in the file raised questions of fact which warranted a hearing. Petitioner asserts the issue of whether or not accommodations could have been made by Kendal to permit the petitioner to do his job should have been addressed by the Division.

Kendal of Ithaca, Inc. seeks dismissal of the petition on the basis that this proceeding was not timely commenced within the sixty (60) day limitation period established by the provisions of Section 298 of the Executive Law. The record reflects that the Determination and Order issued by the Division was served upon the petitioner by first class mail on November 17, 2006, and that the petition herein was filed on January 19, 2007, more than sixty days after such service.

Upon review and consideration of the papers submitted, the Court finds that the motion of Kendal at Ithaca, Inc. should be granted and the petition dismissed.

The record clearly shows that this proceeding was not commenced within the sixty day limitations period and should be dismissed. (See, Gil v. New York State Division of Human Rights, 17 A.D.3d 365; Dudish v. New York State Division of Human Rights, 15 A.D.3d 823). Further, the Court finds that the Division's request for a remand of the case pursuant to its rules (9 NYCRR Sec. 465.20 [a] [2]) is not warranted in this instance. The Court's authority to issue a remand when an appeal has been taken appears to be discretionary and is to be based upon good cause shown. The exercise of that authority would, in this Court's view, not be appropriate where the appeal should be dismissed as untimely. Moreover, a reopening of the case pursuant to the provisions of 9 NYCRR Sec. 465.20 [c] is also not warranted since there has been no demonstration by the Division of actions occurring since the investigation or any newly discovered evidence. (See also, Union Carbide Corporation v. State Division of Human Rights, 1973 WL 2691, Supreme Court, New York County).

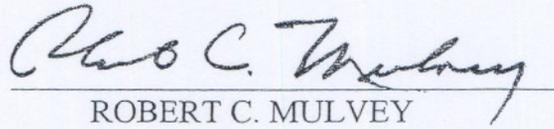
Accordingly, for the reasons set forth above, it is

ORDERED that the motion of the respondent, Kendal at Ithaca, Inc., seeking dismissal of

the petition herein is granted and the petition is hereby dismissed with prejudice.

This shall constitute the Decision and Order of the Court. No costs are awarded on the motion.

Dated, July 3, 2007.

A handwritten signature in cursive script, appearing to read "Robert C. Mulvey", is written over a horizontal line.

ROBERT C. MULVEY

J.S.C.